

THE LEGALIZATION OF GAMBLING IN CANADA

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Prepared by:

Colin S. Campbell, Ph.D.
Timothy F. Hartnagel, Ph.D.
Garry J. Smith, Ph. D.

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EXECUTIVE SUMMARY

Situated within the ambit of the “*What is a Crime?*” project, *The Legalization of Gambling in Canada* reviews the transformed status of gambling in modern Canadian society, with particular emphasis on the social, political, economic and cultural forces that have changed the public perception of gambling from a sin, to a vice, to a mode of entertainment. More specifically, the report examines the selective removal of criminal prohibitions against gambling in Canada.

The provisions of the Canadian *Criminal Code* that pertain to gambling have undergone numerous revisions since the *Code*’s creation in 1892. These changes have entailed a gradual but sustained shift toward greater liberalization and represent a clear transition of gambling’s status from criminal prohibition to legalization. Taken together, the changes also reveal a consistent pattern of lesser federal responsibility over gambling and a greater provincial authority over an activity that now has considerable economic significance. This report documents the consequences of this transition.

Amendments made to the *Criminal Code* in 1969 and 1985 were pivotal developments both in transforming gambling in Canada and in consolidating provincial authority over it. Several different operational and regulatory models have appeared across Canada as a result of differing provincial interpretations of the *Criminal Code* with respect to gambling. A national *Criminal Code*, once uniform in its application, can now be seen to have regional interpretations, at least in regard to gambling.

Available data on public attitudes support the notion that Canadians are ambivalent toward gambling. Canadians generally view gambling as an acceptable community activity, due perhaps to its perceived inevitability and as a source of revenue for governments and charities. On the other hand, many Canadians feel there should be more restrictions on gambling, with the strength of such feelings varying with the type of

gambling (e.g., VLTs), the location of venues (“not in my backyard”), and the perceived social costs of gambling.

Four broad theoretical perspectives are considered as rival explanations of the transformed legal status of gambling in Canada. The consensus perspective suggests that fundamental shifts in Canadian attitudes and values regarding gambling underpinned the legal changes that have facilitated the widespread availability of gambling in Canada in the 20th Century. Alternatively, a group conflict perspective is considered which suggests that relatively powerful interests such as the leisure industry (including private sector gambling operators) in alliance with influential non-profit community-based charities have influenced the legislative process. This perspective points to the presence and influence of prominent groups which have sought to benefit from the relaxation of restrictions on gambling. A third perspective, termed “managing consent” points to a general pattern within Canadian federalism in which the central government has tended to devolve traditional federal responsibilities to the provinces. The transfer of authority to provinces to conduct, manage and license gambling would appear to provide strong evidence in support of this perspective. Finally, aspects of “neo-liberalism” are considered in regard to the relaxation of gambling prohibitions. In this perspective, the state realistically can perform only a minimum of functions, particularly in regard to crime prevention. Thus deviant behaviours that were once criminalized are “defined down.” The decriminalization of substantial amounts of gambling and the devolution of responsibility for its regulation and control (“licensing”) from the federal to provincial governments fit this pattern of “defining deviance down.” The 1969 and 1985 amendments removed centralized state control over much gambling behaviour and shifted responsibility to the provinces for licensing and regulation. In turn, provinces have, in effect, shifted responsibility for the social control of licensed gambling

to the private sphere through management contracts with leisure industry businesses or to Crown corporations.

In the wake of legalized gambling's widespread availability within Canada, a series of unintended and unanticipated negative consequences have also appeared. In this regard, a categorization of gambling-related crime is developed and presented including: illegal gambling, crimes committed to finance gambling, crimes associated with legal gambling expansion, crimes located in or near gambling venues, crimes that occur in the course of legal gambling activities, crimes associated with pathological gambling behaviours and graft and corruption of elected and appointed officials. Additionally, consideration is given to problem and pathological gambling as serious problems in their own right, independent of their association to crime.

A series of contentious public policy issues are identified. These include questions about the legal validity of particular operational and regulatory models of gambling now evident in some provinces. As well, questions are broached pertaining to the legality of the arrangements under which some provinces permit, operate and regulate video lottery terminals (VLTs). Questions are also raised in regard to the legality of Internet betting conducted by First Nations operators on First Nations land and on horse-race betting via the Internet. Additionally, the current class-action suit against Loto Quebec for its alleged failure to prevent excessive losses by problem gamblers is reviewed briefly. Finally, recent concerns raised in the Canadian Senate about provincial operation of VLTs have culminated in a private member's bill to dramatically limit provincial authority with regard to gambling are reviewed as yet another contentious public policy development.

For comparative purposes, the nature and scope of gambling in Australia, Great Britain and the United States are examined, followed by a synopsis of the national studies of gambling that have been completed in each of these countries. The

comparative analysis points to specific aspects of these countries' gambling policies and suggests particular lessons that Canadian law and policy makers may wish to consider with respect to: a) illegal gambling and crimes associated with legal gambling; b) the probity and integrity of gambling regulation; and c) the social costs of gambling.

Despite the legalization of many forms of gambling, a number of unwanted and harmful behaviours associated with gambling persist and, in some cases, have increased. In particular, criminal behaviour and gambling remain linked in a number of ways. New problems or forms of "deviance," such as "excessive" or "problem" gambling have arisen, the latter associated with the availability of electronic gambling machines. As well, a range of provincially-funded educational and therapeutic programs directed at preventing and ameliorating problems associated with these new forms of deviance have arisen.

Fundamentally, *The Legalization of Gambling in Canada* poses a series of challenging questions regarding Canadian gambling policies. How can the benefits and costs of legal gambling be balanced? How can the unintended but negative consequences of legalization be mitigated? How should public opinion and values enter into the policy process with respect to the regulation of gambling? Perhaps the most crucial policy issue concerns the potential conflicts of interest that arise for provincial governments when they both regulate and promote gambling. Provincial governments have become increasingly dependent upon the revenue generated by the expansion of legal gambling; therefore, they have a vested interest in the promotion and expansion of gambling. At the same time, these governments now have exclusive power to regulate and control gambling activity. The potential for conflicts inherent in this situation is of pressing concern from the perspective both of public welfare and respect for governmental institutions.

Canadian criminal law in regard to gambling has been used principally to consolidate and legitimize a provincial government monopoly over gambling as a revenue generating instrument. This, of course, begs the fundamental question of whether or not this is an appropriate use of criminal law.

I. INTRODUCTION

The Law Commission of Canada is an independent federal law reform agency that advises Parliament on how to improve and modernize Canada's laws. As part of its mandate, the Law Commission endeavours to engage Canadians in public debate regarding the purpose and function of criminal law.

In 2003, the Law Commission initiated its "*What is A Crime*" project and released a discussion paper titled *What is a Crime? Challenges and Alternatives* intended to stimulate Canadians to think seriously about alternative methods to the criminal law for controlling undesirable and harmful behaviour. The discussion paper identified a range of strategies including the criminalizing power of the state exercised through the *Criminal Code*, regulation through federal or provincial laws and policies, the provision of treatment and education programs, and a variety of public and private initiatives directed at the prevention of such conduct. *What is a Crime? Challenges and Alternatives* also raised questions concerning why certain behaviours are defined as criminal and why recourse is made to the criminal law as the primary means of control. Citing gambling as an example, the discussion paper invited further consideration of the prospects of legalization and regulation as alternatives to criminal prohibition (Law Commission Canada, 2003:15).

Until several decades ago, most forms of gambling in Canada were illegal while that gambling which was permissible (for example, on track betting at horse races) was narrowly restricted. This situation was transformed with *Criminal Code* amendments in 1969 and 1985, which spurred a proliferation of legal gambling formats licensed, operated and regulated by provincial governments over the past thirty years. Many gambling activities and behaviours have been transformed from the status of being criminal and prohibited to a status of legal and licensed.

