

**Report to the Honourable Joan Smallwood
Minister of Labour**

on

**RELOCATION OF AND CHANGES TO
EXISTING GAMING FACILITIES
IN BRITISH COLUMBIA:
Review and Recommendations**

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CONTENTS

| | |
|----------------------------------------------------------------------|----|
| 1. INTRODUCTION | 1 |
| 1.1 The Terms of Reference | 2 |
| 1.2 Comment on the Terms of Reference | 3 |
| 2. GAMING POLICY IN BRITISH COLUMBIA | 5 |
| 2.1 The Administration of Gaming | 5 |
| 2.1.a The Gaming Policy Secretariat | 6 |
| 2.1.b The British Columbia Gaming Commission | 7 |
| 2.1.c The British Columbia Lottery Corporation | 8 |
| 2.1.d The Gaming Audit and Investigation Office | 9 |
| 2.1.d.i Registration Program | 9 |
| 2.1.d.ii Investigation Program | 10 |
| 2.1.d.iii Audit Program | 10 |
| 2.1.e The British Columbia Racing Commission | 11 |
| 2.2 Recent Studies and Reports | 12 |
| 3. FINDINGS OF THE REVIEW—THE FAULTLINES | 15 |
| 3.1 Gaming Proponents and Opponents | 16 |
| 3.2 Provincial and Municipal Governments | 17 |
| 3.3 Casino Operators and the British Columbia Lottery Corporation | 19 |
| 3.4 Bingo versus Casinos: The Changing World of Gaming | 21 |
| 3.5 Horse Racing versus Casinos: The Changing World of Gaming | 24 |
| 4. RECOMMENDATIONS | 27 |
| 4.1 General | 27 |
| 4.2 Relocation | 29 |
| 4.2.a Establishment of an Independent Agency | 32 |
| 4.2.b A Recommended Process for Relocation | 38 |

| | | |
|-----------|-------------------------------------------------------------|----|
| 4.2.b.i | Stage 1—Relocation Applications | 38 |
| 4.2.b.ii | Stage 2—Preliminary Review and Interim Approval | 39 |
| 4.2.b.iii | Stage 3—Local Government Review and Approval | 41 |
| 4.2.b.iv | Stage 4—Gaming Control Commission Final Review | 45 |
| 4.2.b.v | Stage 5—Final Approval | 48 |
| 4.3 | Changes to Existing Facilities | 50 |
| 4.3.a | Change Applications | 52 |
| 4.3.b | Preliminary Review, Interim Approval and Major Changes | 52 |
| 4.3.c | Procedures Where the Commission Classifies Changes as Minor | 53 |
| 4.4 | The Evaluation Criteria | 56 |
| 4.4.a | Problem Gambling | 59 |
| 4.5 | Horse Racing | 60 |
| 4.6 | Destination Casinos | 64 |
| 4.7 | The Interim Period | 64 |
| 5. | CONCLUDING OBSERVATIONS | 67 |
| 6. | NOTES | 69 |
| 7. | SUMMARY OF RECOMMENDATIONS | 73 |

RELOCATION OF AND CHANGES TO EXISTING GAMING FACILITIES IN BRITISH COLUMBIA: Review and Recommendations

1. INTRODUCTION

On June 17, 1999 the Honourable Mike Farnworth, Minister of Employment and Investment and the Minister Responsible for Gaming, announced an end to the expansion of gaming in British Columbia.ⁱ

Prior to that, in the mid'90s, the provincial government had outlined a number of policy statements whose purpose was the expansion of gaming in the province. The policy of expansion included, among other things, increasing the number of casinos through the introduction of "destination" casinos and permitting slot machines in casinos. In addition, other forms of electronic gaming such as "linked" bingo were added.ⁱⁱ The minister's announcement effectively brought to an end the policy of expansion, although the destination casinos which the provincial government had approved in principle were not affected by this decision. They were allowed to complete the final approval process.ⁱⁱⁱ

On June 17, 1999, the minister also announced that he would appoint "an independent adviser to recommend an arm's-length process for dealing with any proposed relocation of existing facilities." At that time, he stated that memoranda of agreement had been reached with the Union of British Columbia Municipalities (UBCM) and the British Columbia Association for Charitable Gaming (BCACG). The minister signed an agreement with the Charitable Bingo Association Committee of the Bingo Council of British Columbia (BCBC) on June 18, 1999.

On July 19, 1999, Minister Farnworth appointed Professor J. Peter Meekison to act as an independent gaming adviser and to recommend a process for the relocation of existing gaming facilities. However, the terms of reference were not yet finalized. A few days later, as a result of a cabinet reorganization, the Honourable Joan Smallwood replaced the Honourable Mike Farnworth as minister responsible for gaming. Minister Smallwood wanted to review and revise Professor Meekison's proposed terms of

reference. She released the terms of reference at a media conference on September 22, 1999.^{iv} (See Appendix 2 for the terms of reference.)

When the Honourable Joan Smallwood released the terms of reference, she also announced a freeze on any relocation or expansions, either planned or underway, of existing gaming facilities. Rather than making a series of ad hoc decisions, she decided to wait until the review was completed. At that time, she would reconsider the freeze in light of Professor Meekison's recommendations. Accordingly, there was a moratorium on relocation of or changes to existing gaming facilities (bingo halls, casinos and racetracks) until Professor Meekison submitted his report.

1.1 The Terms of Reference

The terms of reference of the review included a request for:

- 1) detailed recommendations for an evaluation process for gaming facilities (i.e., casinos, racetracks) seeking to be relocated;
- 2) detailed recommendations for an evaluation process for gaming facilities seeking any changes to their existing facilities within current government guidelines (e.g., increasing slot machines and/or gaming tables up to the maximum number allowed);
- 3) Detailed recommendations for the evaluation criteria that should be employed as part of the above evaluation process.

In summary, the focus of the mandate was to recommend processes for the relocation of and changes to existing gaming facilities and the criteria to be employed in these processes.

The terms of reference establish some criteria for and constraints to the recommendations. Two criteria are incorporated in the terms of reference. Recommendations are to be guided by the fact that:

- the evaluation process must be independent from direction or influence by elected provincial officials, and
- the evaluation process must be transparent, open and fair to all participants and the public.

The constraints to the recommendations are clear. The recommendations must be consistent with the memoranda of agreement signed with the UBCM, the BCACG and the BCBC. (For the three memoranda of agreement see Appendices 3 - 5.)

The terms of reference directed Professor Meekison to consult openly and fully with interested parties, including charities, operators and municipalities. The Honourable Joan Smallwood informed a large number of organizations and individuals about the review. She sent each one a letter along with the terms of reference encouraging them to meet with Professor Meekison. In addition, Professor Meekison sent out a letter saying he would welcome the opportunity to meet with persons or organizations who wished to share their views on the matters he was reviewing. The two letters resulted in a number of meetings and presentations in a variety of centres in the province. People were forthcoming in their views and welcomed the opportunity to share their ideas, concerns, apprehensions and policy recommendations. A few people wrote letters or telephoned to share their thoughts and concerns. A brief summary of the wide-ranging commentary is found later in this report.

1.2 Comment on the Terms of Reference

Although the terms of reference are reasonably clear, throughout the review, questions about their scope and intent inevitably arose. As a result, a brief comment on them appears necessary.

One way of beginning is to make it clear what was not included. Destination casinos, which the province approved as a result of the July 1997 *Request for Proposals* process, were excluded. The management of ticket lottery sales was not reviewed. The allocation of revenues generated from gaming was not considered. With the announced end to gaming expansion, the current government guidelines of a maximum of 30 tables and 300 slot machines was not reviewed. Policies with respect to the operation of casinos, such as the consumption of alcoholic beverages, was not considered.

Relocation is defined as a move either within the municipality in which the gaming facility is currently located or to a different municipality. It should also be recognized that relocation also includes moving a gaming facility to First Nations' lands.

The phrase "changes to their existing facilities" was not interpreted as a physical change such as a renovation but rather the addition of electronic or hand-held bingo equipment in the case of bingo facilities or an increase in the number of tables or slot machines in a casino up to the maximum of 30 tables and 300 slot machines. Change could also mean a decrease in the number of tables or

slot machines or the closing of a facility.

The terms of reference make it clear that the proposed evaluation process **must** be consistent with the memoranda of agreement already referred to. Accordingly, the relevant provisions of these memoranda form an integral part of the terms of reference. The recommendations which follow reflect this interpretation.

Before identifying some of the principal themes which emerged during the several meetings, it is important to give the reader some understanding of the context and some of the more salient policy issues which led to the appointment of the independent gaming adviser and to the review.

2. GAMING POLICY IN BRITISH COLUMBIA

Upon entering the policy world of gaming, one is immediately confronted with a bewildering number of acronyms, policy pronouncements and a veritable avalanche of previous studies. In order to make sense of this constantly changing landscape and to put this review's recommendations into context, a brief summary of recent gaming policy in British Columbia is imperative. This part of the review is divided into two sections and is essentially descriptive. The first section outlines the individual offices and agencies responsible for the administration of gaming policy. This section is followed by a listing of the major policy papers, studies and recommendations that the province has commissioned in the recent past.

Central to understanding provincial gaming policy is the legal framework for gaming in Canada. The *Criminal Code* makes it clear that gaming is illegal other than under permitted exceptions detailed in the *Criminal Code*. It is lawful for the provincial government "to conduct and manage a lottery scheme" in the province. Examples of other exceptions include pari-mutuel betting on horse-races and provincially-licensed charitable lotteries. The January 1999 *White Paper*, contains a useful and detailed summary of the legal framework for gaming in Canada and British Columbia.^v

2.1 The Administration of Gaming

As a result of both the *Criminal Code* provisions and its own sphere of legislative jurisdiction, the provincial government holds primary responsibility for the administration of gaming. Policy is contained in provincial legislation, orders-in-council, ministerial statements and memoranda of agreement. Some municipalities have also developed policies on gaming, such as the City of Vancouver's prohibition of slot machines within its boundaries. Thus, in examining the legal framework of gaming policy, one must be aware of federal, provincial and municipal legislation, bylaws and regulations.

Given the primary role of the provincial government with respect to gaming, a logical starting place is identification of the individuals and agencies responsible for policy, regulation and administration of gaming. In British Columbia, the Premier has assigned responsibility for gaming to a member of the cabinet who combines that responsibility with other ministerial responsibilities. For example, at the moment, responsibility for gaming rests with the Minister of Labour. Formerly it was the responsibility of the Minister of Employment and Investment; before that it was the

Minister of Government Services. It would appear that gaming policy is not formally identified with any particular ministry, policy area or individual. Other ministries with a direct interest in gaming policy include the Attorney General, Children and Families (Adult Addiction Services—Problem Gambling), and Finance and Corporate Relations.

There are five primary government bodies, apart from the Minister, involved in the regulation and administration of gaming policy. These are:

- the Gaming Policy Secretariat (GPS)
- the British Columbia Gaming Commission (BCGC)
- the British Columbia Lottery Corporation (BCLC)
- the Gaming Audit and Investigation Office (GAIO)
- the British Columbia Racing Commission (BCRC)

2.1.a. The Gaming Policy Secretariat (GPS)

The Gaming Policy Secretariat (GPS) is an administrative unit that co-ordinates the implementation of government policy on gaming. It also provides policy advice to the minister responsible for gaming. The Gaming Policy Secretariat works closely with the other provincial agencies involved with gaming for the purpose of establishing policies and practices that are comprehensive, consistent and enforceable. The GPS also works closely with a number of external agencies, organizations and special interest groups including the Union of British Columbia Municipalities, individual municipalities, First Nations, licensed charities, bingo operators, casino operators and law enforcement agencies. It is the smallest of the various provincial agencies. Given the constantly changing and increasingly complex world of gaming, its policy co-ordination role is essential. The GPS reports to the minister through the department for which the minister has responsibility.

2.1.b The British Columbia Gaming Commission (BCGC)

The province established the British Columbia Gaming Commission (BCGC or the Gaming Commission) by order in council in April 1987. The Gaming Commission operates at arm's length from government. The Board of Commissioners consists of up to seven members from across the province appointed by the Lieutenant Governor in Council.

Pursuant to the *Lottery Act*,^{vi} as amended by the *Miscellaneous Statutes Amendment Act (No. 3)*, 1998,^{vii} the Gaming Commission is solely responsible for the licensing of charities, charitable bingo associations, social occasion casinos, charitable ticket raffles and gaming at fairs and exhibitions. The Gaming Commission establishes the terms and conditions for charitable gaming and access to gaming revenue that govern the licensing and distribution of charitable gaming revenue within the context of the government's strategic directions for public gaming.

The Gaming Commission applies explicit criteria in deciding which groups are eligible for access to gaming revenue, the dollar amount of access, and whether charitable licensees and/or direct charitable access recipients are using gaming revenue for purposes approved by the Commission in an acceptable manner.

At the moment, approximately 4,900 charitable or religious organizations participate in charitable gaming in the province. In 1998/99, approximately \$161 million was distributed to or generated by these charitable organizations.

Until June 1998, the Gaming Commission was also responsible for licensing and regulating charitable casinos, at which time the government transferred responsibility to the British Columbia Lottery Corporation. The decision was part of the government's interim gaming framework that was intended to address certain legal questions surrounding conduct and management of casinos. The net effect of this decision was to establish a clear separation between the provincial agency responsible for the conduct and management of casinos and the agency responsible for charitable gaming. The separation was intended to ensure compliance with provisions of the *Criminal Code*. It should be noted that, up to this point, it was the Gaming Commission that received, reviewed and decided on relocation of casinos. It continues to have the authority to make decisions on the relocation of bingo facilities.

2.1.c The British Columbia Lottery Corporation (BCLC)

The British Columbia Lottery Corporation was incorporated in 1984 and is continued under the *Lottery Corporation Act* of 1985. Its original mandate was to conduct and manage ticket lotteries. The Lottery Corporation's legislative mandate is contained in the *Lottery Corporation Act*.^{viii} The Act requires that net profits of the corporation are to be paid into the provincial consolidated revenue fund. The Act also specifies that the corporation is for all purposes an agent of the

government. The other key point is that one of the objects of the corporation is to develop, undertake, organize, conduct and manage lottery schemes on behalf of the government. The corporation is controlled by a board of not more than nine directors appointed by the Lieutenant Governor in Council.

With the advent of electronic and linked bingo and the introduction of slot machines into the province in 1997, the government expanded the mandate of the Lottery Corporation to include this equipment to ensure that the province was not in contravention of the *Criminal Code*. As was previously mentioned, the Lottery Corporation assumed responsibility for charitable casinos around this same time. The government made these administrative or organizational decisions in 1997/98 as an interim measure until it submitted comprehensive gaming legislation to the Legislature for its consideration. Essentially, two discrete but interrelated policy decisions are in play here. The first is an expansion of gaming activity and the second is a reorganization of the administration of gaming activity.

The mission statement of the Lottery Corporation is included in its *1997/98 Annual Report*. It reads as follows:

As the major advocate on gaming policies and the principal operational agency of commercial gaming within the jurisdiction of British Columbia, the Corporation will contribute significantly to government revenues and economic growth through providing top-quality gaming entertainment to the public in a socially responsible manner.^{ix}

Among the six corporate objectives identified in the *Annual Report*, the first is "to maximize gaming revenue to the Province of British Columbia." The link between the mission statement and this objective is fairly obvious. In 1997/98 the Corporation transferred \$283.4 million to the provincial government.^x

2.1.d The Gaming Audit and Investigation Office (GAIO)

The Gaming Audit and Investigation office was established in 1995 as a result of recommendations contained in the 1994 *Report of the Gaming Policy Review*.^{xi} That review recommended that monitoring and enforcement of gaming activities be separated from those organizations responsible for the delivery of gaming programs, specifically the Gaming Commission and the Lottery Corporation. As a result of this "separation concept," GAIO was located within the Ministry of the

Attorney General.