Situated within the ambit of the “*What is a Crime?*” project, *The Legalization of Gambling in Canada* thus examines the transformed status of gambling in modern Canadian society, with particular emphasis on the social, political, economic and cultural forces that have changed the public perception of gambling from a sin, to a vice, to a mode of entertainment. Drawing on comparative data from the United States, the United Kingdom Australia and Canada, the study reviews the various regulatory regimes that have emerged to license, regulate and otherwise control legal gambling and its undesirable correlates. This analysis was undertaken to gain insights into: a) illegal gambling and crimes associated with legal gambling; b) the probity and integrity of gambling regulation; and c) the social costs of gambling.

Given the current provisions of the *Criminal Code*, it is apparent that modern criminal law in Canada has not been deployed for the purpose of controlling or preventing either the operation of or participation in gambling activities. Rather, existing provisions have facilitated a widespread expansion of a variety of gambling activities provided they are conducted and managed under provincial jurisdiction.

Brodeur and Ouellet (2004) have considered the use of the criminal law for the purpose of creating a “limiting monopoly” wherein government control of particular activities is justified on the basis of protecting the public (27). They point to the state monopoly of lawful violence exercised by such authorities as the police. Similar other examples presumably can be identified in the *Controlled Drugs and Substances Act*, wherein the intent is to restrict both the availability and use of substances deemed to be potentially harmful if used improperly. However, with specific regard to gambling, Brodeur and Ouellet argue that “... the creation of a state monopoly has led to such an overwhelming expansion of gambling that it is possible to speak of an *expansionist* monopoly” (2004:27, emphasis in original). Indeed, as much of the subsequent discussion confirms, Canadian criminal law has been used to consolidate provincial

authority over gambling as a revenue raising instrument and to expand its availability rather than restrict it in any meaningful sense.

As provincial governments have moved to legalize, monopolize, and capitalize on legal and licensed gambling's economic potential, regulatory systems have been constructed to investigate, monitor, inspect, license, audit and control gambling in the interest of sustaining gambling's integrity as a government revenue source. However, "gambling" remains an elusive term in Canada because, depending upon the format and circumstances surrounding it, a variety of legal statuses are possible. Legalization has thus tended to blur public perceptions about the status of gambling with some forms of now legal gambling singled out for continuing social censure (i.e. electronic gambling machines (EGMs)). Furthermore, crime and gambling remain linked in numerous ways and new forms of "deviance" associated with gambling have emerged (e.g., "excessive" or "problem" gambling).

In assessing contemporary developments in regard to gambling in Canada, it is to be noted that gambling¹ is a human activity dating back to ancient times and has been found in nearly all societies through the ages (Wykes, 1964). While the risk-taking urge is nearly universal, public attitudes toward gambling vary considerably between cultures and change over time within societies (Rose, 1988; Pavalko, 2000). The human experience with gambling shows that the activity has been variously regarded as a sin, a vice, an unfortunate, but tolerable weakness of human nature (Spanier, 1988), an evolutionary appropriate behaviour (Dietz & Humpf, 1984), an adult form of play

¹ The term "gambling" used in this report refers to a risk-taking activity that contains three essential elements: a) chance – in which the outcome of a particular event is uncertain; b) consideration – in which something of value is staked on the outcome of the uncertain event; and c) prize – in which something of value may be won contingent upon the successful outcome of the uncertain event.

(Campbell, 1976), a cultural buffer to existential anxieties caused by chance events (Abt & McGurrian, 1992) and a teacher and mirror of cultural values (Smith & Abt, 1984).

For the majority of participants, gambling may be a harmless amusement; however, because of the potential for chicanery, exploitation and overindulgence, “the law has historically taken a stern view toward gambling” (Bowal & Carrasco, 1997:29). Despite its drawbacks, gambling appears here to stay. History has taught us that complete suppression is virtually unachievable (Dixon, 1991). In fact, there is no reason to outlaw all forms of gambling since it is a long-standing cultural practice. Given this reality, modern legislators have tried generally to strike a balance between regulation and prohibition. Inevitably, efforts to control gambling result in policies stipulating where, when, and under what conditions the activity is permissible. Consequently, gambling can be legal or illegal depending on the context, circumstances and the operators of the game. For example, the *Criminal Code of Canada* contains provisions that dictate when gambling is an indictable offence and outlines the range of sanctioned gambling formats that provincial governments can license or operate if they so choose.

We now turn to a description of the methodology used to gather data for the project before tracing the evolution of the gambling provisions of Canada's *Criminal Code*. Subsequently, a discussion of Canadian public opinion toward gambling is presented. Several theoretical perspectives are then suggested for interpreting the evolution of gambling's legal status. Four models of how gambling is conducted and regulated in Canada are then reviewed. Literature on a number of unwanted activities associated with gambling is presented and a categorization of seven gambling-related crimes is developed. The next section places the discussion of Canadian gambling issues in a cross-national context by examining recent gambling developments in the

United States, the United Kingdom and Australia. In the final section, a number of contemporary policy and legal issues with respect to gambling in Canada are raised.

II. METHODOLOGY

The research and analysis presented in this report are informed by a diverse range of academic literature on gambling that draws upon the work of criminologists, sociologists, historians, legal scholars, psychologists and journalists. Historical and contemporary public domain sources including academic papers and texts, statutes, court judgements, government reports, Internet sources, private sector contract research reports, and newspaper accounts are cited throughout.

A search for public opinion data related to gambling was conducted to supplement the data found in Morton (2003) and other published research. Gallup and Ipsos Canadian poll data were reviewed for relevant information and literature searches were conducted for published studies containing Canadian public opinion regarding gambling.

Another measure of public opinion and policy debate is mass media content. While a complete content analysis of media was beyond the scope of this study, a limited search for relevant stories in the Toronto Star and the Toronto Globe and Mail was conducted. The search was delimited to two years prior to and five years following the years 1969 and 1985 when the major legislative changes pertaining to gambling occurred. An electronic search using the words: gambling, lotteries, lottery and game was undertaken. Particular newspaper pages were then reviewed to locate the relevant articles. Overall, the virtual absence of relevant news items in the years leading up to the legislative change reinforces the conclusion above that legislative changes in the area of gambling policy proceeded with little public involvement in the process.

Additionally, a convenience (i.e. non-random) sample of government regulators, police officers, private sector gaming operators, problem gambling counsellors, gambling activists, and academics was compiled and consulted for their perspectives on a range of gambling related issues. Insights were obtained from expert observers in the United

States, the United Kingdom, Australia and, of course, Canada. Many of these observers were known to the researchers on the basis of personal and professional relationships.

Informal interviews, guided by a set of common questions, were conducted in the United Kingdom, Australia, the United States and Canada. The questions served as the basis for 'extended conversations' with academics, government regulators, and gaming industry personnel. In total, the questions, adapted for each country, were used to guide 22 'extended conversations' that were held face to face during May through August of 2004. Given the relative informality of these conversations, the research team agreed that participants would not be publicly identified nor quoted directly.

Common themes explored in the interviews include: (1) informant's reaction to the national gambling study done in their country and the impact, if any, it had, (2) the extent to which legal gambling is operated in a socially responsible manner and what improvements could be made, (3) the circumstances under which gambling should be legalized, (4) how legal gambling is best regulated, (5) the impact and future of Internet gambling, (6) key gambling issues that need to be researched, (7) how legal gambling does or does not contribute to quality of life, (8) harm reduction strategies in use and/or needed and (9) thoughts on how legal gambling will evolve over the next decade.