The 1999 *White Paper* indicated that the formal mandate of GAIO, as authorized by the Attorney General, is to:

- register individuals and companies involved in lawful gaming in British Columbia;
- investigate any occurrence which may be of a criminal nature or bring into disrepute lawful gaming under either s. 207 of the *Criminal Code* or provincial enactments; and
- audit and review gaming operations and organizations against standards established by provincial legislation and policy.^{xii}

2.1.d.i. Registration Program

Companies providing goods and services to the gaming industry are required to undergo due diligence investigation to prove the integrity of the key persons—directors, officers, shareholders and associates—by way of criminal record checks, credit checks and other checks appropriate to the application. The corporate entity is similarly vetted for corporate governance, finances and compliance history. These due diligence investigations frequently require travel to other jurisdictions in Canada and elsewhere and liaison with police forces, regulators and the financial communities in those jurisdictions. The applicant pays the out-of-pocket costs of these investigations. Each corporate registrant is monitored during the registration period for significant corporate changes affecting personnel, financing, corporate structure, corporate governance and regulatory compliance worldwide.

Individuals working at gaming sites in the province are cleared by GAIO after pertinent criminal record checks and financial checks have been conducted. Once scrutinized, such individuals are issued identification cards which must be worn while working at a gaming site.

Other due diligence work is conducted on gaming supplies, particularly electronic gaming supplies. These are tested to ensure the product performs according to specifications and government requirements. Supplies having monetary value, such as chips, are tested and checked for security features to prevent counterfeiting. The owner of gaming sites may differ from the gaming service provider who is the tenant. Where the ownership differs, the owner of the site is investigated to ensure that government and the public interest are protected.

2.1.d.ii Investigation Program

GAIO conducts investigations of alleged *Criminal Code* gaming-related offenses occurring at gaming sites. These investigations may be specific to the operation, to a person within the operation or to the use of gaming funds by the charity recipient. As well, investigations are conducted where serious or complex regulatory breach is determined or suspected to have occurred. Investigations are conducted on suppliers and service providers where allegations of misconduct or illegal conduct are alleged. Investigations may also be conducted into illegal gaming activities in conjunction with those police agencies with jurisdictional responsibility.

2.1.d.iii Audit Program

GAIO conducts operational audits to determine compliance with the Terms and Conditions of License issued by the Gaming Commission, including uses of net gaming proceeds or compliance with Standard Operating Procedures established by the Gaming Commission or the Lottery Corporation. Audits are a proactive program designed to monitor for the ongoing integrity of gaming operations and to determine any control weaknesses that may need to be brought to the attention of either the Lottery Corporation or the Gaming Commission.

As noted in the *White Paper*, neither the *Lottery Act* nor the *Lottery Corporation Act* includes specific provisions for GAIO's enforcement activities. GAIO has entered into memoranda of understanding with both the Lottery Corporation and the Gaming Commission, identifying the roles and responsibilities of each and what each organization will communicate to the other. To give some appreciation of the different roles and responsibilities, the Memorandum of Understanding between GAIO and the Lottery Corporation is attached as Appendix 6.

2.1.e The British Columbia Racing Commission

Horse racing is regulated under the gaming and betting part of the *Criminal Code* and is outlined in its own section, Section 204. Some view racing as a sport and as a part of the agricultural industry. While this view is correct, it is equally correct to see horse racing as one sector of the gaming industry in the province. Until recently, the tendency was to consider horse racing separately from other forms of gaming. There are, however, zones of convergence such as the Lottery Corporation's offering certain programs at racetracks and suggestions that slot machines be permitted at racetracks. One distinction between horse racing and other forms of gaming is that the

former is regulated by both the federal and provincial governments.

In British Columbia, racing is regulated by the British Columbia Racing Commission. The Racing Commission is established by statute, the *Horse Racing Act*.^{xiii} Essentially the Racing Commission regulates the operation of all horse racing sites and training centres. It is also the licensing authority for racing. Finally, it is the sole and absolute authority to assign racing days. A "race day" is a day assigned to an association by the Racing Commission on which the association may carry on horse racing.

2.2 Recent Studies and Reports

Over the past few years there has been a steady stream of policy papers, studies and pronouncements on gaming of which this review is the most recent. Because the various documents are referred to frequently in this review, it seemed useful to list them to give a better understanding of what has preceded this report. Several of the themes or ideas in these materials have been of great assistance in formulating recommendations in this report. Many of these reports are based on wide consultation and background studies prepared specifically for that particular assignment.

The documents include:

- 1) ***Report of the Gaming Policy Review*** released in October 1994. This report announced a number of decisions reached by the provincial government. Among others: there would be no Las Vegas style casinos ("major casinos"); the 1987 moratorium on new charitable casinos would be lifted; a moderate number of video lottery terminals would be introduced; and electronic bingo would be introduced. There would be gaming legislation to strengthen regulation and enforcement and policies would be put in place to deal with problem gambling.

- 2) ***Gaming Review: Expansion Options and Implications*** released in March 1997. This study outlines a variety of options for expanding gaming in the province. The information in the report is based on a study prepared by KPMG. After examining the report, the government released it and announced a new gaming policy. For example, it reaffirmed the earlier decision to prohibit major casinos and indicated, at the same time, that video lottery terminals would not be allowed in bars and pubs. The policy announcement also indicated that destination casinos and new charity casinos and bingo halls would require local government

support. A few days later there was a more specific announcement on destination casinos.

3) ***Request for Proposals: Destination and Charitable Gaming Facilities*** released in July 1997.

This document, otherwise referred to as RFP, set out the detailed guidelines for those wishing to submit proposals. The acknowledged purposes of the RFP were:

- to evaluate proposals for relocations, across municipal boundaries, of existing gaming facilities;
- to solicit proposals for the development of new gaming facilities in B.C.^{xiv}

The objectives of the RFP were to have the government "consider a moderate, measured and co-ordinated expansion of gaming opportunities in B.C."^{xv}

4) ***Gaming Policy Recommendations*** released in March 1998. This report arises from a January 1998 court decision upholding a challenge to the province's authority to determine, by regulation, the distribution of proceeds from charitable gaming.^{xvi} As noted in the report, the court decision "did render invalid certain aspects of the administrative and regulatory structure put in place to implement [the gaming policy objectives of government]." The January 1998 court decision came right after an earlier court decision upholding Vancouver's bylaw prohibiting slot machines in charitable casinos.^{xvii}

5) ***Bingo Review: Options for a Revitalized Bingo Gaming Sector*** released in February 1999.

This study gives an overview of bingo in the province. In April 1998, Minister Farnworth announced an interim gaming policy in light of recent developments arising from the successful court challenges. He included the *Bingo Review* as part of this policy package.

6) ***Report on Gaming Legislation and Regulation in British Columbia*** released in February 1999. Minister Farnworth released this document, commonly referred to as the *White Paper*, at the same time as he released the *Bingo Review*. There was consultation with various groups and individuals in the preparation of both papers. As one would expect, the *White Paper* generated additional debate on gaming policy. As noted in the *White Paper*:

This initiative followed several years of policy review and implementation of gaming expansion and diversification in the province. It also followed unprecedented levels of court activity involving the province, various municipalities, several charity groups, and government and commercial operators. Legal challenges, court decisions and appeals have required some changes to government's originally intended program of moderate gaming

expansion. They also resulted in implementation of an "interim" regime defining the structure and roles of participants in government and charitable gaming. While the interim regime has served to bridge the period and circumstances of uncertainty, many of the current issues now in dispute or doubt will be resolved only with a set of clear policy decisions and the introduction of enabling provincial legislation.^{xviii}

- 7) ***Horse Racing Review*** released in September 1999. This review is the final study of the different gaming sectors in the province. The report is a broad review of the horse racing sector and includes a considerable amount of data comparing horse racing to other forms of gaming in the province. The assessment of the consultations following the release of the review has yet to be released.

The June 17, 1999 announcement of this review also included a policy statement terminating gaming expansion in the province. The interim policy continues in effect as modified by the June 17, 1999 statement.

3. FINDINGS OF THE REVIEW—THE FAULTLINES

At the outset of the review, it was by no means certain what would result from the various meetings, discussions and presentations. By the end of the review, however, certain themes had become clearly evident. In assessing these themes, one must recognize that there is an element of self-interest in the views expressed and articulated by those offering comment. Discounting this element of bias, specific comments, concerns, apprehensions and desires do stand out. Their frequency, coming as they did from very diverse interests, also make them worth repeating.

Perhaps the single most important theme is the recognition, but not necessarily acceptance, that the status of gaming in British Columbia today is fundamentally different from what it was just a few years ago. The obvious manifestation of this change is the expansion of gaming through the addition of slot machines, an increase in the number of casinos as a result of the RFP process, and changes to betting limits and hours of operation. At the very centre of this expansion is the provincial government orchestrating and overseeing this transformation.

Government has gone from being primarily a regulator of gaming to being both regulator and chief promoter. This new role is reflected in the *1997/1998 Annual Report* of the Lottery Corporation and in a number of the policy papers referred to in the previous section. The new role is probably the primary distinction between the earlier period (which for the purposes of argument can be referred to as the pre-slot machine period) and the current situation (or post-slot machine period). What has happened in British Columbia parallels a similar phenomenon in other provinces. One could argue that the transformation took place much earlier when governments became involved in lottery schemes. Whichever date one chooses to select, the introduction of slot machines in British Columbia has had a profound and, to some, disturbing effect on the gaming sector.

The second theme is a direct result of this transformation and the new role of government in gaming. This second theme, for want of a better term, can best be described as the development of faultlines. With faultlines come tension and stress.

The various faultlines are as follows:

1. gaming proponents and opponents,
2. provincial and municipal governments,

3. casino operators and the Lottery Corporation,
4. bingo and casinos,
5. racing and casinos.

One would expect to encounter some of these faultlines such as the division of opinion between those favouring and opposing gaming and its expansion or the ongoing differences between the provincial and municipal orders of government. The others appear more directly linked to government's new role as promoter. While these faultlines may be well known to those directly involved in the gaming industry, to the casual observer they are not as obvious. Each faultline requires a brief comment because the recommendations which follow are based largely upon them.

3.1 Gaming Proponents and Opponents

For every action there is a reaction, and gaming is no exception. The province, through its various studies and reports, has been the key architect and promoter of gaming expansion. The January 1997 *Gaming Review: Expansion Options and Implications* set the stage for this debate. While the status quo is presented as an option, the thrust of the report is the presentation of a number of alternatives for expanding gaming in the province. This possibility led to criticism, and segments of the public organizing and mobilizing public opinion in opposition. One example is "CAGE," Citizens Against Gambling Expansion. Opposition was found at several municipal councils, including Vancouver, Surrey, Richmond and Victoria, which approved policies prohibiting slot machines within their respective municipal boundaries. It should be noted that these four municipalities account for a significant percentage of the provincial population.

Arguments for expansion usually focus on economic benefits, and range from significant increases in provincial revenues to increases in employment, economic development and tourism. Critics of expansion often focus on social and moral arguments and view gaming as a tax on the poor leading to an increase in crime and problem gambling.^{xix} While critics view government's involvement in gaming with both distaste and a certain degree of cynicism, some also recognize that government withdrawal is unlikely.

3.2 Provincial and Municipal Governments

The issue here is the nature of the relationship between the two orders of government. Section 92 of the Constitution Act, 1867 gives provincial legislatures exclusive legislative jurisdiction over

municipal governments. This authority is generally manifested through legislation such as the *Municipal Act*. That said, municipal governments have at their disposal a wide range of policy areas over which they exercise considerable control including land use, business licensing, building permits and the provision of local services. Accordingly, when it comes to gaming policy, municipal governments have a very real role to play with respect to what occurs within their boundaries. As already noted, a number of municipalities have passed bylaws or resolutions prohibiting the installation of slot machines within their boundaries.

Recognition of some municipal role is reflected in a number of the recently released provincial position papers. For example, the July, 1997 *Request for Proposals: Destination and Charitable Gaming Facilities*, makes it clear that any proposal must have demonstrable "host" local government support in the form of a resolution. Without that support, the provincial government would not consider the proposal. In addition, proponents were to secure the views of adjacent local governments. The other policy which warrants attention is that "host" local governments would receive one-sixth of the net gaming income from the destination gaming facility, an inducement to encourage local support.^{xx}

The *Request for Proposals* (RFP) process which contemplated an expansion to gaming in the province set in place a new dynamic, the right of local governments to approve **new** gaming facilities within their boundaries. But what about existing facilities? The expectation on the part of the province was that slot machines would go into existing casinos, prompting some local governments to challenge this assumption and to go to court to have their position affirmed. In October 1999, the British Columbia Court of Appeal struck down the Surrey bylaw prohibiting slot machines.^{xxi}

The January, 1999 *White Paper* on gaming legislation contained a detailed commentary on the role of local governments. The draft legislation conferred authority on local governments to approve new facilities within their boundaries, reflecting the commitments contained in the RFP document. The draft legislation also included a section which authorized the minister to override a municipal limitation on gaming with respect to pre-existing facilities. In short, the question of where paramouncy rested with respect to the introduction of slot machines in the existing charitable casinos was resolved by this section. Provincial policy would be paramount.^{xxii} It goes without saying that this proposal was criticized by both the Union of British Columbia Municipalities (UBCM) and those local governments that had adopted bylaws prohibiting the introduction of slot

machines within their boundaries. The UBCM had recommended that "the right of local governments to determine the extent and type of gaming in their communities be recognized in the *Gaming Act*."^{xxiii} The province and local governments were on a collision course.

The June 17, 1999 Memorandum of Agreement (MOA) with the UBCM resolved the policy dispute, with the municipalities achieving their major objectives. These include the right of local governments to approve the introduction of slot machines, a share (10 percent) of the proceeds from gaming within their boundaries and affirmation of their land use (zoning) authority. To the UBCM, the MOA was recognition and vindication of their position and demonstrates the link between gaming and community interests. To critics, the MOA is an abdication by the province of its overall responsibility for gaming policy.

While it appears that the faultline between the province and municipalities has disappeared, it may be only temporary because the Lottery Corporation may cause municipalities to review their policies governing slot machines. If a particular municipality does not want slot machines within its boundaries, the Lottery Corporation, in fulfilling its mandate to maximize revenues for the provincial government, believes it has an obligation to pursue the relocation of casinos to municipalities that are more receptive to the idea. This carrot and stick position may lead to further strains between the province and individual municipalities.

3.3 Casino Operators and the British Columbia Lottery Corporation

On March 13, 1997, the government announced its new gaming policy. Among other things, it authorized charitable casinos to introduce slot machines "to allow them to compete with casinos in other jurisdictions, particularly those in Washington state."^{xxiv} The government released the *Request for Proposals* (RFP) document in July 1997. Having ruled out Las Vegas style casinos on March 13, it set the maximum size of a casino at 30 tables and 300 slot machines.^{xxv} There were 17 charitable casinos that offered table games only in operation in British Columbia. Appendix 7 gives a listing of the 17 existing casinos and the three destination casinos that have received final approval. At that time, slot machines had not been introduced in the province and the Gaming Commission regulated the existing charitable casinos.