III. THE EVOLUTION OF THE CRIMINAL CODE'S GAMBLING PROVISIONS

When the Canadian *Criminal Code* was enacted in 1892, under a section titled “Offenses against Religion, Morals and Public Convenience,” a series of gambling offences that had been created by acts of Parliament in 1886 and 1888 were simply incorporated. Since 1892 there have been a series of *ad hoc* seemingly minor amendments to the sections of the Code on gambling. As a result, the current criminal legislation dealing with gambling has been described as a “patchwork of fossilized law” (Glickman, 1979:11). Amendments made to the gambling provisions of the *Criminal Code* between 1892 and 1998 have nevertheless, taken together, facilitated the expansion of legal gambling in Canada and typically occurred in the absence of public debate. Indeed, the last public review of the gambling sections of the *Criminal Code* took place in 1954-1955 when a Special Committee of the House of Commons and Senate examined the issues of lotteries (Campbell & Smith, 1998).

Table 1 condenses the key amendments and notable developments in the history of gambling in Canada.

Table 1: Chronology of Amendments and Developments Regarding The Legal Status of Gambling in Canada

DATE	AMENDMENT OR DEVELOPMENT
1892	<i>Criminal Code of Canada</i> enacted.
1901	Exemption for raffles at any bazaar held for charitable and religious objects.
1906	The phrase "lottery scheme" inserted into the <i>Code</i> .
1909 -10	Select Committee of House of Commons convened to inquire into horserace betting.
1910	Betting limited to horserace tracks.
1917	Order-in-council suspends betting as "incommensurate" with war effort.
1919 -20	Royal Commission in [sic] Racing Inquiry convened to examine horserace betting.
1920	Racetrack betting reinstated using pari-mutuel system.
1922	Offence created for betting on dice games, shell games, punchboards, coin tables, or wheels of fortune.
1925	Select games of chance including wheels of fortune permitted at agricultural fairs and exhibitions.
1938	Gambling on the premises of bona fide social clubs permitted if operators did not exact a percentage of the stakes.
1954	Game of three card monte added to the list of prohibited games.
1954	Special Joint Committee of House of Commons & Senate convened to examine need for law reform in regard to lotteries. Recommends no state lotteries but calls for greater clarity in existing provisions.
1969	Federal & provincial governments allowed to conduct lotteries, broadening of charitable gambling under provincial licence, continuation of exemption for fairs and exhibitions.
1973 - 85	Federal – provincial conflict over authority to conduct lotteries.
1985	Provinces given exclusive authority to manage and conduct lotteries and lottery schemes, including games conducted via a computer, video device, or slot machines. Betting on horse races via telephone permitted.
1998	Prohibitions against dice games removed from <i>Code</i> .

1. The Process of Legalization: The Modern Context²

In late 1967, Minister of Justice Pierre Trudeau sought to introduce an omnibus bill to amend several aspects of the *Criminal Code*. These amendments included:

- Removal of criminal sanctions for abortion, homosexual practices between consenting adults, and lottery schemes;
- Allowing federal and provincial governments the option of conducting state lotteries;
- The broadening of charity gambling;

² In 1963, the state of New Hampshire authorized a state lottery that began operating in 1964, marking what many commentators have referred to as the "Third Wave" of legal gambling in the United States (Rose, 1986:2; Mason & Nelson, 2001:9). The state of New York similarly introduced a state lottery in 1967. In 1970 the dam broke when 12 states, mostly in the Northeast U.S.A., also legalized state lotteries. The First Wave of legal gambling started in the American colonial period and lasted until the decades just prior to the Civil War. The Second Wave commenced with the Civil War and ended in the 1890s when corrupt lotteries resulted in stern federal laws and state constitutional restrictions (Rose, 1986:1).

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- The continuation of the existing exemption permitting games of chance for agricultural fairs and exhibitions;
 - The creation of a new exemption for gambling at public places of amusement under provincial licence (Osborne, 1989:59).

In 1968, when Parliament was dissolved for a general election, the Bill was abandoned. However, when the Liberal Party was re-elected under Prime Minister Trudeau, the House of Commons passed an identical Bill in 1969. Thus began the transformation of gambling from federal prohibition to provincial regulation and, at the same time, opened the door to a protracted struggle between federal and provincial governments over gambling revenues.

2. The Federal-Provincial Struggle Over Gambling

Given the province of Quebec's long standing interest in liberalizing the legal status of gambling (see, Osborne, 1989, Campbell, 1994, Morton, 2003), it was not surprising that the government of Quebec took quick advantage of the 1969 amendment. By 1970, Quebec had established two Crown corporations, one to supervise horse racing and one to conduct provincial lotteries.

Other provinces soon followed as lotteries conducted by provincial governments rapidly spread across Canada in the early 1970s. In 1971, Manitoba established its own lottery and Alberta and Saskatchewan did likewise in 1974. British Columbia also created its lottery in 1974 and subsequently collaborated with Manitoba, Saskatchewan and Alberta in establishing the Western Canadian Lottery Foundation.

In 1969 when the *Code* was amended, the Minister of Justice declared that the government had no intention of establishing a lottery "at present" (Osborne, 1989:66). This position, however, changed in 1973 when the federal government established the Olympic Lottery Corporation to conduct lotteries in support of the 1976 Montreal Olympics. The success of the Olympic Lottery Corporation led to the creation of another

federal Crown corporation, Loto-Canada, in 1976 (Labrosse, 1985:171; Osborne, 1989: 67).

The formation of a post-Olympic federal agency mandated to conduct lotteries on an on-going basis precipitated provincial resentment (Labrosse, 1985:171). Manitoba, British Columbia, Ontario, and later Alberta, jointly moved to market their lottery products in direct competition with Loto-Canada. Soon the Maritime Provinces and Quebec joined the western provinces in an attempt to squeeze the federal government out of the lottery marketplace (Campbell, 1994:247).

By 1979, the matter of lottery revenues had become an election issue with the federal Progressive Conservative Party promising to dismantle Loto-Canada and abandon federally operated lotteries. When Joe Clark was elected Prime Minister, the federal government struck a tentative deal with the provinces in which they agreed to halt federal lottery operations in return for a \$24 million annual payment as compensation. However, before the deal was formalized, Clark's minority government was defeated.

When the Liberals reclaimed office in 1980, Loto-Canada was resurrected and the federal government moved to re-establish a presence in the lottery marketplace by offering sports pools. In retaliation, the provinces initiated litigation against the federal government seeking to have the terms of the 1979 agreement upheld (Osborne, 1989:68). However, before the matter was argued in court, another election in 1984 returned the Progressive Conservatives under Brian Mulroney with the largest majority in Canadian history.

In June 1985, the Conservative federal minister responsible for fitness and amateur sport announced the following agreement between the federal government and the provinces:

The central government, in return for 100 million dollars from the provinces, would change the *Criminal Code* to grant the provinces and their agencies the sole legal right to conduct or have conducted lotteries and games of chance (Labrosse, 1985:199).

The press release announcing the agreement disclosed that:

The agreement will result in the federal government receiving 100 million dollars in non-tax revenues over the next three years. The funds will be directed towards the federal government's financial commitment to the 1988 Winter Olympics in Calgary....

The new agreement effectively removes the federal government from the field of lotteries by way of the proposed amendments and is an extension of the 1979 federal-provincial lottery agreement (cited in Labrosse, 1985:200).

In addition to negotiating the provincial payment to the federal government of 100 million dollars that would be redirected to the 1988 Calgary Olympics, the 1985 agreement reaffirmed that 24 million dollars would be paid annually (adjusted according to the Consumer Price Index) to the federal government according to the terms negotiated in 1979. Each province would contribute a share calculated proportionally to its lottery sales. In 2003, the amount contributed by the provinces under this agreement amounted to approximately 60 million dollars (Canada, 2004, Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Dec. 1 & 2).