The RFP document envisaged two types of casinos, the existing charitable casinos and the new

destination casinos.^{xxvi} As noted previously, the 1999 draft legislation reflected this duality. The Lottery Corporation would be responsible for new destination casinos, while the existing charitable casinos, even though they were now in a position to introduce slot machines, would continue to be regulated by the Gaming Commission. In April 1998, the government announced a change in this regulatory structure. As part of its interim gaming policy, the government transferred responsibility for all casino operations to the Lottery Corporation "in compliance with Canada's *Criminal Code*, which only allows electronic gaming to be conducted by the provincial government or its agent."^{xxvii} The actual transfer of responsibility for casinos took place in June 1998, just after the government announced approval in principle for the first three destination casinos.^{xxviii}

Assuming responsibility for all casino operations represented a major shift in focus and mandate for the Lottery Corporation. While the Lottery Corporation had extensive experience in managing lotteries, it had no experience in supervising casinos. When it acquired its new mandate, it was faced with two tasks. One was to negotiate the various agreements with those destination casinos receiving approval in principle. The other was to develop a working relationship with the existing casino operators, otherwise known as service providers. Obviously the two tasks had to be conducted concurrently and it is here that faultlines began to appear.

As an interim measure, the Lottery Corporation entered into two-year contracts with the existing casino operators. By contrast, the RFP document specified that successful proponents for the new destination casinos would be given 10-year contracts with a 10-year renewal option.^{xxix} To existing casino operators, there is an apparent double standard in terms of their treatment by the Lottery Corporation. They are worried and uncertain about their future.

The first destination casino to receive final approval and to begin operation was the Royal City Star Riverboat Casino in New Westminster.^{xxx} The new facility set a new casino industry standard for space, surveillance and other amenities. It is a standard which the Lottery Corporation believes the existing casino operations must meet now or in the immediate future. Because of this new standard, relocation becomes a distinct alternative, for the simple reason that many of the existing premises either do not have the space necessary to meet this new standard or are thought to be in the wrong location to attract customers. As part of its gaming policy the City of Vancouver has placed square footage limits on casino operations, which adds a further complication.

The Lottery Corporation has placed its own employees in the casinos. Their function is to service the slot machines that are the property of the Lottery Corporation. The corporation also has in the casino an individual who acts as the Corporation's supervisor. With two different personnel groups, the possibility of conflict and confusion over who is ultimately in charge increases. Existing operators feel they possess far greater knowledge about casino operations than does the Lottery Corporation. On the other hand, the Lottery Corporation feels that some of the operators are uncooperative and have not adjusted well to the new administrative structure.

British Columbia, unlike some other provinces, has adopted a model for casinos being operated by the private sector or First Nations. This approach is certainly reflected in the RFP document which invited proposals from individuals, consortia, companies and First Nations. The link between the Lottery Corporation and the operator or service provider is by contract. In the case of destination casinos, the Lottery Corporation and the intended service provider negotiate the 10-year contract. When these negotiations are concluded, the minister (now the deputy minister) reviews the contract and decides whether or not to give final approval, ending the RFP process. Final approval is contingent on successful contract negotiations.

The situation for existing casinos is different in that they are already in operation and their contracts extend only until May 31, 2000. What the operators seek is some degree of certainty about their future. They are unlikely to invest money in an upgraded or relocated facility if there is no guarantee that their investment will be given comparable treatment to that offered to the destination casinos. The nagging question is, what happens if the Lottery Corporation and an existing operator are unable to reach an agreement? Is the casino operating permit forfeit? Is it transferable to another existing operator or to a new operator through competition? Should there be a procedure for reconciliation of differences? If so, who or what body would exercise this responsibility? These issues need to be addressed in light of the very real probability of a number of requests for relocation.

3.4 Bingo versus Casinos: The Changing World of Gaming

There are two complementary issues associated with this faultline. The first is the desire on the part of bingo operators to reverse the gradual decline in bingo receipts and bring in new players. The second is that the government, in the form of the Lottery Corporation, is perceived as a competitor to bingo. This second theme arises from the expansion of gaming in the province, the

vagaries of the *Criminal Code* and the Lottery Corporation's new mandate.

In April 1998, Minister Farnworth announced he would undertake a strategic analysis of British Columbia's bingo sector.^{xxxii} In the same news release, he guaranteed charity gaming revenues of \$125 million in 1998/99. This policy decision was a direct result of a successful court challenge by the Nanaimo Community Bingo Association with respect to the government's revenue distribution model contained in the *Gaming Proceeds Distribution Regulation*.^{xxxiii} The Minister released the *Bingo Review* and the *White Paper* at the same time.^{xxxiii} The June 1999 agreements with the BC Association for Charitable Gaming and the Charitable Bingo Association Committee of the Bingo Council of British Columbia signal the end to the revenue distribution controversy. Since the two agreements are identical, the possibility of a future dispute over which of the two groups speaks for charities should not be overlooked.

The *Bingo Review* provides one with a useful overview of the state of bingo in the province. Some of the findings are relevant to this review and have certainly surfaced in the meetings held. The following quotations from the *Bingo Review* are particularly germane.

Bingo revenue has now leveled out and recently has begun to decline.

This phenomenon is not unique to British Columbia. It is apparent in most other bingo jurisdictions and appears to have occurred even without full-scale competition from other forms of gaming. This trend was evident in British Columbia before the introduction of enhancements to charity casinos, and is evident even in communities without casinos. (p. 5)

In order to comply with the requirements of the *Criminal Code*, electronic and linked bingo were offered, when approved, as government bingo, not charitable bingo. To ensure that there was no question respecting their legality, they were introduced under section 207.(1)(a) of the *Criminal Code* and conducted and managed by the Lottery Corporation as agent of government. This resulted in a bingo framework that had the potential to generate competition between government bingo and charitable bingo within the same facility. (p. 7)

Throughout most of North America, as in British Columbia, bingo is currently a static or declining form of gaming. The primary exceptions to this trend are jurisdictions that have limited competing forms of gaming.

Other jurisdictions have introduced technologically enhanced forms of bingo in an effort to enhance the sector. These efforts have produced mixed results. The following represent the three primary technological enhancements available in the bingo sector.

- "Linked" halls

- Hand-held devices
- Console-based devices

Each of these enhancements has produced positive results in some jurisdictions. Of these, linked halls and hand-held devices appear to provide the greatest potential benefits in a highly competitive market. Few jurisdictions have introduced console-based devices....

Regardless of the technological enhancement, paper bingo remains the foundation of a successful bingo operation. (p. 11)

Bingo players in British Columbia tend to be older and less affluent than lottery, casino or horse racing patrons. They also tend to play their preferred game more often than patrons of other forms of gaming. There appear to be two distinct groups of bingo players: a core group of dedicated players and a larger group of casual players.

For bingo to remain viable on an ongoing basis, efforts must be made to attract new players. Increased marketing efforts focused on existing core players are unlikely to achieve much growth, while similar efforts focused on casual players may achieve limited growth. The key to ensuring the ongoing viability of the sector, however, is attracting a broader player base.

Some members of the general public indicate that there are no initiatives that would immediately encourage them to play bingo more often, or at all. Some of those individuals will likely never play bingo. Some, however, may be attracted over time, as long-term efforts to improve bingo facilities and offerings result in a gradual change in the public's view of bingo. Some jurisdictions have found that greater public exposure to bingo can be achieved through locating bingo halls in facilities that also offer other forms of entertainment.

The success of any such initiatives will be measured by the degree to which they enhance the public's perception of bingo and contribute to an expanded player base. (p. 12)

The two memoranda of agreement commit the government to seeking amendments to the *Criminal Code* "to provide greater legal certainty" and "to permit the broad use of technology in bingo by licensed charities." Because the *Criminal Code* applies nation-wide, it will probably be necessary to get other provinces on side before these amendments are given serious consideration. Until such amendments are enacted by Parliament, the Lottery Corporation retains the legal authority.

In particular, the *Bingo Review* underlines the competitive nature of gaming. The largest promoter of gaming in the province is the Lottery Corporation which, because of the *Criminal Code* provisions, has responsibility for electronic gaming including electronic bingo and linked bingo. In addition, the paper used in bingo is currently supplied by the Lottery Corporation.

If the future success of bingo is partially dependent on technology or new kinds of paper bingo, it is the Lottery Corporation which has final authority over when, where and what will be introduced. Under the memorandum of agreement with the Union of British Columbia Municipalities, local governments can now define the type of bingo gaming permitted within their boundaries which further complicates matters. In a competitive market, there is certainly room for bingo operators to perceive an apparent conflict of interest in decisions of the Lottery Corporation. Under the memoranda of agreement with the BC Association for Charitable Gaming and the Bingo Council of British Columbia, the province,

reaffirms its commitment to the existing charitable guarantee of a minimum \$125 million annually, indexed annually at the rate of Vancouver CPI, with a formula that ensures charity entitlement to an amount, after accounting for retained bingo revenues, equal to 1/3 of ongoing net community casino gaming revenue.^{xxxiv}

This provision is a reminder that the existing (non destination) casinos were initially charity casinos and ties bingo revenue to casino revenues. The pressure on the province to continue this level of funding is considerable.

3.5 Horse Racing versus Casinos: The Changing World of Gaming

Attendance at live horse racing has been in decline over the past few years. As stated in the *1997-1998 Annual Report* of the British Columbia Racing Commission,

Most industry analysts agree that live wagering and attendance have been affected to some degree by the introduction of live teletheatre outlets and by an increasing number of gambling alternatives. Other reasons for the decline include the need for new marketing approaches and changing demographics.^{xxxv}

The horse racing sector is experiencing problems similar to those facing the bingo sector—competing forms of gaming, changing demographics and a need for new marketing approaches. In some jurisdictions racetracks are closing.

What has maintained the overall level of wagering on horse racing is the introduction of simulcasting. Simulcast wagering takes two forms: people in the province wagering on live race events in other jurisdictions and the reverse, where people outside the province wager on British Columbia racing events. The dilemma is that the long term future of the sector is dependent on attendance at live racing. As noted in the *Horse Racing Review*, "While simulcasting has helped many horse racing jurisdictions maintain and even increase their total handle, it has not directly

benefited local live racing in these same jurisdictions. More local benefits are created when gaming customers wager on local, live races."^{xxxvi}

The dilemma facing the industry is how to increase its player base. One of the conclusions of the *Horse Racing Review* is: "From the results of the surveys, it is evident that the current market potential of the horse racing sector could be increased in the future."^{xxxvii} In searching for solutions to increase attendance and revenues, the *Review* suggests introducing slot machines at racetracks. (This proposal is discussed elsewhere in this report.) This idea serves to highlight the increasing interdependence of the various sectors of the gaming industry. It also means that the Racing Commission and the Lottery Corporation would need to develop a close working relationship.

4. RECOMMENDATIONS

This part of the report is divided into seven sections:

1. General
2. Relocation
3. Changes to existing facilities
4. The evaluation criteria
5. Horse racing
6. Destination casinos
7. The interim period.

4.1 General

To put the following recommendations in context, one must consider the terms of reference of the review. A second consideration is the content of the three memoranda of agreement the province signed on June 17, 1999 with the UBCM and the BCACG and on June 18 with the BCBC. The third factor one needs to reflect on is that the recommendations contained in this review are only one component, although an important one, of a new and comprehensive policy framework.

In this respect there are two overarching recommendations. The first is the immediate need for legislation to provide both a secure legal foundation for gaming policy and activities and to set out in a clear and unequivocal manner the regulatory authority for gaming in British Columbia. The second is the need for a comprehensive process by which applications for relocation or changes to existing facilities are evaluated.

From the various discussions and presentations associated with this review there appears to be nearly universal recognition that legislation is essential. Moreover, if some of the central objectives of public policy are certainty, stability and predictability in the gaming sector, legislation must be enacted now. While it is reasonable to assume that the legislative calendar is crowded, the number of individuals, communities, local governments, other organizations and agencies of the provincial government with an interest in this subject is too large to ignore. When the government announced its interim gaming policy in April 1998, the expectation was that legislation would soon follow. This did not happen. Policy development through ministerial announcements or judicial interpretation is not a substitute for carefully thought-out legislation.

For the past few years, there have been a number of statements from the government that gaming legislation is imminent, especially after the release of the 1999 *White Paper* which included a draft of a gaming act.^{xxxviii} Given the response to both the *White Paper* and the three memoranda of agreement the province signed last June, it is evident that the legislation proposed last year needs to be reconsidered. The three memoranda of agreement include clauses that require the province to "consult in a meaningful way with local government [and charities] regarding the form and content of legislation before it is introduced into the Legislature." In turn, the organizations with which the government signed the agreements have undertaken "to actively and cooperatively work with the Province in the development of comprehensive gaming legislation."

Recommendation 1: That the minister responsible for gaming introduce gaming legislation in the next session of the Legislature.

Recommendation 2: That the province fulfill the requirements of the three memoranda of agreement on gaming policy to consult in a meaningful way with local governments and charities before introducing gaming legislation.

The past few years have seen an expansion in gaming activity in the province and continuing uncertainty about the regulatory framework within which gaming policy has evolved and continues to operate. One example was the decision to transfer responsibility for charitable casinos to the Lottery Corporation. Another is the use of agreements between GAIO and the Lottery Corporation outlining their respective roles when it comes to enforcement. Another is the lack of clearly defined processes and procedures for decisions regarding relocation of existing casinos. Other examples can be selected but the point is that the development of the regulatory framework has been more reactive than proactive.

In the course of this review it became evident that the existing structure for regulating gaming in the province needs to be reconsidered and modified. The principal agency for developing and promoting gaming in the province, apart from the provincial government itself, is the Lottery Corporation. The gradual emergence and identification of this role, particularly since the province

embarked on its policy of expansion, has given the Lottery Corporation considerable authority in policy-making. There is no corresponding check and balance to this authority. It has been argued that this role and responsibility is a direct result of the vagaries of the *Criminal Code* that requires the Lottery Corporation to be the "operating mind." There is nothing in the *Criminal Code* to prevent an independent provincial body from regulating certain activities of the Lottery Corporation. While rulings or decisions of such a regulatory body may limit the scope of the Lottery Corporation's authority, the proposed agency would not directly conduct or manage the gaming industry but would certainly regulate aspects of that industry. Regulation and operation are fundamentally different spheres of policy activity. Just as the Canadian Radio-television and Telecommunications Commission does not provide broadcasting services, the proposed agency would not provide gaming services. A more detailed comment is developed after the procedures for relocation and change have been addressed.

4.2 Relocation

The question of relocation is potentially the most contentious matter addressed in this review. The terms of reference call for "detailed recommendations for an evaluation process for gaming facilities seeking to be relocated." The terms of reference also state that the recommendations should be guided by the following criteria.

- The evaluation process must be independent from direction or influence by elected provincial officials.
- The evaluation process must be transparent, open and fair to all participants and the public.

What is involved in relocation? The word relocate means to move to a new location. While the meaning and intent of relocation is clear, the evaluation process by which a relocation is accomplished must be developed. The process is developed in this section.

A request to relocate a gaming facility can result from a variety of causes. Examples include lease expiration, insufficient space to accommodate expansion, deterioration of premises, loss of premises due to accident, changing demographics in the surrounding community, changes in zoning, inadequate parking, poor public transportation, expressions of concern by local government and expressions of concern by the surrounding community. These reasons would apply equally to casinos, bingo halls and racetracks.

A decision to relocate is seen by those involved in the gaming industry as primarily a business decision. Seen from their perspective, this view is understandable. However, individuals, communities, local governments and others potentially affected by the decision may see relocation through a different lens. As a consequence of these fundamentally different perspectives, the process developed to review and decide upon relocation requests is of paramount importance.

Relocation proposals can vary from a move across the street, to elsewhere within the same municipality, or to a different municipality. In the case of proposals to move across municipal boundaries, the relocation conceivably could be to a neighbouring municipality (e.g. Vancouver to Burnaby) or to a different region within the province (e.g. Vancouver Island to the Lower Mainland). The possibility of trans-municipal boundary relocation requests is certainly a possibility and may be partially dependent on whether or not a particular local government permits or prohibits slot machines within its boundaries. Either a service provider or the Lottery Corporation may determine that enhancement of revenues warrants a trans-boundary move. A similar situation could arise with some bingo halls if municipalities limit the forms of electronic bingo or if better opportunities are seen elsewhere.

What is the current relocation process? Up to the point when the Lottery Corporation assumed responsibility for charitable casinos in June 1998, the same procedures for relocation were in place for both bingo halls and casinos. They remain in place for the bingo halls which are still under the jurisdiction of the Gaming Commission. The Lottery Corporation inherited this process and is currently reviewing these procedures as part of an overall review of the location of casinos. From the time it assumed responsibility for casinos, the Lottery Corporation's experience with relocation has been relatively limited. With the freeze currently in place, all relocation applications or considerations are being held in abeyance.

When relocating charitable bingo halls, the Gaming Commission uses the following procedure and conducts its review in three stages:

- the preliminary review,
- the evaluation process,
- approval to proceed and final inspection.

In the preliminary review, the Gaming Commission staff reviews the proposal. The local government and local police force are notified and asked to express their views, as is GAIO. A

review panel of the Gaming Commission meets to decide if the request should go the next stage—evaluation.

In the evaluation stage the review panel assesses responses from the local government, the local police force, GAIO and the Gaming Commission staff along with any other relevant information. In addition, the review panel may call for a public hearing before reaching its decision. Recent practice has been for the Gaming Commission to hold public hearings. When a public hearing is used, the applicant, the local government, interested parties and the media are notified. Written comments are requested from interested parties which could be neighbourhood organizations, surrounding communities, individuals, charities, local businesses and competitors. Those who wish to make verbal presentations are asked to indicate their interest. If there is to be a public hearing, the Gaming Commission staff present their report at that time. In short, the public hearing process is an opportunity for broad public input and for Commissioners to gauge the extent of local support and opposition to a specific relocation proposal.

If the review panel gives approval, the successful applicant can then proceed. Before the Gaming Commission gives a licence, it inspects the premises and ensures that the applicant has secured all necessary local approvals and permits. At that point, final approval is given. The complete procedures, as found in the Gaming Commission's Charitable Bingo Association Governance Manual, are found in Appendix 8. From all accounts the relocation process has been seen to be reasonable, workable and fair.

The *Request for Proposals* (RFP) document included a detailed process for the submission of proposals which is also helpful in identifying different facets and factors which may enter into or need to be considered in the relocation process.^{xxxix} It is recognized that the RFP process and the proposed relocation process are very different in terms of their objective and intent. As will be seen below, the relevant parts of the RFP document deserve consideration, especially the application process and evaluation criteria. For example, some of the information requested in the applications under the RFP process is equally relevant to a request for relocation. These are:

- Market assessment including the potential impact on existing gaming facilities in the same market,
- Description and design of proposed facility,
- Description of the number and mix of table games and the number of slot machines,
- A business plan including the financing of the relocation, and

- A complete list and description of individuals, companies or other entity involved in the project.

4.2.a Establishment of an Independent Agency

The terms of reference for this review, as already noted, set out some but by no means all the parameters for a relocation evaluation process. These parameters include the following:

- independence from direction or influence by elected provincial officials,
- consistency with the memoranda of agreement on gaming issues,
- transparency, openness and fairness to all participants and the public, and
- evaluation criteria, unspecified, but possibly inclusive of socioeconomic indicators.

In assessing the foregoing, certain requirements for the evaluation process are patently obvious. At the provincial level, if final approval is to be independent from direction or influence by elected provincial officials, it stands to reason that either a new, reconstituted or existing agency should exercise that responsibility. Of existing agencies, the logical candidates are the Gaming Commission and the Lottery Corporation. Given the mandate of the Lottery Corporation to maximize revenues for the province and its obvious role in promoting its activities, the twin issues of fairness and neutrality become salient. The public must have confidence in the evaluation process. A process where the Lottery Corporation is both an advocate or stakeholder and the final approving authority could undermine that confidence and is inappropriate in such a sensitive area of public policy.

Essentially the choices come down to reconstituting the Gaming Commission, establishing a new body to regulate the Lottery Corporation or establishing a new body to regulate specified decisions of both the Gaming Commission and the Lottery Corporation. The memoranda of agreement between the province and the B.C. Association for Charitable Gaming and the Bingo Council of British Columbia "affirms that the Gaming Commission is the sole licensing authority for charitable gaming." Accordingly, this responsibility would not change. It makes little sense to create an agency for the sole purpose of regulating the Lottery Corporation. That leaves the other two alternatives, reconstituting the Gaming Commission or creating a new agency.

There are advantages and disadvantage to both alternatives. Is a new agency necessary? Would an additional body lead to inefficiencies? How would appeals of Gaming Commission decisions

concerning bingo be resolved? Is there a possibility of bias on the part of Gaming Commission and hence the potential for conflict?

On balance it appears that a new agency regulating both the Lottery Corporation and the Gaming Commission is the best alternative. There is no overlap of responsibilities. The element of bias disappears. There is a clearly defined route for an appeals process, a need stressed in the 1994 *Gaming Policy Review*. The new agency should be called the **British Columbia Gaming Control Commission**. To avoid confusion, the British Columbia Gaming Commission should be renamed the British Columbia Charitable Gaming Commission.

The Gaming Control Commission would be designated as an agent of the Crown and as the prime regulator of gaming in the province. There would need to be a Gaming Control Commission Board appointed by the Lieutenant Governor in Council. The legislation must spell out clearly the exact duties and scope of authority for the new agency.

Given the faultlines already identified, disputes may arise between the Lottery Corporation and service providers or between individual charities, bingo associations and the renamed Charitable Gaming Commission over policy matters. The legislation should make it clear that the Gaming Control Commission has the authority to mediate or otherwise settle disputes between the different gaming sectors. There may be occasion for the Gaming Control Commission to act as a facilitator in resolving disputes between local governments over the location or relocation of gaming facilities. It should also be authorized to hear appeals on certain matters. Given the importance of relocation of facilities or changes to them including their closure, either temporarily or permanently, the legislation should confer authority on the Gaming Control Commission to make such decisions.

Recommendation 3: That the gaming legislation establish a Gaming Control Commission.

Recommendation 4: That the gaming legislation confer authority on the Gaming Control Commission to receive, review and decide on relocation requests; to approve changes to existing facilities such as increases/decreases in the number of table games or slot machines and to resolve disputes and other matters as assigned by the minister.

One further aspect of the regulatory function should also be considered at this point—the location of GAIO. To include its activities within the Gaming Control Commission could conceivably be perceived as undermining its independence and ability to enforce operational compliance of gaming activities. It should continue to be part of the Ministry of the Attorney General. This differentiation of function is found in draft legislation contained in the 1999 *White Paper* and should be reflected in the new legislation. Rather than relying on interagency memoranda of agreement, the proposed legislation should outline the responsibilities of GAIO, the Gaming Control Commission, the Charitable Gaming Commission and the Lottery Corporation with respect to enforcement and penalties for breaches of rules and regulations.

Recommendation 5: That the Gaming Audit and Investigation Office continue as part of the Ministry of the Attorney General.

Recommendation 6: That the gaming legislation identify the roles and responsibilities with respect to enforcement of gaming policy and penalties for breaches of these policies.

Establishing an independent Gaming Control Commission does not mean that the government has divested itself of setting general policy for gaming. For example, it is reasonable that the government retain the authority and responsibility for determining the overall number of casinos in the province, the maximum number of table games and slot machines permitted in a casino, maximum betting limits and whether or not slot machines should be introduced at racetracks

(subject to the limitations of the MOA with the UBCM). The gaming legislation should make clear that the Gaming Control Commission is independent but that government continues to be responsible for general policy.

Examples of this bifurcation of responsibility can be found in various statutes. The *Liquor Control and Licensing Act* contains the following provision. "The general manager must, subject to the orders and direction of the minister on matters of general policy, (a) administer this Act...."^{xli}

Another example of bifurcation is the *Broadcasting Act* which includes a provision where the "Governor in Council may, by order, issue to the Commission [the Canadian Radio-television and Telecommunications Commission] directions of general application on broad policy matters with respect to any of the objectives of the broadcasting policy set out ... or any of the objectives of the regulatory policy set out...."^{xlii} The *Broadcasting Act* makes it clear that no order can be made with respect to the "issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence" or to any "licensing matter pending before the Commission...." Copies of orders have to be tabled in both houses of Parliament, are to be referred to the appropriate parliamentary committees and are published in the *Canada Gazette*. The minister is required to consult with the Commission before issuing such an order. In summary, the government retains the right and the responsibility to set broad policy directions for broadcasting but must do so within clearly defined checks and balances.

Recommendation 7: That the gaming legislation should establish the independence of the Gaming Control Commission while making it clear that the Lieutenant Governor in Council continues to exercise responsibility for general policy direction.

A closely related matter is a situation where the minister or the Lieutenant Governor in Council can ask the Gaming Commission to undertake specific assignments. The Manitoba Gaming Control Commission has, among other things, the following duties:

- a) at the request of the Minister, to provide advice and recommendations as to gaming activity;
- b) at the request of the Minister, to conduct public meetings or hearings for the purpose of clause (a)...;
- d) at the request of the Lieutenant governor in council, to conduct public inquiries into matters of gaming activity.^{xliii}

These provisions allow the Manitoba government to utilize the experience of its independent gaming commission without compromising its independence. Gaming is constantly changing. Before governments embark on policy changes, some process for public input and participation in policy development is necessary if public confidence is to be restored and maintained.

Recommendation 8: That the gaming legislation incorporate provisions authorizing the minister or the Lieutenant Governor in Council to ask the Gaming Control Commission to undertake special public hearings or inquiries.

Accountability of independent agencies is essential if they are to sustain public confidence in their operations. The legislation should include a provision requiring the Gaming Control Commission to prepare an annual report to the minister detailing its activities. The legislation should also require that the report be tabled in the Legislature.

Recommendation 9: That the legislation include a requirement for an annual report from the Gaming Control Commission and that the report be tabled in the Legislature.

4.2.b A Recommended Process for Relocation

A relocation essentially involves five different stages:

- 1) preparation and submission of the application,
- 2) preliminary review and interim approval,
- 3) local government review and decision,
- 4) final review, and
- 5) final approval.

As will be seen, each stage may have several phases. It should be recognized at the outset that applications for relocation may be delayed or rejected at several of the stages.

4.2.b.i Stage 1—Preparation and Submission of the Application

One of the first tasks the new Gaming Control Commission is to determine what information is required in a relocation application. It must also decide who has standing to initiate a relocation application. In the case of casinos this is particularly relevant in that a relocation could conceivably be initiated by either the service provider or the Lottery Corporation separately or jointly with the service provider. As previously mentioned, much of the information required in the RFP process would also be required in a relocation application.

The following types of information should be included in the application for relocation:

- Name of applicant,
- Reason for the relocation application,
- Proposed location—municipality/regional district, site specifics and description of surrounding communities within a one kilometre radius (note: the radius may vary depending upon population density),
- Market assessment, including the potential impact on existing gaming facilities in the same market,
- Description and design of proposed facility, including capital costs,
- Description of the number and mix of table games and the number of slot machines,
- A business plan including the financing of the relocation as well as,
 - Corporate information,
 - Corporate and staff organizational charts,
 - Description of marketing plans,
 - Financial projections and detailed operating budgets,
 - Staffing plans and costs,
- A complete list and description of individuals, companies or other entity involved in the relocation project, including financial participation,
- Proposed method for community consultation.

As previously mentioned, the Lottery Corporation in trying to maximize revenues for the province may pursue a policy of relocation of existing casinos from municipalities opposed to slot machines to municipalities more favourably disposed to this aspect of gaming. In pursuing this policy, the Lottery Corporation first needs to assess the total provincial market and identify municipalities

interested in expanding gaming within their boundaries. It is currently considering developing its own version of a request for proposals from interested municipalities. Depending upon the response, several potential relocations of existing casinos could be identified.

Recommendation 10: That the Gaming Control Commission adopt a series of policy guidelines detailing the information to be included in relocation applications.

4.2.b.ii Stage 2—Preliminary Review and Interim Approval

Upon receipt of the relocation application, the Gaming Control Commission staff will examine the application to ensure that it is complete. Following this initial examination, the application is sent to GAIO for its review and assessment. If the relocation request is for a casino and the Lottery Corporation is a party to the relocation application, there is no need for it to be informed. If not, the application must be sent to the Lottery Corporation for its review and comment. For bingo facilities the views of the Charitable Gaming Commission (currently the Gaming Commission) are requested. As a general rule both the Lottery Corporation and the Charitable Gaming Commission should be apprised of any relocation request for the simple reason that the decision may have implications for facilities within their mandate.

At the same time, the Gaming Control Commission should inform the local governments and police forces affected by the proposed relocation. If the relocation is within the same municipality, normally only that municipality would be informed. If the relocation is across municipal boundaries, the municipality which will lose the facility and the one to gain the facility should both be informed. It may well be that either or both municipalities are aware of the relocation application. Advance notice ensures that the local government where the relocation will take place is alerted to the possibility and can begin to consider its own review and approval process. In addition, if the relocation is close to the municipal boundary, adjacent local governments should be notified of the relocation application.

Following receipt of the GAIO review and any comments from the Lottery Corporation or the Charitable Gaming Commission or others, the staff of the Gaming Control Commission makes a recommendation to the Commission itself. The recommendation is to be based on its assessment of the application, the GAIO review and other comments received. At the preliminary review

stage for relocation, it should be a requirement that both the service provider and, depending upon the specific facility, either the Lottery Corporation or the Charitable Gaming Commission present their views on the proposed relocation. In some instances, both the Lottery Corporation and the Charitable Gaming Commission may need to make presentations. On some occasions it may be necessary and appropriate for the Gaming Control Commission to mediate differences between the various parties.

Either the full Commission or a panel selected by the Chair will meet to make an interim decision.

The Commission has several choices available to it. At this stage the Commission may:

- Give interim approval and forward the matter to the relevant local government for its review and decision,
- Reject the application in light of the GAIO review,
- Reject the application because it finds the relocation request unwarranted or the proposed location unacceptable,
- Request more information before reaching a decision, or
- Defer a decision pending resolution of specific concerns.

4.2.b.iii Stage 3—Local Government Review and Decision

The preliminary review stage is essentially a closed process. The local government review stage becomes the first opportunity for public input and participation. If a relocation application involves a zoning decision, the *Municipal Act* requires a public hearing.^{xliii} However, if there is an official community plan for the area in question and the proposed bylaw is consistent with that plan, the local government can waive the holding of a public hearing. If the local government does not hold a public hearing, the Gaming Control Commission must ensure that the next stage (the final review) includes a public hearing. To ensure an open process, at some stage there must be an opportunity for the public to express its views. It should also be made perfectly clear at the outset that if a local government rejects an application for relocation, the process terminates.

The Memorandum of Agreement (MOA) with the Union of British Columbia Municipalities contains a number of provisions which have a direct bearing on relocation decisions and processes. In the memorandum of agreement, among other things, the province:

- affirms the jurisdiction of local governments, specifically with respect to their land use and bylaw making powers;

- affirms the ability of local governments to make decisions as to whether or not new facilities or re-located facilities will be permitted within their boundaries;
- affirms the ability of local governments to direct and define the extent, scope and type of casino and bingo gaming permitted within their boundaries. It also affirms the ability of local government to decide if slot machines or other similar devices could be placed within their boundaries; and
- will ensure that there is a legislative mechanism for consultation/ mediation with adjacent communities.