There was little opportunity for public consultation on the 1985 agreement which proposed a significant reallocation of governmental authority over gambling (Osborne, 1989; Osborne & Campbell, 1988). Osborne (1989:69-70) has pointed out:

The lotteries bill was given first reading in October 1985. As a result of an all-party agreement, a brief discussion in the Commons was substituted for a reference to the Standing Committee on Justice and Legal Affairs. This debate and the second and third readings of the bill took place in less than three hours on November 6, 1985. In the Senate, it was given first reading the following day, and the second reading on November 27. The Senate Standing Committee gave the proposals a closer examination, but, despite serious reservations, ultimately concluded that they should be "approved without amendment." The bill received Royal Assent on December 20 and was proclaimed in force on the final day of the year. Parliament

effectively “rubber stamped” an agreement negotiated by federal and provincial officials.

Buried within the terms of the amendment which facilitated the transfer of power over gambling was another significant change. The amendment permitted provinces alone or in partnership with other provinces to operate lotteries and lottery schemes through a computer, video device, or slot machine.

The modern provisions of the *Criminal Code* dealing with gambling are set out in *Part VII Disorderly Houses, Gaming and Betting*. Part VII provides definitions of the following terms: disorderly houses, bawdy houses, betting houses, gaming houses, gaming, betting and lotteries. The section also presents a number of presumptions with respect to disorderly houses and establishes a series of prohibitions related to betting, gaming, lotteries and games of chance. Subsequently, Part VII lists exemptions from these prohibitions. While it is beyond the scope of this discussion to provide a detailed review of the technical descriptions contained in the *Code*, it is important to note that exemptions to the prohibitions have been granted for:

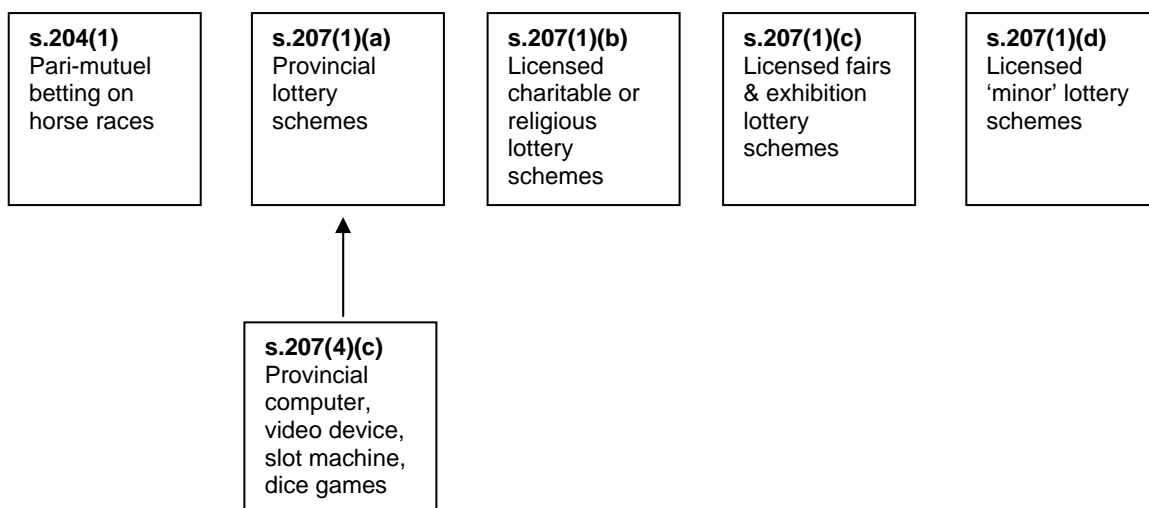
- Pari-mutuel wagering on horse racing conducted under the jurisdiction of the Minister of Agriculture;
- Private bets between individuals not engaged in the business of betting;
- Lotteries and games of chance at fairs and exhibitions;
- Governments of a province alone or in conjunction with other provinces to conduct and manage a lottery scheme;
- For a charitable or religious organization pursuant to a licence issued by a province to conduct and manage a lottery scheme for the purpose of raising proceeds for a religious or charitable object or purpose; and
- For a board of a fair or an exhibition to conduct and manage a lottery scheme pursuant to a provincial licence.

Most germane to an understanding of permitted gambling in Canada are: (1) sections 204 which, in addition to exempting private betting between individuals also, since 1920, permits betting on horse racing via a pari-mutuel system operated under the auspices of the federal Minister of Agriculture and Agri-Food; and (2) section 207, subtitled *Permitted Lotteries*. It is under section 207 that the transformation and

expansion of gambling in Canada over the last thirty-five years has occurred. Section 207 legalizes the creation and operation of lotteries run by any of the bodies specified in s.207(1) (a) to (d). As well, it provides for the regulation of such schemes under provincial laws and under terms and conditions of licences that may be granted pursuant to provincial authority. In other words, section 207(1) permits lotteries to be created and operated by a province, or under licence by charitable or religious organizations, by a board of a fair or exhibition or by any other person to whom a licence has been issued if the ticket cost does not exceed two dollars and the prize does not exceed \$500.

(Martin's Annual *Criminal Code*, 2005:397).

Permitted Gambling Under Part VII of the *Criminal Code*:



It is under these *Criminal Code* provisions that provinces have been granted exclusive authority to operate and/or license particular forms of gambling. As a consequence, all Canadian provinces and territories conduct or permit gambling to some extent.

With the 1969 amendment and with the consolidation of provincial authority over almost all forms of legal gambling as a result of the 1985 amendment, Canadian provincial governments have significantly increased the extent and availability of

gambling in Canada. The two formats that now dominate Canadian gambling are: a) electronic gaming machines (EGMs) such as video lottery terminals (VLTs) and slot machines and; b) casino gambling which in addition to the traditional 'green felt' table games (such as blackjack and roulette) now offers a variety of electronic gaming devices such as slot machines. Lotteries - once the primary source of government gambling revenues - have now been eclipsed by revenues derived from electronic gaming machines and casinos.

From a Canadian historical perspective, most forms of gambling were considered vices until the *Criminal Code* amendments of 1969 and 1985 (Campbell, 1994). These amendments launched a rapid and dramatic proliferation of gambling formats that have included: sports betting, off-track horse wagering, instant scratch tickets, 50/50 draws, bingo, video lottery terminals, slot machines and new casino games such as poker, baccarat, *pai gow*, *sic bo*, Caribbean stud poker and craps.

In the 20 years since the 1985 amendment, legal gambling in Canada has become a big business. For example, in the fiscal year (2002-2003) revenues from government-operated gambling (bingo, EGMs, table games and lottery tickets) totalled just over \$12 billion. Canadian adult per capita expenditure on gambling averaged \$481 and ranged from a low of \$318 in Prince Edward Island to a high of \$641 in Alberta. Provinces generating in excess of a billion dollars revenue annually include Ontario (\$4.9), Quebec (\$2.7), Alberta (\$1.5) and British Columbia (\$1.1). Finally, the national problem gambling prevalence rate as measured by the Canadian Problem Gambling Index (CPGI)³ is 2.6% and ranges by province from a low of 1.7% in Quebec to a high of 5.9%

³ The Canadian Problem Gambling Index (CPGI), developed in 1999 by Canadian researchers, is a survey instrument that accurately identifies and classifies non-problem, at risk, and problem gamblers in the general population. It has been used widely in Canada in telephone surveys to determine the prevalence of problem gambling in the general population. See Ferris, Wynne & Single (1999).

in Saskatchewan. (All figures noted in this paragraph are derived from Canadian Partnership for Responsible Gambling, 2004.)

IV. CANADIAN OPERATIONAL-REGULATORY MODELS

Differences exist among provinces with regard to the type of gambling offered and with respect to how it is operated and regulated. The major forms of legal gambling extant in Canada include: lotteries, casinos, electronic gaming machines (EGMs), bingo and pari-mutuel betting on horse racing. The different provincial formats, structures, operations and regulatory regimes are attributable to varying interpretations of the language of the *Criminal Code*. More specifically, Canadian provinces differ in their interpretations of two particular phrases contained in the gambling provisions of the *Criminal Code*.

The first phrase, “lottery scheme,” was inserted into the *Criminal Code* in 1906. This became a significant phrase in Canadian gambling law, particularly after 1969, and has been broadly construed by provinces to encompass not only “true lotteries” but other games of chance such as bingo, sports betting and casino-style card games such as blackjack and poker. More recently, with developments in electronic technology, slot machines, video devices and games operated on or through computers have, since 1985, been incorporated within the *Criminal Code*’s definition of permitted lottery schemes if managed and conducted by the government of a province alone or in conjunction with other provinces.

The second phrase, “manage and conduct,” has also been translated discrepantly by Canadian provincial governments as evidenced in the marked contrasts between provincial gambling operational and regulatory structures across Canada. Stemming from the varying provincial understandings of the Canadian *Criminal Code* gambling provisions, four models of managing and conducting gambling have emerged which are broadly outlined below.

The Crown Corporation Model:

Manitoba, Quebec and Saskatchewan have interpreted “manage and conduct” such that major gambling formats such as casinos and lotteries within their jurisdiction are directly owned and operated under the auspices of Crown corporations.

With regard to Crown corporations, it is important to understand their role in the delivery and regulation of legal gambling operations. Provincial Crown corporations are government-owned corporations that are, ostensibly, at arms length from government control. They are usually formed to pursue economic and social objectives that generate revenue by selling goods and/or services on the open market (Canadian Tax Foundation, 2004). In Canada, Crown corporations are the favoured business entities used by provinces to manage and conduct legal gambling businesses. For example, the sale of lottery tickets is administered under the authority of various Canadian-based lottery corporations. An overarching national coordinating body (the Interprovincial Lottery Corporation), comprised of five regional lottery corporations (British Columbia, Western Canada, Ontario, Loto Quebec and Atlantic), coordinates policy issues and common concerns with respect to the marketing and operation of government-run lotteries.

Regional lottery corporations own the ticket lottery terminals in their areas, conduct and manage ticket lotteries, design and print “Scratch ‘n Win” tickets, market ticket lottery products, organize advertising and promotions, authorize and administer retailers, install and maintain lottery terminals, conduct training and communicate regularly with retailers about the ticket lottery program.

The Hybrid Model:

The Hybrid Model is a joint venture partnership arrangement in which provincial governments contract with private sector companies to provide gambling facilities and oversee gambling operations. For example, when Ontario implemented casino gambling

in the early 1990s, the province adopted a hybrid ownership, management and operation model. Under this arrangement, casinos are owned and controlled by the Ontario government. However, daily operations are overseen by private sector operators acting as agents of government (Alfieri, 1994).

As part of the operational and regulatory structure, two Ontario Crown agencies currently divide the responsibility for casino gambling operations and regulatory oversight. The Ontario Gaming and Lottery Corporation (OGLC) was created in 2000 by merging two existing Crown corporations: the Ontario Casino Corporation and the Ontario Lottery Corporation. Reporting to the Minister of Economic Development and Trade, the OGLC is responsible for four business divisions: lottery products, charity and Aboriginal casinos, commercial casinos, and slot machines at racetracks. In these business divisions, private sector companies are retained under contract to provide a range of gambling services and products directly to the public. For example, Casino Windsor, the flagship of the OGLC's casino gaming operations, is operated and managed on a day-to-day basis by Windsor Casino Limited (WCL). WCL is a privately owned consortium consisting of major corporations such as Park Place Entertainment and Hilton Hotels. WCL provides its operational services to the OGLC on the basis of a contractual arrangement.

The Alcohol and Gaming Commission (AGCO), which reports to the Minister of Consumer and Business Service, is responsible for break-open tickets and bingo. As well, AGCO is responsible for the regulation of commercial casinos, charity casinos, and slot machine facilities at racetracks.

Nova Scotia also employs a hybrid model. A provincial Crown corporation, the Nova Scotia Gaming Corporation (NSGC), is responsible to a board of directors appointed by the provincial government. It is governed by the provincial Gaming Control Act and is responsible for ticket lottery, video lottery and casino gambling in Nova Scotia.

Day-to-day operation of these gambling formats is carried out under the jurisdiction of the Atlantic Lottery Corporation (ALC) and Casino Nova Scotia.

The Atlantic Lottery Corporation, the regional Crown corporation created to oversee lottery schemes in the Atlantic provinces, functions under the umbrella of the Nova Scotia Gaming Corporation. The ALC is mandated with the task of overseeing the operation of ticket lotteries and video lottery terminals within Nova Scotia. Casino Nova Scotia, a private company, is a subsidiary of American-based Caesar's Entertainment. Under its contractual agreement with NSGC, Casino Nova Scotia operates casinos in Halifax and Sydney.

A further variation of the hybrid model exists in British Columbia, whereby private sector gambling service providers own casino facilities and supply personnel to operate the games. However, the gambling equipment such as blackjack tables, roulette tables and slot machines are owned and maintained by the provincial Crown corporation, the British Columbia Lottery Corporation (BCLC). Under contractual agreements with BCLC, private sector operators derive a percentage of the casino winnings as remuneration for their operational services.

The Charity Model

The *Criminal Code* has long allowed lottery schemes to be conducted and managed by charitable and religious groups under a licence issued by a provincial authority, if the proceeds are used for charitable or religious purposes. All provinces license some form of charity gambling (mostly bingo, raffles, sports pools and break-open tickets), but Alberta is the leading exponent of this gaming model because casinos also fit under the charitable umbrella. In Alberta, private casino companies provide the facility, personnel and gambling services for the delivery of gambling activities.

It is common practice for charities to provide volunteers to help run gambling events and to spend considerable time on waiting lists to host an event due to the high

demand for the privilege (Youngman Berdahl, 1999). Annual charity gambling revenues vary widely from province to province; for example, in 2002/03 these revenues ranged from a low of \$17.5 million in Newfoundland to a high of \$563 million in Ontario (Canadian Partnership for Responsible Gambling, 2004). A major consequence of charity or “worthy cause” gambling has been to legitimize what was once seen as a vice or a sinful activity (Campbell, 2000b).

While it is beyond the scope of this review to explore in depth the nature and extent of charitable gaming, it is to be noted that the Canada West Foundation has documented the benefits and drawbacks of charity gambling in considerable detail (Youngman Berdahl, 1999; Campbell, 2000b; Azmier & Roach, 2000).

First Nations

Some Canadian First Nation communities have gained access to gambling revenues through agreements with provincial authorities. The approval of gambling on Native lands has been driven by the rationale that gambling proceeds are a vehicle for financial autonomy that will improve social and economic conditions on reservations. Existing Canadian First Nation gambling ventures are regulated in one of three ways (Kiedrowski, 2001): (1) a First Nation community applies for a licence similar to other charitable organizations; (2) a First Nation enters into an agreement with the province to operate a casino (depending on the province this may be on or off reserve); or (3) a licence to conduct gambling events is obtained from a provincially approved First Nation licensing body (this is the case in Saskatchewan where Native gambling initiatives are overseen by the Saskatchewan Indian Gaming Authority).