The MOA affirms the authority of local government on a number of important policy matters. An affirmation of municipal authority represents a confirmation that these decisions are of critical interest at the local level. Local government approval has, therefore, become a necessary condition for relocation within or across municipal boundaries. The MOA could not make that reality more clear. Decisions can be made through zoning powers or a general bylaw which restricts gaming activity, e.g., the prohibition of slot machines. Thus, important components in the overall assessment of a relocation are the processes and procedures in place at the municipal level, particularly with respect to land use or zoning.

Recommendation 11: That the gaming legislation reflect and confirm the provisions of the Memorandum of Agreement between the province and the Union of British Columbia Municipalities concerning:

- 1) jurisdiction of local government, with respect to land use and bylaw-making powers;
- 2) the ability of local governments to make decisions as to whether or not new or relocated facilities will be permitted within their boundaries;
- 3) the ability of local governments to direct and define the extent, scope and type of casino and bingo gaming permitted within their boundaries; and
- 4) the ability of local governments to decide if slot machines or other similar devices could be placed within their boundaries.

The public hearing provisions of the *Municipal Act* are certainly relevant to the terms of the

memorandum of agreement with the UBCM. Under sec. 892, the local government must give notice of the hearing. The notice is to include the following:

- the time and date of hearing;
- the place of the hearing;
- in general terms, the purpose of the bylaw;
- the land or lands that are the subject of the bylaw;
- the place where and the times and dates when copies of the bylaw may be inspected.

To inform the public, "The notice is to be published in at least 2 consecutive issues of a newspaper, the last publication to appear not less than 3 and not more than 10 days before the public hearing." This same section also requires that if a bylaw alters the permitted use of an area, owners "within a distance specified by bylaw" are to be notified by mail "at least 10 days before the public hearing." For example, the City of Vancouver uses the same notification guidelines for liquor licensing as for casinos. The specified distance is a 1,000 foot radius in the downtown area and a 2,000 foot radius for facilities outside the downtown area. The relevant provisions of the *Municipal Act* are included in Appendix 9.

While the provisions of the *Municipal Act* are straightforward and provide for public input, the question remains as to whether or not local governments should go beyond its provisions for public consultation. As a result of the memorandum of agreement, the province has acknowledged a major role for local governments in the decision-making process with respect to relocation. It would now be difficult for the province to stipulate, beyond the requirements of the *Municipal Act*, what process local governments must follow in reaching their decisions. That said, there is nothing to prevent the province from working with the UBCM to develop one or more models which local governments might choose to follow. During the meeting with the Gaming Committee of UBCM, it was suggested that a one-size-fits-all policy would be inadvisable given the significant differences in size and staff resources of local governments across the province.

In considering the role of local government in the approval process, a comparison with an equally sensitive location policy is useful. A helpful example for purposes of comparison is the process that the Liquor Control and Licensing Branch has developed for the approval of neighbourhood pubs. Community input is part of the application process and the local government is responsible for determining community opinion. Of particular interest is the provision that the council must state by resolution whether it "considers the majority of residents to be (in favour/not in favour) of the licence being granted." This requirement leaves no room for ambiguity on the part of the council.

In the same resolution, the local government is required to give its views on various social factors including proximity to other public buildings, e.g. schools or social facilities which would include churches. The resolution is also to address questions of traffic, parking, noise, and any other local issue considered relevant. In reaching a final decision, the general manager of the Liquor Control and Licensing Branch is required to take into consideration the information in this resolution. The entire process is designed and intended to encourage and reflect community concerns.

The relevance and applicability of liquor laws to both the legislative provisions and the regulations for gaming facilities seeking relocation is fairly evident. The overall approach that the Liquor Control and Licensing Branch uses for neighbourhood pubs is certainly in accord with a transparent, open and fair process. Of particular interest here are the processes for public consultation.^{xliv}

While a public process is required for establishment of a neighbourhood pub, the fact that the pub is located in or adjacent to a residential area has generated a very specific approval process, one where social considerations become more prominent. While it is highly improbable that a casino would elect, or be given approval, to relocate to a residential area, the question of adjacency or proximity to residential areas cannot be overlooked. With this possibility in mind, procedures beyond the requirements of the *Municipal Act* should be examined jointly by the new Gaming Control Commission and the UBCM. Whether or not a more detailed process should be developed for the relocation of bingo facilities should at least be examined by the Gaming Control Commission, bearing in mind that many bingos already take place in community-based facilities.

While destination casinos are not included in the terms of reference of this review, the RFP process required a demonstration of "host" local government approval. The experience gained from the RFP process may be helpful in developing processes at the local level for relocation.

For example, to ascertain the level of public support for gaming expansion, the City of New Westminster undertook a comprehensive public consultation process. They sponsored a public forum with panelists holding a variety of views, both for and against gaming expansion. They engaged a national polling firm to conduct a telephone survey to canvass public opinion. The third component was to solicit public input through a notice in the newspaper. The notice invited public input by letter, e-mail or telephone. People were also invited to attend a Council meeting to express their opinion. Before the public consultation process was complete, the City Council

passed a resolution indicating it was prepared to consider additional gaming facilities in the City, subject to certain conditions being met and an evaluation of the public consultation process. In Penticton, the City required the proponents to submit their proposal to a referendum. Each of these techniques is equally appropriate as a means of gauging public opinion on a relocation application.

Recommendation 12: That the Gaming Control Commission and the Union of British Columbia Municipalities jointly examine existing practices and procedures for public consultation on gaming matters, such as relocation, with the view to developing a set of guidelines available for the use of individual local governments.

4.2.b.iv Stage 4—Gaming Control Commission Final Review

After the local government has made a decision with respect to a relocation application, it informs the Gaming Control Commission of its decision. As part of its report, the local government should also indicate what process of public consultation they used to assist them in reaching their decision. In addition, they should indicate whether or not they sought the views of adjacent municipalities and if these municipalities had raised any concerns. If concerns had been expressed what were they and were they addressed?

The local government has essentially three options. It can:

- approve the application,
- approve the application with conditions, or
- reject the application.

If the local government approves the application without condition, has held public hearings and indicates there are no unresolved disputes with other municipalities, the final review should be reasonably straight-forward and the Gaming Control Commission can give approval in principle.

If municipal approval is conditional, the Gaming Control Commission must review the conditions with the service provider and either the Lottery Corporation or the Charitable Gaming Commission to ascertain their views and whether or not they wish to proceed with the relocation. The Commission must also satisfy itself that the conditions conform to their policies and overall provincial policy. If the several parties are satisfied and indicate no objection to the conditions,

the Gaming Control Commission can proceed with its final review.

If an applicant raises objections to the conditions, the choices are that the Gaming Control Commission can ignore the objections, recommend the application be abandoned, send it back to the local government for reconsideration or see if some compromise is possible. If the Gaming Control Commission believes the conditions contravene their policies or provincial policies, they inform the local government and attempt to resolve the differences.

If the local government has approved a relocation application, but has not held any public consultations, the Gaming Control Commission must, at this stage, hold a public hearing. The procedures the Commission uses should be either those contained in the *Municipal Act* or ones it has developed jointly with the UBCM. At the conclusion of the public consultation process, the Gaming Control Commission makes its decision, which is either to approve or to reject the relocation application.

If the local government rejects the relocation application, that terminates the process. There is, however, one policy question that arises from a negative decision. The list of possible reasons for refusal is long and may range from a technical or procedural problem to fundamental opposition to the site selected. Whatever the reason for rejection, the question of reapplication inevitably arises. Obviously a decision to reapply will not be entered into lightly, given the costs and uncertainty associated with the application process. Nevertheless, the Gaming Control Commission should develop some guidelines on reasonable time limits between an unsuccessful application and a reapplication. One example would be a three-year moratorium, meaning that the reapplication would be considered after the next municipal election.

Recommendation 13: That the Gaming Control Commission, in consultation with the Union of British Columbia Municipalities, develop guidelines for time limits for resubmission of an unsuccessful relocation application.

Although highly unlikely, disputes may arise between two or more municipalities over a relocation application. This possibility is reflected in the memorandum of agreement with the UBCM which calls for a consultation/mediation section in the new gaming legislation. It is difficult to predict at what point in the approval process a dispute might arise. If the Commission is aware of a potential

conflict or senses that one may develop, it may decide at what stage it wishes to review the matter or it may prefer to wait and see if a disagreement surfaces. In some instances, it may be preferable to address the dispute before the local government approval; in others, after. The final review stage provides the last opportunity for resolution of such differences.

For example, conflict could arise when a proposal is to relocate a facility very close to a municipal boundary and an adjacent local government believes that it will be adversely effected. Disputes may also arise over the need to extend municipal services such as road access. Whatever the basis for the dispute, the final review stage provides an opportunity for the Commission and the several interested and concerned parties to resolve the conflict. The *Municipal Act* contains a dispute resolution process when differences arise over regional growth strategy. The processes include a peer panel, final proposal arbitration or full arbitration.^{xlv} Two potential sources of conflict which the Gaming Control Commission should not be expected to mediate are trans-boundary relocations, where one municipality is losing a facility and its share of the revenues and another is gaining them, and competition between municipalities for relocation of the same facility.

Recommendation 14: That the legislation contain provisions for a dispute resolution process between two or more local governments with regard to the relocation or location of gaming facilities. The Gaming Control Commission, or its delegate, should be authorized to perform this responsibility.

4.2.b.v Stage 5—Final Approval

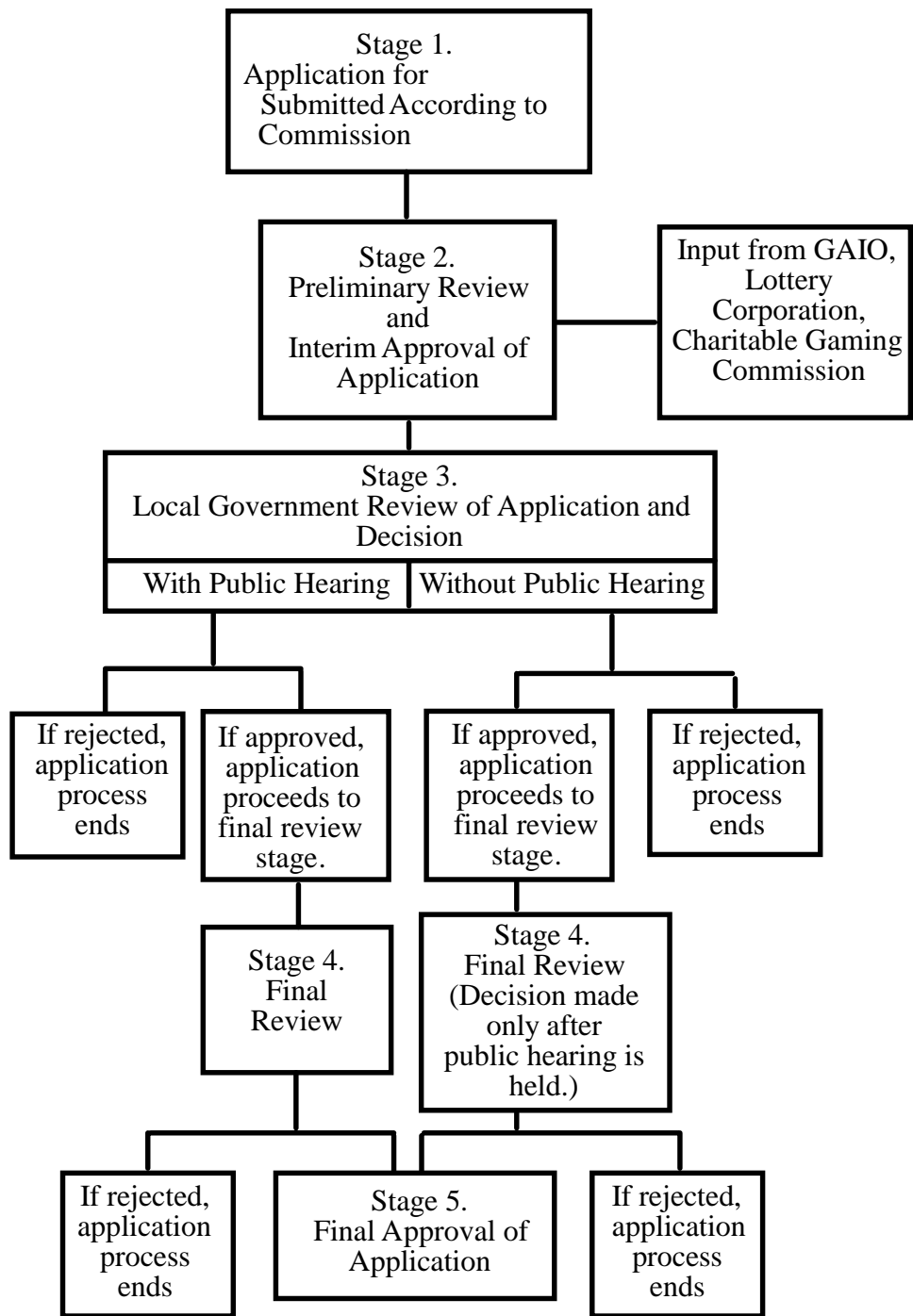
The Gaming Control Commission gives final approval for the relocation when the applicant has fulfilled any conditions; secured the necessary municipal approvals, permits and licences; secured the approval of the Lottery Corporation or the Charitable Gaming Commission and passed a final inspection. Since GAIO gave its evaluation earlier, further review by them is not necessary at this stage unless there has been a change in financing or some other aspect of the operation which may require their input. Once the Gaming Control Commission has given final approval, the relocated facility can begin operation.

One final policy question requires exploration—the term of the agreement. By way of comparison, the *Request for Proposals* document for destination casinos guaranteed successful applicants an

initial 10-year operating agreement with a renewal option for a further 10 years. Renewal is contingent on operators exercising their right of renewal and not breaching the terms or conditions of the agreement during the initial 10 years. Operators of existing casinos do not have a similar guarantee. Indeed, when the Lottery Corporation assumed responsibility for casinos in June 1998, it entered into two-year contracts with all service providers. These contracts end in May 2000.

Flow Chart #1

Chart 1. Recommended Process for Relocation of Existing Gaming Facilities



The issue at this point is an appropriate term for a relocation. In terms of fairness to the proponents of the relocation application, the initial term should be equivalent to the term for destination casinos—10 years. Before the end of the 10-year contract and before the agreement is renewed for another 10 years, the Gaming Control Commission should conduct a review. The purpose of the review is for the Gaming Control Commission to satisfy itself that all commitments have been met and that concerns raised by any interested parties during the first 10-year agreement have been addressed. Expressed another way, approval of a relocation does not mean an indefinite term. Instead it should be for a fixed term of reasonable length and renewal should be dependent on a satisfactory review. The expectation is that, as problems or concerns arise, whether it be over traffic congestion or changing demographics, one can be reasonably confident that those involved with the operation of the facility will endeavour to rectify or deal with the situation.

Recommendation 15: That final approval for relocations be given for a 10-year period with an option for renewal for a further 10 years following a satisfactory review conducted by the Gaming Control Commission.

4.3 Changes to Existing Facilities

The second term of reference of this review is the development of "detailed recommendations for an evaluation process for gaming facilities seeking any changes to their existing facilities within current government guidelines...." The new evaluation process for changes is subject to the same criteria as the relocation process namely, independent from direction or influence by elected provincial officials and transparent, open and fair to all participants and the public. The terms of reference give one example of a potential change, "adding additional slot machines and gaming tables up to the maximum number allowed." The current government guideline is 300 slot machines and 30 table games, excluding poker tables. The Lottery Corporation will allow an additional four poker tables beyond the 30 table game maximum upon written request of the service provider. The above example indicates the type of change contemplated by the terms of reference.