The amount and type of gambling allowed on First Nation lands varies considerably from province to province; for example,

- In Saskatchewan four of the five full time casinos are on Native reservations and Aboriginals hold over 70% of the jobs in the 1,100 person workforce,

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- Both the Alberta and Manitoba governments have a First Nations Gaming Policy which allows for on-reserve casinos; in Alberta one First Nation casino has been approved and several are at various stages of the application process; five First Nation casino proposals have been recommended in Manitoba, one is operational and the others are working their way through an implementation process,
 - Casino Rama in Orillia, Ontario is a mega First Nation gambling resort featuring a hotel, over 2,000 slot machines, 120 gaming tables and high profile entertainers, a portion of Casino Rama revenues go into a First Nation Fund that is distributed amongst all First Nation communities in the province, and
 - Provinces such as Nova Scotia, Quebec, New Brunswick and Manitoba, have agreements with First Nation groups allowing them to operate bingo, sell lottery tickets and have VLTs on-reserve, while the British Columbia, Newfoundland/Labrador and Prince Edward Island governments have no special gaming arrangements with their First Nation communities (Kiedrowski, 2001).

It is important to note, that no matter which regulatory model is used, provincial governments have a monopoly over gambling offerings within their borders. Up to the mid 1980s the federal government could also engage in authorized lottery schemes; however, the 1985 *Criminal Code* amendment removed the exemptions for the federal government. The creation of provincial gambling monopolies has resulted in an overwhelming expansion of gambling, seemingly driven by a desire to maximize profits (Brodeur & Ouellet, 2004). Critics argue that:

Essentially, the provinces purchased their monopolies with a \$100 million payment to the federal government. This is particularly remarkable, as it represents the purchasing of amendments to the *Criminal Code of Canada*. Despite the dubious morality of elected representatives decriminalizing otherwise criminal behaviour for cash payments, the permanency of the exemptions appears beyond doubt (Patrick, 2000:111).

In line with the observations tendered by Brodeur and Ouelett (2004), the gambling provisions of the modern *Criminal Code* and the operation and regulatory regimes that have been embraced are directed less at preventing participation in a harmful activity and more toward securing and justifying provincial monopolization of gambling as a revenue source.

V. GAMBLING AND CANADIAN PUBLIC OPINION

Criminologists are interested in various aspects of public opinion regarding law, crime and criminal justice mainly because of the relationship between such opinion and public policy (Zimmerman *et al.*, 1988). Roberts (1992) claims that public officials' beliefs about public opinion influence criminal justice policy. The public's views concerning gambling are therefore relevant to an understanding of the development of gambling policy and its potential future directions. However, there is little available in the way of national, systematic, time-series data on Canadians' attitudes toward gambling. Furthermore, the 1985 *Criminal Code* amendment finalizing the transfer of authority over legal gambling from federal to provincial jurisdictions and legalizing computer, video and slot machine style gambling was legislated without public input and has been an ongoing source of public controversy ever since (Smith and Wynne, 2004). In fact, "gambling policy continues to evolve in Canada with only a minimum of opportunity for public involvement in the decision-making process" (Azmir, 2001:15).

Morton (2003) characterized the attitudes of Canadians toward gambling as ambivalent for most of the twentieth century; however, beginning with the 1969 *Criminal Code* amendment, gambling was transformed from a stigmatized minor vice to an acceptable activity regarded as appropriate and perhaps necessary to fund the Canadian welfare state. Morton shows how official condemnation co-existed with unofficial toleration during the first half of the twentieth century. She also points to the steady public lobby, beginning in the 1930s, looking for reform and liberalization of gambling law. While the rhetoric of anti-gamblers and the law remained relatively constant from 1919 to 1969, Morton claims there was uneven enforcement of the gambling laws. As well, there were noticeable shifts in public opinion toward more liberal attitudes in both the 1920s and 1950s, at least partly as a function of economic

conditions. She summarizes a series of post-Second World War Gallup Polls that showed a gradual increase in support for legalized lotteries and sweepstakes, reaching a 79% approval level by 1969. Thus public attitudes toward this type of gambling shifted over time from viewing it as a vice that should be prohibited to an acceptance of its inevitability from which society should benefit.

In March of 1984, shortly before the 1985 amendments to the *Criminal Code*, the Gallup Poll asked: “On the whole, are you in favour of, or opposed to government-run lotteries?” On a national basis, 76% of Canadians were in favour, 16% opposed and 8% uncertain. So, tolerant attitudes toward one type of gambling persisted after the changes in legislation in 1969 up to a point prior to the 1985 revisions to the *Criminal Code*.

Although legal gambling has burgeoned over the intervening years, debate continues regarding the appropriate levels and types of gambling that should be allowed in Canadian communities. Recent public opinion on gambling issues has been the subject of only a few polls and surveys. While 6 in 10 Canadians reported partaking in gambling in a 1998 poll, 73% felt that problems associated with gambling had increased in their province over the past couple of years (Ipsos News Centre, 1998a). In the same poll, 58% indicated that increased revenues do not offset the problems caused by gambling; VLTs and casinos were the formats viewed as most harmful to the community (42% and 41%, respectively) while charity lotteries were perceived least harmful (10%); and 86% believed that governments had become addicted to the money generated from gambling (Ipsos News Center, 1998b).

The expansion of VLTs became a matter of public concern in the mid-1990s. Public opinion concerning VLTs in Alberta became increasingly negative from 1992 to 1994; and almost 7 in 10 media stories could be classified as anti-VLT (Azmier *et al.*,

1998). Citizens in a number of locales favoured municipal plebiscites on the subject; for example, 63% of Calgarians wanted to see the VLT issue brought to a vote, although just over half (54%) said they would vote to retain the machines. Given a range of options for dealing with the VLT issue, the majority (54%) of Calgarians would restrict them to casinos only. However, the actual plebiscites held in October of 1998 only offered the options of keeping or removing VLTs from a municipality. Because of the compelling fiscal benefits of VLTs, eight provinces to date have installed the devices. The decision to forego VLT gambling in Ontario and British Columbia appeared to have been made in anticipation of a negative public response to plans for their implementation since, in the meantime, VLTs had become a flashpoint of public concern in New Brunswick and Prince Edward Island (Smith and Wynne, 2004; Canada West Foundation, n.d.).

In the only national random survey of adult Canadian views on gambling, Azmier (2000) reported that 43% felt their governments should be doing more to restrict gambling in their province while 47% were satisfied with current levels of restriction. However, there was strong support for increased government accountability regarding gambling policy, with 84% agreeing (61% strongly) that governments should hold public consultations before introducing new forms of gambling. Sixty percent of the sample agreed that gambling problems had increased in their province in the past three years; 24% perceived the overall impact of gambling to be negative compared to 9% who agreed that gambling has had an overall positive impact on their community; and 68% disagreed that gambling had improved the quality of life in their province while only 14% felt it was beneficial. There was strong disagreement with current policies allowing VLTs in bars and lounges: 70% agreed (49% strongly) with restricting VLTs to casinos and race tracks; while 41% believed that VLTs should be banned altogether, 43% disagreed, although the results favoured a complete ban among those with a strong preference.

But respondents saw gambling as a legitimate means for provincial governments to raise revenues, with 67% preferring it to raising taxes. However, a strong anti-gambling sentiment is suggested among the 19% who preferred to raise revenues through increased taxes.

Azmier (2000) noted four overarching patterns in these survey data: (1) a split between public opinion and gambling policy in several areas (e.g., on the availability of VLTs; and on who should be the primary beneficiary of gambling revenue); (2) significant regional variation in public opinion on nearly every issue; (3) a general tolerance of gambling although smaller groups with strong opinions are less tolerant and tend to drive policy debates; and (4) general acceptance of gambling linked to feelings of its inevitability and importance as a revenue source for governments and charities. Yet in Alberta, a province where legal gambling activity has greatly expanded and provides substantial revenues to the government, 53% of respondents to a January/February 2003 poll felt that problems associated with gambling had increased over the past year (Alberta Alcohol and Drug Abuse Commission, 2003).