The provisions of the memorandum of agreement with the Union of British Columbia Municipalities also apply to changes to existing facilities. Local governments can "direct and

define the extent, scope and type of casino and bingo gaming permitted within their boundaries."

Before addressing the evaluation process, a better understanding of what constitutes "change" warrants consideration. Changes can be considered major or minor in nature. Major changes would include closing the facility temporarily or permanently, adding to the number of table games or slot machines, introduction of new table games such as craps, a significant increase in seating capacity in bingo halls and introduction of electronic bingo to a particular bingo hall. Examples of minor changes might include new paper bingo games or a change in the mix of current table games within a casino. Obviously there will be differences of opinion as to what constitutes major and minor change. The evaluation process which follows is based on drawing a distinction between major and minor changes.

The recommended evaluation process for changes to existing facilities is similar to the evaluation process recommended for relocation. The differences reflect the fact that zoning is unlikely to be an issue and that change can be either major or minor. In the latter instance, a procedure for shortening the process should be available to the parties. The evaluation process would consist of four or five stages. The number of stages depends on the classification of the change as being of a major or minor nature. The five stages are:

- 1) preparation and submission of the application,
- 2) preliminary review and interim approval,
- 3) local government review and decision,
- 4) final review, and
- 5) final approval.

4.3. a Change Applications

The following types of information should be included in the application for changes to an existing facility:

- Name of applicant;
- Reason for the change application;
- Particulars of the change proposal, including an assessment of possible effects on the surrounding community;
- Is the change applied for considered to be major or minor in nature? (with an accompanying explanation);
- Market assessment, including the potential impact on existing gaming facilities in the same market;
- Description, design and costs of any renovations to the existing facility;
- A business plan including the financing of the change as well as,
 - Corporate information,
 - Corporate and staff organizational charts,
 - Description of marketing plans,
 - Financial projections and detailed operating budgets,
 - Staffing plans and costs;
- A complete list and description of individuals, companies or other entity involved in the relocation project, including financial participation;
- Proposals for community consultation.

4.3.b Preliminary Review, Interim Approval and Major Changes

Upon receipt of the change application, the Gaming Control Commission staff reviews the application. If the application concerns casinos or electronic bingo and the Lottery Corporation is not a party, the Corporation should nevertheless be notified of the change request. As with relocation, a standing operating procedure should be that both the Lottery Corporation and the Charitable Gaming Commission are notified of all change applications and their comments requested. GAIO should be notified and its views solicited on all change requests. The municipality directly affected by the proposed change should also be notified at this time. To expedite the evaluation process, the Commission staff should ask the local government to indicate whether or not it considers the change proposal to be of a major or minor nature. The local

government may decide to refrain from classifying the change as major or minor until the Commission has ruled on the matter. If they elect not to express an opinion, this stage continues without their input. After receipt and assessment of the views of the Lottery Corporation, the Charitable Gaming Commission, GAIO and the decision of the local government directly affected, the staff makes a recommendation to the Commission.

The next phase of the preliminary review stage is that the Gaming Control Commission convenes a meeting of interested parties, which may include the concerned local government. If the change involves bingo, the Commission should request input from both the BC Association for Charitable Gaming and the Charitable Bingo Association Committee of the Bingo Council of British Columbia. At this meeting, the Commission staff present their recommendations on both the merits of the application and their classification of the change as being major or minor in nature. If the various parties disagree on the classification or if the local government has not expressed its position, the Commission must still reach a decision.

At this stage, the Commission may give interim approval, ask for additional information or vary or turn down the application. The Commission must rule on whether or not the application is major or minor. Since changes to existing facilities may have consequences for other gaming facilities, charities dependent upon a certain revenue stream, traffic patterns, parking or noise levels, this decision is of considerable importance. If the Commission classifies the application as major, the remainder of the steps for relocation are to be followed, including a public hearing at either the local government or final review stage.

4.3.c Procedures Where the Commission Classifies Changes as Minor

Where the Commission rules that the change is minor, the following procedure is recommended. If the Commission, the applicant and the municipality directly affected are in agreement that the proposed change is minor in nature, and if the Commission staff so recommend, the Commission should have the option at this point of moving directly to the final review stage. In the event that the local government has not expressed an opinion on classification, the Commission would inform the local government of its decision. If the local government concurs with the Commission's classification, it may recommend that the process go to the final review stage immediately. At this time or at the final review stage, the local government must identify any municipal permits, licences or other approvals required before the Commission gives final approval.

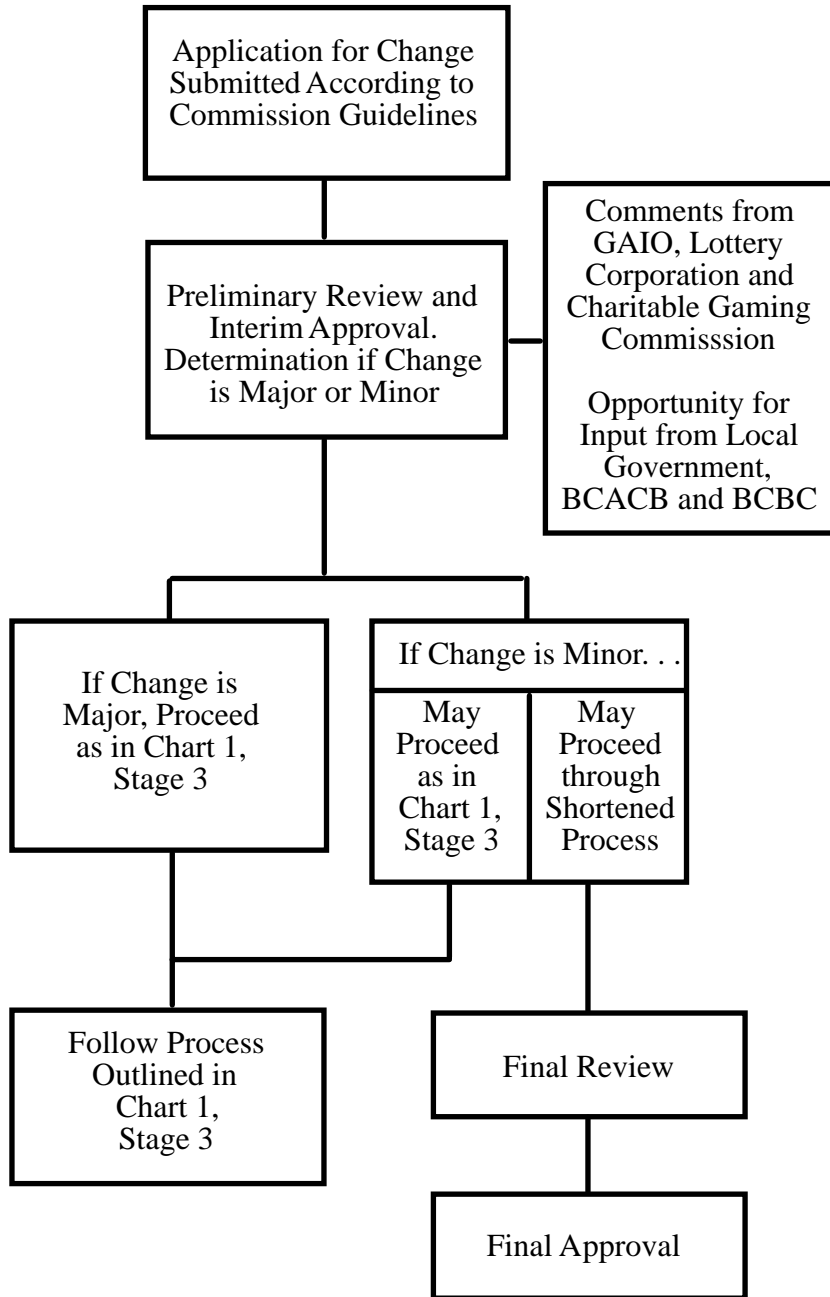
The local government may disagree with the Commission's classification. In this situation, the remaining stages of the relocation procedure are automatically triggered. It is also possible that the local government may agree with the Commission's classification but still elect to use all stages of the relocation process. What should be clear is that, even if all the parties are in agreement that the change is minor, either the Commission or the local government may still require that all five stages of the process be completed.

Recommendation 16: That requests for changes to existing gaming facilities be classified as being of a major or minor nature. Both the Gaming Control Commission and local governments have an equal say in determining the classification of the change to existing facilities.

Recommendation 17: That if either the Gaming Control Commission or the local government classify the changes to existing facilities as major, the process for relocation is to be followed.

Recommendation 18: That if the Gaming Control Commission and the local government classify the changes to existing facilities as minor, and if both agree that the public interest is served by shortening the process, the final review stage can immediately follow the interim approval stage.

Chart 2. Recommended Process for Changes to Existing Gaming Facilities



Recommendation 19: That the Gaming Control Commission and the Union of British Columbia Municipalities develop guidelines for classifying major and minor changes to existing facilities. In developing these guidelines, they should consult with the Lottery Corporation, the Charitable Gaming Commission, the BC Association for Charitable Gaming and the Bingo Council of British Columbia.

4.4 The Evaluation Criteria

The terms of reference for this review call for detailed recommendations on the evaluation criteria employed in the evaluation process. To a considerable extent, the detailed requirements of the evaluation process include, either directly or by implication, the evaluation criteria. Evaluation means to judge, to measure or to assess. Whatever the means used, evaluation requires weighing, balancing and assessing a number of different factors or variables, some of which are quantifiable. At the end of the deliberative or assessment stage comes the decision itself. For local governments, decisions are based on the votes of individual members of council. Accordingly, decisions are an exercise in both individual and collective judgment where the view of the majority prevails.

In determining criteria for the location of gaming facilities, some obvious ones come to mind. The first is the location itself. The location must be economically viable and socially responsible. Proponents of a relocation will make their decision for site selection based on economic considerations, such as the cost of the site and a market assessment. Social issues arise in terms of the proximity of a gaming facility to residential areas, schools, churches or community centres. Social issues also arise from concerns about increased traffic, inadequate parking, proximity to public transportation, alcohol consumption, increase in crime, additional policing and problem gambling.

A second consideration is the potential impact of a relocation or expansion on other gaming facilities in the same market. The faultlines addressed earlier indicate that there are tensions and competition among the different gaming sectors. There is also competition between casinos for customers, so location is of primary importance. The application process requires an assessment of this factor.

The local government review in both the relocation process and in the change to existing facilities is of great importance since their approval is a necessary condition. In addition, they are also in a position to determine the extent, scope and type of gaming within their boundaries. If a local government makes a blanket prohibition of slot machines within its boundaries, it has established an evaluation criteria. If a local government uses its zoning authority to restrict different kinds of gaming facilities to specific areas within its boundaries or limits the size of the facility, it has established evaluation criteria.

A relocation application would include a description of surrounding communities within a one (1) kilometre radius. Depending upon population density, this distance may be increased or decreased. The purpose of this requirement is to identify clearly the demographics and nature of the neighbouring communities. In addition, data on population trends, unemployment and crime should be included. Other factors to consider, given the increasingly multi-cultural nature of the province, are the languages spoken by local residents. They may have a bearing on which newspapers carry a public notice or how other information is conveyed. Is the area residential, commercial, entertainment, industrial or mixed? All this information is relevant to the final decision.

A relocation application would also include a proposed process for community consultation. This process may consist of the requirements of the *Municipal Act* only. Depending upon its assessment of demographics and population density, at the interim approval stage, the Gaming Control Commission might propose additional processes.

The results or assessment of the public consultation process are also part of the evaluation criteria. Some approaches are quantifiable such as the results of a referendum. In other instances, such as a telephone survey, the information may be considered statistically reliable. The sentiments expressed at public forums are more difficult to assess because the speaker may not live in the community directly affected. In terms of reaching a final decision, local governments must factor in their assessment of the degree of public support. This determination is a requirement under the neighbourhood pub approval process. The weight the local government attaches to this factor compared to other factors remains their responsibility.

Other factors local governments are likely to address include traffic, road access, parking and policing. There may be additional considerations such as the relationship of a proposal to

economic development or tourism. The purpose of the various stages of the review is to explore fully all these questions, to modify as appropriate specifics of the proposal, to assess community opinion and, in the final analysis, to reach an informed decision.

To assist it and others involved with or concerned with gaming, the legislation should authorize the Gaming Control Commission to undertake research into various aspects of gaming. In Manitoba the legislation authorizes its Commission to "conduct independent or joint research projects."^{xlvi} The comparable legislation in Nova Scotia assigns similar, but more specific, duties to its Commission. In Nova Scotia the Commission shall:

- (c) carry on a continuous study of the operation and administration of casinos, other lottery schemes and gaming control laws in effect in other jurisdictions, including the *Criminal Code* (Canada), that may affect the operation and administration of casinos or other lottery schemes in the Province;
- (d) carry on a continuous study of the public interest and reaction of residents of the Province to existing and potential features of casinos, other lottery schemes and games of chance;
- (e) carry on a continuous study of the social, health, justice, economic and environmental impact of casinos and other lottery schemes.^{xlvii}

The new gaming legislation should include a research provision. Whether or not it needs to be as specific as the provisions of the Nova Scotia legislation is a question of detail. One could also argue that some of this activity is better carried out by the Gaming Policy Secretariat. Whatever the final division of labour, the Gaming Control Commission should be legislatively mandated to conduct independent research.

If the Gaming Control Commission undertakes research, its regulatory activities will be informed by that research. The information it acquires should be made readily available to the public, leading to a more informed public debate. It also ensures that the Gaming Control Commission has the capacity to remain abreast of changes to gaming policies elsewhere. Given the types of concerns expressed about gaming expansion and its socioeconomic impact, research into its consequences, both positive and negative, is a desirable policy objective. Research projects can be independent, joint or sponsored.

Recommendation 20: That the gaming legislation include, as part of the Gaming Control Commission's duties, the authority to conduct independent research or joint research or to sponsor research.

4.4.a Problem Gambling

One issue which emerged in some meetings and presentations is the issue of problem gambling. Critics and supporters of gaming may differ over the size of the population that is or that has the potential to become problem gamblers. However, nobody denies that there are problem gamblers and that policies to address this addiction are necessary.

In the summer of 1999, the Lottery Corporation, as part of its program of dealing with problem gambling, developed a voluntary self-exclusion policy. Under this program, individuals sign a consent form which authorizes casinos to deny them entry to the premises. To date, 108 individuals are participating in this program.

Applications for relocation of existing facilities or for making changes should include a description of how the particular facility addresses the question of problem gambling. Is literature available and readily displayed? Where is the number for the 24-hour toll-free gambling help line displayed? What practices are in place at the existing facility to deal with this matter?

Recommendation 21: That applications for relocation of existing casinos or for changes to existing facilities include a statement by the proponent on current and future practices with respect to problem gambling.

Recommendation 22: That the province, as a result of the recent changes to gaming policy, confirm its commitment to its problem gambling program and review the program to ensure it is achieving its objectives.

4.5 Horse Racing

To this point, the primary focus of this review has been on existing casinos and bingo with little mention of horse racing. This omission is not an oversight but a result of the release of the *Horse Racing Review* in September 1999.^{xlviii} The release of the *Horse Racing Review* came two days after the release of the terms of reference for this review. When the Honourable Joan Smallwood released the *Horse Racing Review* she called for public input into its findings, "before our government considers the recommendations dealing with gaming...." That process of consultation went on simultaneously with this review. It seemed inappropriate to prejudge the outcome of the *Horse Racing Review* consultations in advance of the completion of the public input phase

Nevertheless, the "Summary of Findings" at the end of the *Horse Racing Review* contains a number of policy conclusions which relate directly to this review and its recommendations.^{xlix} As a result, some comment is warranted to highlight zones of convergence in approach. It should be noted that the only direct reference to horse racing in the terms of reference of this review is in the relocation of racetracks.

In the conclusion, "Industry Overview," one finds the following statement: "Horse racing should be viewed as a sector of the entire gaming industry, which includes lotteries, bingo, electronic gaming devices and casinos. All gaming sectors should be treated in a consistent manner in terms of applicable rules and regulations...."¹ This uniform approach makes sense and is particularly relevant to relocation applications for existing racetracks. If horse racing is a sector of the entire gaming industry, it stands to reason that the processes and procedures established for relocation of existing facilities should apply across all sectors. Since the Gaming Control Commission is to approve all relocation applications for casinos and charitable bingo halls, its mandate could readily be expanded to include racetracks. The Gaming Control Commission should also exercise a similar regulatory authority over any proposal to build new racetracks.

Recommendation 23: That the government establish a uniform policy for consideration of relocation applications across the entire gaming sector.

Recommendation 24: That the Gaming Control Commission, in light of Recommendation 23, assume responsibility for applications to relocate existing racetracks. Given its overall responsibility for the regulation of gaming in the province, the Gaming Control Commission's authority should also include approving applications for the development of new racetracks.

A second conclusion of the *Horse Racing Review* which has a direct bearing on this review is contained in the section entitled, "Organizational Review." The particular reference is to GAIO and builds on the already stated principle that horse racing is a sector of the gaming industry. The following excerpt is particularly relevant in the context of Recommendation 6.

[S]ince the horse racing sector is part of the entire gaming industry ..., there should be a role for the Province's main gaming regulator, the Gaming Audit and Investigation Office ("GAIO").... GAIO is involved in all other sectors in the gaming industry. GAIO's mandate is to ensure that gaming in the Province is conducted with honesty and integrity through the registration of individuals and companies involved in lawful gaming. As well, GAIO reviews all gaming operations and organizations against standards established through Provincial legislation and policy. This would ensure that all gaming sectors are treated equally and are subject to the same standards.ⁱ

The justification for a single enforcement agency's applying standards across the entire gaming industry is particularly difficult to ignore. It makes sense and is the inevitable result of the continuing interaction of the different sectors of the gaming industry. If GAIO's mandate is expanded, that expansion must be accompanied by a corresponding increase in resources.

Recommendation 25: That the government give consideration to expanding the mandate of the Gaming Audit and Investigation Office to include horse racing.

The third conclusion of direct relevance to this review is contained in the section entitled, "Economic Environment," and advances the idea of introducing slot machines at racetracks. As noted in the *Horse Racing Review*: "A number of jurisdictions have responded to the decline in their horse racing sector by introducing slot machines to both increase attendance at racetracks and generate revenue to supplement purses. The success of this initiative is difficult to fully evaluate."ⁱⁱⁱ When Minister Smallwood released the *Horse Racing Review*, she categorically

rejected this suggestion. She said, "Our government ended gaming expansion. That policy change means racetracks won't get the go-ahead to install slot machines."ⁱⁱⁱ

There is a further consideration. The two largest racetracks in the province, Hastings Park and Fraser Downs, are located on land leased from the City of Vancouver and City of Surrey respectively. Both municipalities have taken a very strong position in opposition to the introduction of slot machines within their boundaries, a position now strengthened by the provisions of the Memorandum of Agreement with the Union of British Columbia Municipalities. The terms of the lease for both racetracks restricts gaming activities to horse racing. As noted in the *Horse Racing Review*,

In order for slot machines to be installed at the racetracks, the land leases need to be amended or the racetracks need to be relocated. These two options both have difficulties. Relocation involves extreme costs and since the two cities are adamantly opposed to the installation of slot machines in their jurisdictions, amending the leases to include slot machines is unlikely.^{iv}

This understatement, combined with the minister's statement, would suggest that adding slot machines to racetracks is not an option. There is, however, another alternative which was not addressed in the *Horse Racing Review*—the relocation of an existing casino to a racetrack. Obviously the prohibition against slot machines would remain in place in both the City of Vancouver and the City of Surrey. The recommended procedures for the relocation of casinos require approval of the municipality, so the local government concerned would have to be in agreement.

Relocating a casino to a racetrack is a major policy decision and the province must address the principle. This question falls into the category of general policy referred to in Recommendation 7. If the province gives general approval to such relocations, it can authorize the Gaming Control Commission to process any applications it may receive. It should be understood that the policy of the municipality in which the racetrack is located will determine whether or not slot machines will be permitted.

Recommendation 26: That the minister, on behalf of the province, declare whether or not the province gives general approval to the relocation of casinos to racetracks.

The final question at this point is whether or not the government should add the regulation of horse racing to the mandate of the Gaming Control Commission. The preceding discussion of viewing all gaming as a single industry would point in that direction. Until the assessment of the *Horse Racing Review* is completed, however, any recommendation in this report is premature.

4.6 Destination Casinos

As indicated in the introduction to this report, destination casinos were specifically excluded from this review. As the review progressed, it was difficult to ignore their existence, particularly when comparisons were frequently made between them and existing casinos. The processes and policies in the *Request for Proposals* document were helpful in developing benchmarks for the processes developed in this review. On a few occasions, the subject of destination casinos came up in the context of a general discussion of relocation. The underlying implication was difficult to miss. There was an assumption or expectation that a destination casino, which had received approval in principle, could apply to relocate to another part of the province. To avoid any future misunderstanding, the minister should indicate that this assumption is false and that destination casinos are site specific.

Recommendation 27: That the minister communicate with the successful destination casino applicants which have not yet received final approval indicating that the approval in principle is based on the site indicated in the original proposal. Any other assumptions are false.

4.7 The Interim Period

As was stated at the outset of this report, the Honourable Joan Smallwood announced a freeze on relocations and changes to existing facilities until this review was completed. With the completion of the review, it becomes necessary to reconsider that decision and establish an interim bridging policy that reflects the content of this report. The bridging policy would cover the period between receipt of this report and the proclamation of new legislation, reinforcing further the need for the government to introduce legislation at the next session of the Legislature.

The bridging policy on relocations would be become another component of the interim policy

announced in April 1998. From comments received in the course of this review, it is evident that a number of relocation requests for existing casinos will be forthcoming. Although the freeze was partially lifted for bingo operations in December, the government should also anticipate that bingo operators will submit requests for relocation of or changes to existing facilities.

The two principal distinctions between current practice and what is proposed in this report are the consolidation of regulatory authority in a new agency for casinos and bingo and a more central role for local governments in the decisions. The current policies of both the Lottery Corporation and the Gaming Commission concerning relocation of charitable casinos and bingo facilities already provide for local government input. Thus the bridging policy should not be too difficult to implement. To avoid uncertainty and to maintain the spirit of cooperation reflected in the three memoranda of agreement, consultation with the three organizations is essential.

Recommendation 28: That the minister announce an interim bridging policy with respect to relocation of and changes to existing facilities. The bridging policy should consist of the following components:

- 1) The minister should issue a statement indicating that the freeze is lifted and the date when this becomes effective;
- 2) The minister should issue a statement that the government remains committed to the specifics of the three memoranda of agreement signed in June 1999 with the Union of British Columbia Municipalities, the BC Association for Charitable Gaming and the Charitable Bingo Association Committee of the Bingo Council of British Columbia;
- 3) The minister, while affirming the independence of the Gaming Commission for decisions with respect to specific bingo facilities, should direct the Gaming Commission to review its current processes and procedures for relocation of and changes to existing facilities to bring them in line with the Memorandum of Agreement with the Union of British Columbia Municipalities and the processes outlined in this report;
- 4) The minister, while affirming the independence of the Lottery Corporation for decisions with respect to specific casinos, should direct the Lottery Corporation to review its current processes and procedures for relocation of and changes to existing facilities to bring them in line with the Memorandum of Agreement with the Union of British Columbia Municipalities and the processes outlined in this report;
- 5) Since the freeze may have had different effects on individual service providers, especially with regard to outstanding applications for relocation or other changes, both the

Gaming Commission and the Lottery Corporation should have the discretion to act expeditiously to process these applications. This process should respect the spirit and intent of the Memorandum of Agreement with the Union of British Columbia Municipalities and the processes outlined in this report;

6) To facilitate the transition, and in keeping with the memoranda of understanding referred to in (2) above, the minister or her delegate should meet with the Union of British Columbia Municipalities, the

BC Association for Charitable Gaming and the Charitable Bingo Association Committee of the Bingo Council of British Columbia to brief them on the interim policy.

Recommendation 29: That in the event legislation is delayed for any reason, the Lieutenant Governor in Council establish the proposed Gaming Control Commission by regulation and transfer responsibility for approving relocation of existing facilities or changes to existing facilities from both the Lottery Corporation and the Gaming Commission to the Gaming Control Commission.

5. CONCLUDING OBSERVATIONS

In the past few years, gaming policy in British Columbia has been in a constant state of flux. There have been consultations, studies, policy papers, policy announcements, policy reversals, court challenges, minor legislation and new regulatory and policy agencies. The constant change is primarily a result of the province's embarking on a policy of gaming expansion. That other jurisdictions may be experiencing similar challenges is small comfort.

The expansion policy has led to conflict which has manifested itself in many ways. There has been conflict between the province and a number of municipalities, between charities and the province and between agencies of the province. Citizens' groups such as Citizens Against Gambling Expansion (CAGE) have been formed to challenge the government's position and remain ever-vigilant. The vagaries of the wording of the *Criminal Code* have further complicated matters. The role of the province has changed from being primarily a regulator to being the chief promoter and largest provider of gaming activities through the Lottery Corporation. To say that the net effect of this constant roller coaster ride has been to undermine public confidence in gaming policy is an understatement. It is time to put the brakes on and reflect.

Gaming "products" are constantly changing. Technological advances have led to different forms of gaming being introduced such as linked bingo and simulcasting. Technology makes it possible to turn slot machines on and off from a central location at Kamloops. Technology is also creating new issues such as internet gaming. Change, due to technological advances, and its consequences will continue to have a major effect on gaming policy and its regulation.

Despite a policy of expansion, some gaming sectors, notably bingo and horse racing are concerned about their future. This, in turn, creates considerable anxiety among charities who rely on this source of revenue and to the people who are employed in the horse racing industry.^{lv} These sectors are being forced to examine what they do and how they do it. Change and adaptation are essential if they are to remain viable. That is the essence of the conclusions of both the bingo and horse racing reviews.

The terms of reference of this review were fairly narrow in scope. Nevertheless they provided a window on the state of gaming in the province. In such a sensitive area of public policy, one would expect to find conflict and tension. What was not expected was the level of anxiety uncertainty has produced. Constant change has led to a perception of instability. One has tended to fuel the other, the net result being the escalation of conflict.

One senses that the policy decision to enter into agreements with the Union of British Columbia Municipalities, the BC Association for Charitable Gaming and the Bingo Council of British Columbia has reduced tension and is leading to a more constructive relationship. The decision to bring an end to gaming expansion appears to have had a similar effect on public discourse. Despite any misgivings and regardless of why they were signed, these agreements reflect a fundamental change in the province's approach to gaming policy. But suspicions and anxiety remain below the surface.

The focus of this report has been on existing facilities, and its recommendations have reflected the spirit of the memoranda of agreement with the Union of British Columbia Municipalities, the Association for Charitable Gaming and the Bingo Council of British Columbia. The focus in the memoranda on local involvement and consultation forms a strong foundation for policy development. The challenge to government is to restore public confidence. The answer, in a word, is legislation. Legislation provides certainty which policy announcements, no matter how well intentioned, can never achieve. If there was one central message received in the various meetings and presentations it was the need for stability and certainty. To restore public confidence, the government must introduce legislation which reflects the policy decisions and agreements of June 1999, establishes an independent regulatory agency and provides for consultation and public input into developing changes to gaming legislation.

6. NOTES

- i. Ministry of Employment and Investment, *News Release*, 059, June 17, 1999. See Appendix 1 for the text.
- ii. A destination casino is a casino developed in conjunction with other facilities and amenities such as a hotel, dining facilities, bars and lounges, entertainment, recreation and retail operations. In linked bingo, several facilities are linked to each other via telephone circuits, thus allowing for substantially increased prize levels through greater game attendance potential.
- iii. As of January 31, 2000, three destination casinos had received final approval: The Royal City Star, New Westminster (May 1999); Lake Cities Casinos Ltd., Penticton (June 1999); and Casino of the Rockies, Cranbrook (November 1999).

- iv. Ministry of Labour, *News Release*, Ref. No.:09-17-99, September 24, 1999.
- v. British Columbia, *Report on Gaming Legislation and Regulation in British Columbia*, Victoria: Ministry of Employment and Investment, January 1999. See Part 1, Chapters 2 and 3, pp. 7-106. This document will be referred to as the *White Paper*. See also: *Canada's Gambling Regulatory Patchwork: A Handbook*, Calgary: Canada West Foundation, 1999.
- vi. RSBC 1996, c. 278.
- vii. SBC 1998, c.37.
- viii. RSBC 1996, c. 279.
- ix. British Columbia Lottery Corporation, *1997/98 Annual Report*, British Columbia Lottery Corporation: 1998, p. 4.
- x. Lottery Corporation, *1997/98 Annual Report*, p. 6.
- xi. Ministry of Government Services, *Report of the Gaming Policy Review*, Victoria: October 1994, p. 20.
- xii. *White Paper*, p. 180.
- xiii. *Horse Racing Act*, RSBC 1996, Chapter 198.
- xiv. *Request for Proposals*, p. 3.
- xv. *Request for Proposals*, p. 3.
- xvi. *Nanaimo Community Bingo Association v. Attorney General of British Columbia* (January 14, 1998) Victoria 97/4779 (B.C.S.C.).
- xvii. *British Columbia Lottery Corporation v. Vancouver (City)* (December 19, 1997) Vancouver A972911 (B.C.S.C.).
- xviii. *White Paper*, p. i.
- xix. See for example Garry Smith and Harold Wynne, *Gambling and Crime in Western Canada: Exploring Myth and Reality*, Calgary: Canada West Foundation, September, 1999.
- xx. See *Request for Proposals* pp. 11-13 for the details. On July 31 and August 1, 1997 Peter Clark, Chair of the now defunct Lotteries Advisory Committee sent out letters to all municipalities, regional districts and First Nations informing them of the RFP process and local government involvement.
- xxi. *Great Canadian Casino Company Limited v. Surrey (City) et al.* (October 19, 1999) Vancouver, 99/619 (B.C.C.A.).
- xxii. See the *White Paper* pp. 193-229 for a discussion of the municipal role. Secs. 47 and 52 of the 1999 draft legislation are the sections referred to.
- xxiii. *White Paper*, p. 212.
- xxiv. Ministry of Employment and Investment, *News Release* 020, March 13, 1997.