In the province of Ontario, out of 22 municipalities that held referenda, 18 rejected their own community as a site for a permanent charity casino (Gordon, 1998). Similar to the Canadian gambling attitudes survey reported above (Azmier, 2000), a Nova Scotia provincial survey of public attitudes toward VLTs showed a sizeable gap between respondent attitudes and government VLT policies (Nova Scotia Annual Gaming Report, 1998-1999). A recent Vancouver, British Columbia survey that assessed attitudes toward a casino proposal, reported that overall, residents were divided about gambling facilities with 56% viewing them as a liability and 40% as an asset for the city. While 50% supported expanding the number of charity bingos in British Columbia, only 30% supported expanding the number of casinos (Ipsos-Reid, 2004).

To the extent it can be gauged from these limited data, Canadian public opinion toward gambling seems ambivalent. On one hand, Canadians generally view gambling as an acceptable community activity, due perhaps to its perceived inevitability and as a source of revenue for governments and charities (Azmier, 2001). On the other hand, many Canadians feel there should be more restrictions on gambling, with the strength of such feelings varying with the type of gambling (e.g., VLTs), the location of venues (“not in my backyard”), and the perceived social costs of gambling.

VI. THEORETICAL CONSIDERATIONS

Significant changes in the way in which gambling in Canada has been regulated through the criminal law are strikingly evident. While beyond the scope of this report to develop a comprehensive theoretical explanation for these changes, several criminological perspectives help explicate the underlying social, economic and political forces contributing to these changes in the social control of gambling.

One perspective on the criminal law regards it as an expression of a fundamental consensus in society with regard to certain values and norms. This view of law and punishment emphasizes the expressive and symbolic functions of the criminal law and its enforcement (Durkheim, 1960; 1984). For Durkheim, social cohesion or solidarity requires certain shared values; and crimes are offences against collective values as constituted and expressed in law. Legal punishment for Durkheim functions to promote social solidarity through the expression and affirmation of collective values rather than through the control or prevention of crime (Garland, 1990a; Hudson, 2003). From this perspective, then, change in consensus regarding fundamental values should result in legal change, with behaviours once regarded as crimes being decriminalized or legalized. Applied to the topic of gambling, then, this perspective would argue that the legalization of many forms of gambling in Canada reflects the declining consensus around gambling as a moral evil or vice. While it is not possible to draw a direct causal connection, this interpretation is consistent with Morton's (2003) evidence regarding Canadian attitudes toward gambling. However, public opinion data often relies upon overly simplified survey questions which assume that respondents are knowledgeable about the subject matter and have well-developed attitudes. Furthermore, the brief examination of Toronto Star and Globe and Mail newspaper reporting on gambling laws suggested that there was little public involvement in or agitation for the legislative changes that occurred.

This implies that a second theoretical perspective could also be applied to these legislative changes. This perspective recognizes a major limitation of Durkheim's functional approach, namely a failure to consider the role of power and interest group activity in legal change. Rather than a consensus on fundamental values, this perspective conceptualizes society as constituted by a variety of interest groups in competition and conflict over scarce resources (Quinney, 1970; Akers, 1994; Akers & Hawkins, 1975). The law is a resource to be "captured" and used by groups to protect and extend their material interests and/or particular values or beliefs. Interest groups with greater power are better situated to influence the legislative process to protect their interests and/or values. This perspective emphasizes the instrumental functions of law and punishment, connecting them to the exercise of economic and political power in society (Garland, 1990b). While there are a variety of interest group/conflict theories, they all emphasize that law, including criminal law, represents, expresses and protects the specific interests and/or values of particular groups or segments within society. Applied to gambling legislation, this perspective looks for indications of the influence of business groups such as the leisure industry and private security firms, trade associations, charitable groups and entrepreneurial individuals in lobbying for the decriminalization of gambling. While the present study was not designed to pursue this line of research, it seems clear that a number of "special interest" groups and organizations have certainly benefited from the legislative changes which resulted in an expansion of legalized gambling in Canada.

Another, less comprehensive perspective, has been developed to draw upon the historical and cultural realities of Canada's political economy—such as its colonial past, regionalism, role in the international community and, most importantly for present purposes, federal-provincial jurisdictional divisions—to interpret strategies used by the

federal government for governing in a neo-conservative environment (Hatt *et al.*, 1990; 1992). Termed “managing consent:”

This strategy emphasizes the generation of public support while avoiding direct, open, and hostile confrontation. When conflict does occur, steps are taken to restore the situation to ‘normal’ as quickly as possible. An effort is made to institutionalize conflict and turn political problems into technical and administrative ones (Hatt *et al.*, 1992:246).

These authors suggest that a number of external and domestic factors act to constrain federal public policy development. Among the latter are the competing interests in the country: centre and periphery, regional interests, French and English, and most importantly for our purposes, federal versus provincial powers. The practice of devolving federal responsibilities to lower levels of government has allowed the federal government “to insulate itself from criticism by shifting frustrations and concerns from its own terrain onto that of the provinces” (Hatt *et al.*, 1992:247).

While this is especially evident in the reduction of provincial transfer payments, it has also been manifest in criminal justice policy where the federal government has exclusive jurisdiction over criminal legislation while provincial governments have jurisdiction over much of the administration of justice. Hatt *et al.* (1992) argue in their review of criminal justice policy during the early Mulroney government that, where possible, the federal government transferred responsibility to the provinces while at the same time attempting to project an image of being tough on crime. It could be argued that the 1969 and 1985 amendments to the *Criminal Code* represent manifestations of a finely-tuned balancing act on the part of the federal government. Keeping a common gaming house; certain gambling formats such as three-card monte, punch boards, and shell games; and ‘unlicensed’ gambling formats continue to be proscribed while, at the same time, provinces are given wide jurisdictional latitude to license a proliferation of gambling formats. In this way the federal government can be seen as simultaneously

decriminalizing a variety of now widely acceptable activities while upholding the public condemnation of some remaining public vices.

A recent theme in the literature of social control is the mutation of welfare capitalism with the primacy of the social activist state into neo-liberalism with its emphasis on individualism and minimal state structure, and preoccupation with the containment of risk (Garland, 1996; 2001; Hudson, 2003; O'Malley, 1999). Neo-liberalism allows the state only a minimum of functions; punishment and control of the dangerous and predatory are the functions of states in relation to crime (Hudson, 2003). Among the cultural characteristics of late modernity noted by Garland (2000) are hyperindividualism, distrust of the state, and the dominance of economic rather than social reasoning. Garland (1996; 2001) argues that the problem of crime control in late modernity demonstrates the limits of the sovereign state: the state is seriously limited in its capacity to provide security for its citizens and deliver adequate levels of social control; it can no longer govern by means of sovereign commands to obedient subjects. Governments therefore "see the need to withdraw or at least qualify their claim to be the primary and effective provider of security and crime control...." (Garland, 1996:449).

Garland (1996) discusses several strategies devised by the administrative machine of the state to adapt to its limitations with respect to crime control. One of these is to 'define deviance down' either by filtering it out of the system altogether or by lowering the degree to which certain behaviours are criminalized and penalized. Thus behaviours that were once routinely prosecuted may be decriminalized; or the police may decide that they will no longer use scarce investigative resources on certain offences having a low likelihood of detection and a low priority for the public. Garland emphasized that 'defining deviance down' is indeed a strategy which is patterned, systematic and resource-driven, and made possible by a cultural context in which

criminalization of minor violations is viewed as counterproductive and unnecessarily expensive, not due simply to changing views about offence seriousness.