- xxv. Ministry of Employment and Investment, *News Release* 094, July 31, 1997.
- xxvi. See RFP, "definitions and terms."
- xxvii. Ministry of Employment and Investment, *News Release* 031, April 9, 1998.
- xxviii. Ministry of Employment and Investment, *News Release*, 035, May 14, 1998.
- xxix. RFP, p. 21.
- xxx. Ministry of Employment and Investment, *News Release* 046, May 4, 1999.
- xxxi. Ministry of Employment and Investment, *News Release* 031, April 19, 1998.
- xxxii. *Nanaimo Community Bingo Association v. British Columbia (Attorney General)* (January 14, 1998) Victoria 97/4779 (B.C.S.C.).
- xxxiii. Ministry of Employment and Investment, Gaming Policy Secretariat, *Bingo Review: Options for a Revitalized Bingo Gaming Sector*, Victoria: Ministry of Employment and Investment, January, 1999. See also Ministry of Employment and Investment, *News Release* 008, February 2, 1999. This document is referred to as the *Bingo Review*.
- xxxiv. See Frank A. Rhodes, *Gaming Policy Recommendations: Report to the Honourable Mike Farnworth*, Victoria: Ministry of Employment and Investment, February 1998. The \$125 million indexed to the Vancouver CPI is Recommendation 4, p. 38.
- xxxv. British Columbia Racing Commission, *1997-1998 Annual Report*, p.7.
- xxxvi. Gaming Policy Secretariat, *Province of British Columbia: Horse Racing Review*, Victoria: September 1999, p. 76. The Review consists of two volumes. PricewaterhouseCoopers prepared the Review at the request of the Gaming Policy Secretariat. This document is referred to as the *Horse Racing Review*.
- xxxvii. *Horse Racing Review*, p. 72.
- xxxviii. The following *News Releases* contain references to new legislation: 020, March 13, 1997; 031, April 9, 1998; 060, July 17, 1998; 008, February 2, 1999; 026, March 10, 1999; 038, April 16, 1999.
- xxxix. See *RFP*, pp. 22- 39.
- xl. RSBC Chap. 267, sec. 3.
- xli. *Broadcasting Act*, B-9.01 (1991) sec. 7.
- xlii. Manitoba, *Gaming Control and Consequential Amendments Act*, 1996, sec. 4.
- xliii. RSBC, Chap. 323, sec. 890-894.
- xliv. Ministry of the Attorney General, Liquor Control and Licencing Branch, *Role of Local Government in the Provincial Liquor Licensing Process*, Victoria: 1997.
- xlv. *Municipal Act*, sec. 860-862.

- xlvi. Manitoba, *Gaming Control and Consequential Amendments Act*, 1996, sec. 4 (c).
- xlvii. Nova Scotia, *Gaming Control Act*, Chapter 4, 1994-95, sec. 56 (c) - (e).
- xlviii. Ministry of Labour, *News Release* 09-18-99, September 24, 1999.
- xlix. *Horse Racing Review*, pp. 74-77.
- i. *Horse Racing Review*, p. 74.
 - ii. *Horse Racing Review*, p. 75.
 - iii. *Horse Racing Review*, p. 77.
 - iiii. *News Release*, 09-18-99, September 24, 1999.
 - v. *Horse Racing Review*, p.70.
 - vi. See Loleen Youngman Berdahl, *The Impact of Gaming Upon Canadian Non-Profits: A 1999 Survey of Gaming Grant Recipients*, Calgary: Canada West Foundation, July, 1999.

7. SUMMARY OF RECOMMENDATIONS

Recommendation 1: That the minister responsible for gaming introduce gaming legislation in the next session of the Legislature.

Recommendation 2: That the province fulfill the requirements of the three memoranda of agreement on gaming policy to consult in a meaningful way with local governments and charities before introducing gaming legislation.

Recommendation 3: That the gaming legislation establish a Gaming Control Commission.

Recommendation 4: That the gaming legislation confer authority on the Gaming Control Commission to receive, review and decide on relocation requests; to approve changes to existing facilities such as increases/decreases in the number of table games or slot machines and to resolve disputes and other matters as assigned by the minister.

Recommendation 5: That the Gaming Audit and Investigation Office continue as part of the Ministry of the Attorney General.

Recommendation 6: That the gaming legislation identify the roles and responsibilities with respect to enforcement of gaming policy and penalties for breaches of these policies.

Recommendation 7: That the gaming legislation should establish the independence of the Gaming Control Commission while making it clear that the Lieutenant Governor in Council continues to exercise responsibility for general policy direction.

Recommendation 8: That the gaming legislation incorporate provisions authorizing the minister or the Lieutenant Governor in Council to ask the Gaming Control Commission to undertake special public hearings or inquiries.

Recommendation 9: That the legislation include a requirement for an annual report from the Gaming Control Commission and that the report be tabled in the Legislature.

Recommendation 10: That the Gaming Control Commission adopt a series of policy guidelines detailing the information to be included in relocation applications.

Recommendation 11: That the gaming legislation reflect and confirm the provisions of the Memorandum of Agreement between the province and the Union of British Columbia Municipalities concerning:

- 1) jurisdiction of local government, with respect to land use and bylaw-making powers;
- 2) the ability of local governments to make decision as to whether or not new or relocated facilities will be permitted within their boundaries;
- 3) the ability of local governments to direct and define the extent, scope and type of casino and bingo gaming permitted within their boundaries; and
- 4) the ability of local governments to decide if slot machines or other similar devices could be placed within their boundaries.

Recommendation 12: That the Gaming Control Commission and the Union of British Columbia Municipalities jointly examine existing practices and procedures for public consultation on gaming matters, such as relocation, with the view to developing a set of guidelines available for the use of individual local governments.

Recommendation 13: That the Gaming Control Commission, in consultation with the Union of British Columbia Municipalities, develop guidelines for time limits for resubmission of an unsuccessful relocation application.

Recommendation 14: That the legislation contain provisions for a dispute resolution process between two or more local governments with regard to the relocation or location of gaming facilities. The Gaming Control Commission, or its delegate, should be authorized to perform this responsibility.

Recommendation 15: That final approval for relocations be given for a 10-year period with an option for renewal for a further 10 years following a satisfactory review conducted by the Gaming Control Commission.

Recommendation 16: That requests for changes to existing gaming facilities be classified as being of a major or minor nature. Both the Gaming Control Commission and local governments have an equal say in determining the classification of the change to existing facilities.

Recommendation 17: That if either the Gaming Control Commission or the local government classify the changes to existing facilities as major, the process for relocation is to be followed.

Recommendation 18: That if the Gaming Control Commission and the local government classify the changes to existing facilities as minor, and if both agree that the public interest is served by shortening the process, the final review stage can immediately follow the interim approval stage.

Recommendation 19: That the Gaming Control Commission and the Union of British Columbia Municipalities develop guidelines for classifying major and minor changes to existing facilities. In developing these guidelines, they should consult with the Lottery Corporation, the Charitable Gaming Commission, the BC Association for Charitable Gaming and the Bingo Council of British Columbia.

Recommendation 20: That the gaming legislation include, as part of the Gaming Control Commission's duties, the authority to conduct independent research or joint research or to sponsor research.

Recommendation 21: That applications for relocation of existing casinos or for changes to existing facilities include a statement by the proponent on current and future practices with respect to problem gambling.

Recommendation 22: That the province, as a result of the recent changes to gaming policy, confirm its commitment to its problem gambling program and review the program to ensure it is achieving its objectives.

Recommendation 23: That the government establish a uniform policy for consideration of relocation applications across the entire gaming sector.

Recommendation 24: That the Gaming Control Commission, in light of Recommendation 23, assume responsibility for applications to relocate existing racetracks. Given its overall responsibility for the regulation of gaming in the province, the Gaming Control Commission's authority should also include approving applications for the development of new racetracks.

Recommendation 25: That the government give consideration to expanding the mandate of the Gaming Audit and Investigation Office to include horse racing.

Recommendation 26: That the minister, on behalf of the province, declare whether or not the province gives general approval to the relocation of casinos to racetracks.

Recommendation 27: That the minister communicate with the successful destination casino applicants which have not yet received final approval indicating that the approval in principle is based on the site indicated in the original proposal. Any other assumptions are false.

Recommendation 28: That the minister announce an interim bridging policy with respect to relocation of and changes to existing facilities. The bridging policy should consist of the following components:

- 1) The minister should issue a statement indicating that the freeze is lifted and the date when this becomes effective;
- 2) The minister should issue a statement that the government remains committed to the specifics of the three memoranda of agreement signed in June 1999 with the Union of British Columbia Municipalities, the BC Association for Charitable Gaming and the Charitable Bingo Association Committee of the Bingo Council of British Columbia;
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- 4) The minister, while affirming the independence of the Lottery Corporation for decisions with respect to specific casinos, should direct the Lottery Corporation to review its current processes and procedures for relocation of and changes to existing facilities to bring them in line with the Memorandum of Agreement with the Union of British Columbia Municipalities and the processes outlined in this report;
- 5) Since the freeze may have had different effects on individual service providers, especially with regard to outstanding applications for relocation or other changes, both the Gaming Commission and the Lottery Corporation should have the discretion to act expeditiously to process these applications. This process should respect the spirit and intent of the Memorandum of Agreement with the Union of British Columbia Municipalities and the processes outlined in this report;
- 6) To facilitate the transition, and in keeping with the memoranda of understanding referred to in (2) above, the minister or her delegate should meet with the Union of British Columbia Municipalities, the BC Association for Charitable Gaming and the Charitable

Bingo Association Committee of the Bingo Council of British Columbia to brief them on the interim policy.

Recommendation 29: That in the event legislation is delayed for any reason, the Lieutenant Governor in Council establish the proposed Gaming Control Commission by regulation and transfer responsibility for approving relocation of existing facilities or changes to existing facilities from both the Lottery Corporation and the Gaming Commission to the Gaming Control Commission.

ⁱ Ministry of Employment and Investment, *News Release*, 059, June 17, 1999. See Appendix 1 for the text.

ⁱⁱ A destination casino is a casino developed in conjunction with other facilities and amenities such as a hotel, dining facilities, bars and lounges, entertainment, recreation and retail operations. In linked bingo, several facilities are linked to each other via telephone circuits, thus allowing for substantially increased prize levels through greater game attendance potential.

ⁱⁱⁱ As of January 31, 2000, three destination casinos had received final approval: The Royal City Star, New Westminster (May 1999); Lake Cities Casinos Ltd., Penticton (June 1999); and Casino of the Rockies, Cranbrook (November 1999).

^{iv} Ministry of Labour, *News Release*, Ref. No.:09-17-99, September 24, 1999.

^v British Columbia, *Report on Gaming Legislation and Regulation in British Columbia*, Victoria: Ministry of Employment and Investment, January 1999. See Part 1, Chapters 2 and 3, pp. 7-106. This document will be referred to as the *White Paper*. See also: *Canada's Gambling Regulatory Patchwork: A Handbook*, Calgary: Canada West Foundation, 1999.

^{vi} RSBC 1996, c. 278.

^{vii} SBC 1998, c.37.

^{viii} RSBC 1996, c. 279.

^{ix} British Columbia Lottery Corporation, *1997/98 Annual Report*, British Columbia Lottery Corporation: 1998, p. 4.

^x Lottery Corporation, *1997/98 Annual Report*, p. 6.

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- ^{xi} Ministry of Government Services, *Report of the Gaming Policy Review*, Victoria: October 1994, p. 20.
- ^{xii} *White Paper*, p. 180.
- ^{xiii} *Horse Racing Act*, RSBC 1996, Chapter 198.
- ^{xiv} *Request for Proposals*, p. 3.
- ^{xv} *Request for Proposals*, p. 3.
- ^{xvi} *Nanaimo Community Bingo Association v. Attorney General of British Columbia* (January 14, 1998) Victoria 97/4779 (B.C.S.C.).
- ^{xvii} *British Columbia Lottery Corporation v. Vancouver (City)* (December 19, 1997) Vancouver A972911 (B.C.S.C.).
- ^{xviii} *White Paper*, p. i.
- ^{xix} See for example Garry Smith and Harold Wynne, *Gambling and Crime in Western Canada: Exploring Myth and Reality*, Calgary: Canada West Foundation, September, 1999.
- ^{xx} See *Request for Proposals* pp. 11-13 for the details. On July 31 and August 1, 1997 Peter Clark, Chair of the now defunct Lotteries Advisory Committee sent out letters to all municipalities, regional districts and First Nations informing them of the RFP process and local government involvement.
- ^{xxi} *Great Canadian Casino Company Limited v. Surrey (City) et al.* (October 19, 1999) Vancouver, 99/619 (B.C.C.A.).
- ^{xxii} See the *White Paper* pp. 193-229 for a discussion of the municipal role. Secs. 47 and 52 of the 1999 draft legislation are the sections referred to.
- ^{xxiii} *White Paper*, p. 212.
- ^{xxiv} Ministry of Employment and Investment, *News Release* 020, March 13, 1997.
- ^{xxv} Ministry of Employment and Investment, *News Release* 094, July 31, 1997.
- ^{xxvi} See RFP, "definitions and terms."
- ^{xxvii} Ministry of Employment and Investment, *News Release* 031, April 9, 1998.

^{xxviii} Ministry of Employment and Investment, *News Release*, 035, May 14, 1998.

^{xxix} RFP, p. 21.

^{xxx} Ministry of Employment and Investment, *News Release* 046, May 4, 1999.

^{xxxi} Ministry of Employment and Investment, *News Release* 031, April 19, 1998.

^{xxxii} *Nanaimo Community Bingo Association v. British Columbia (Attorney General)* (January 14, 1998) Victoria 97/4779 (B.C.S.C.).

^{xxxiii} Ministry of Employment and Investment, Gaming Policy Secretariat, *Bingo Review: Options for a Revitalized Bingo Gaming Sector*, Victoria: Ministry of Employment and Investment, January, 1999. See also Ministry of Employment and Investment, *News Release* 008, February 2, 1999. This document is referred to as the *Bingo Review*.

^{xxxiv} See Frank A. Rhodes, *Gaming Policy Recommendations: Report to the Honourable Mike Farnworth*, Victoria: Ministry of Employment and Investment, February 1998. The \$125 million indexed to the Vancouver CPI is Recommendation 4, p. 38.

^{xxxv} British Columbia Racing Commission, *1997-1998 Annual Report*, p.7.

^{xxxvi} Gaming Policy Secretariat, *Province of British Columbia: Horse Racing Review*, Victoria: September 1999, p. 76. The Review consists of two volumes. PricewaterhouseCoopers prepared the Review at the request of the Gaming Policy Secretariat. This document is referred to as the *Horse Racing Review*.

^{xxxvii} *Horse Racing Review*, p. 72.

^{xxxviii} The following *News Releases* contain references to new legislation: 020, March 13, 1997; 031, April 9, 1998; 060, July 17, 1998; 008, February 2, 1999; 026, March 10, 1999; 038, April 16, 1999.

^{xxxix} See *RFP*, pp. 22- 39.

^{xl} RSBC Chap. 267, sec. 3.

^{xli} *Broadcasting Act*, B-9.01 (1991) sec. 7.

^{xlii} Manitoba, *Gaming Control and Consequential Amendments Act*, 1996, sec. 4.

^{xliii} RSBC, Chap. 323, sec. 890-894.

⁴³Ministry of the Attorney General, Liquor Control and Licencing Branch, *Role of Local Government in the Provincial Liquor Licensing Process*, Victoria: 1997.

^{xliv} *Municipal Act*, sec. 860-862.

^{xlvi} Manitoba, *Gaming Control and Consequential Amendments Act*, 1996, sec. 4 (c).

^{xlvii} Nova Scotia, *Gaming Control Act*, Chapter 4, 1994-95, sec. 56 (c) - (e).

^{xlviii} Ministry of Labour, *News Release 09-18-99*, September 24, 1999.

^{xlix} *Horse Racing Review*, pp. 74-77.

¹ *Horse Racing Review*, p. 74.

ⁱⁱ *Horse Racing Review*, p. 75.

ⁱⁱⁱ *Horse Racing Review*, p. 77.

ⁱⁱⁱⁱ *News Release*, 09-18-99, September 24, 1999.

^{liv} *Horse Racing Review*, p.70.

^{lv} See Loleen Youngman Berdahl, *The Impact of Gaming Upon Canadian Non-Profits: A 1999 Survey of Gaming Grant Recipients*, Calgary: Canada West Foundation, July, 1999.