The decriminalization of substantial amounts of gambling and the devolution of responsibility for its regulation and control (“licensing”) from the federal to provincial governments fit this pattern of ‘defining deviance down’. The amendments of 1969 and 1985 removed centralized state control over much gambling behaviour through the federal *Criminal Code* and shifted responsibility to the provinces for licensing and regulation. In turn, provinces have, in effect, shifted responsibility for the social control of licensed gambling to the private sphere through management contracts with leisure industry businesses or to Crown corporations. These agencies thus acquire much of the responsibility for the prevention of gambling-related crime on their premises, as well as some law enforcement in view of the low priority assigned to such crime by the public police (Smith *et al.*, 2003; Smith and Wynne, 1999). This fits Garland’s (1996:452) “responsibilization strategy” -- whereby central government seeks to act upon crime indirectly by seeking to activate action on the part of non-state agencies and organizations rather than directly through state agencies. Perhaps paradoxically, this may result in an extension of social control as these gambling enterprises employ a variety of surveillance techniques over all customers in efforts at situational crime control.

VII. UNWANTED BEHAVIOURS ASSOCIATED WITH GAMBLING

Despite the withdrawal of criminal prohibitions for many types of gambling and the corresponding availability of legal provincially operated or licensed gambling formats, gambling remains a controversial public policy issue. The magic wand of legalization has not purged gambling of its potential for harming both the individual and society. Indeed, several unanticipated and unwanted negative consequences have emerged in the wake of legalization. It is to these unwanted consequences that the discussion now turns.

1. Gambling-Related Crime as Unwanted Behaviour

One of the difficulties in pursuing gambling-related research is that there is no accepted definition of gambling-related crime nor is there a typology for categorizing various offences. Obviously, there is both direct and indirect gambling-related criminal activity. That is, there are instances where 'out-of-control' gambling makes a person desperate enough to commit a financial crime (direct). As well, there are crimes committed at gambling venues that may just as easily have been perpetrated elsewhere and are thus only peripherally related to the gambling activity (indirect). However, even this distinction can be imprecise. For example, does a losing slot machine player who expresses frustration by vandalizing the casino washroom commit a direct or indirect gambling-related crime? On the one hand, it could be argued that gambling losses produced a pent-up frustration that led to the vandalism. Had the person not gambled, the vandalism likely would not have occurred. On the other hand, gambling losses may only be one of several factors contributing to the player's frustration (e.g. a bad day at work, relationship difficulties, poor coping skills). This suggests that the crime cannot be attributed to gambling losses alone. Also, the fact that the crime took place in the casino might be incidental. The anger might just as easily have been displaced in another fashion at a different place or time.

Given the limitations of assigning criminogenic characteristics to individual gambling behaviour or to particular gambling scenes, the following categories derived from the academic literature are used to differentiate gambling-related crimes.

2. Gambling-Related Crime Categories

- (a) Illegal gambling -- gambling activity that breaches *Criminal Code* of Canada provisions, (e.g. bookmaking, keeping a common gaming house or providing unauthorized electronic gambling machines).
- (b) Crimes committed to finance gambling activities (e.g. forgery, embezzlement, fraud and other forms of property crime).
- (c) Crimes associated with legal gambling expansion (e.g. street crime such as robbery or property crime such as theft and break and enter).
- (d) Crimes that are spatially or situationally co-incidental or co-symptomatic with gambling expansion or particular gambling venues (e.g., loan sharking, money laundering, profit skimming, passing counterfeit currency, prostitution, drug trafficking and theft).
- (e) Crimes that occur in the course of legal gambling operations (e.g. cheating at play, employee theft, and player overpayment).
- (f) Crimes that are behaviourally co-incidental or co-symptomatic with an individual's gambling involvement (e.g., domestic violence, child neglect, suicide).
- (g) Graft and corruption designed to expedite permits and licences, relax the enforcement of gaming laws/regulations, inappropriate use of gaming funds, and influence peddling (e.g., kickbacks, bribes, or extortion).

Illegal Gambling

The *Criminal Code* of Canada explicitly forbids certain gambling formats or operations such as three-card monte and keeping a common gaming house. As well, any gambling format not exempted from *Criminal Code* prohibitions is illegal.

The Criminal Intelligence Service Canada (1999; 2000) identified the following trends concerning illegal gambling in Canada: (1) tremendous profits for organized crime groups with few significant deterrents; (2) rapid growth in online gambling; and (3) significant untaxed profits produced from illegal electronic gambling machines. Subsequently, undeclared income is used by criminals to support drug trafficking and other enterprise crime operations.

Morton (2003) noted how illegal gambling flourished in Canada's largest cities prior to, during, and after the Second World War; with horse race bookmaking and unauthorized casinos being the primary forms. Public concerns about illegal gambling at that time were reflected in (1) an Ontario police agency establishing a permanent anti-gambling squad; (2) judicial inquiries establishing links between illegal gambling operations and organized crime; (3) collusion between criminals, police and politicians; and (4) a lack of police, judicial and political will to enforce laws directed at illegal gambling, particularly in Vancouver and Montreal. In Morton's (2003) view, the public objection to illegal gambling was not so much due to the moral consequences of engaging in the activity, but "the way it could contaminate the police force and municipal government and support organized crime" (165).

A study of gambling and crime in Western Canada concluded that there was extensive illegal gambling in the four largest cities - Vancouver, Calgary, Edmonton, and Winnipeg - less so in medium-sized cities, and a minor concern in rural areas (Smith & Wynne, 1999). This research also identified sports betting with a bookmaker,

unauthorized card clubs, unlicensed VLTs, and offshore lottery sales as the most prominent illegal gambling formats in western Canada. Perhaps ironically, these are versions of government-offered gambling formats. Some illegal gambling formats compete well with their legal counterparts because they offer more attractive wagering propositions and services such as credit, better odds, higher stakes, and telephone betting (Small, 1999). Since credit is often available to illegal gambling patrons, there is an increased likelihood of gamblers getting in over their heads and becoming vulnerable to loan sharks, blackmailers, or extortionists.

The most accurate estimate of illegal gambling in a Canadian region comes from Ontario's Illegal Gaming Enforcement Unit. From its inception in 1997 to 2001 the unit recorded 1,370 illegal gambling occurrences, 2,069 persons charged, 3,517 charges laid, and 2,034 machines seized at a value of \$6,016,505. In addition, \$1,233,763 in cash was seized and \$2,839,533 worth of fines and forfeitures was imposed (Moodie, 2002). Moodie's (2002) observations on illegal gambling in Ontario include: (1) a confirmation of the suspected link between organized crime and illegal gambling; (2) an estimated three murders and 25-armed robberies annually in Toronto associated with illegal gambling houses; (3) an estimated 4,000 to 5,000 illegal gambling machines in Ontario owned and operated by organized crime groups; (4) a belief that profits from illegal gambling are used to fund other unlawful activities, thereby entrenching organized crime in the community; and (5) the view that "Proceeds of Crime" legislation has been the most effective tool in devitalizing illicit gambling, because it allows the dismantling of operations through asset and profit seizures.

Internet gambling is also attracting criminal conspiracies looking to profit by swindling investors, bilking customers, and hoodwinking security commissions. A recent example of a Canadian company investigated for Internet gambling improprieties including selling franchised Internet gaming systems and for having organized crime

affiliations, is the Vancouver-based “Starnet” corporation (Ryan, 2002). Incorporated in Delaware and listed on NASDAQ but with all its operations in Canada and the Caribbean, Starnet was illegally providing North American gamblers with Internet betting services. In 2001, Starnet Communications International pleaded guilty in a British Columbia court to criminal gambling charges, was fined \$100,000 and forfeited approximately \$6 million as proceeds of crime (Lipton, 2003).

Crimes Committed to Finance Gambling Involvement

The report of the Canadian Inter-Provincial Task Force on Problem Gambling (Ferris, Wynne & Single, 1999:57) defines problem gambling as “gambling behaviour that creates negative consequences for the gambler, others in his or her social network, or for the community.” A major social and economic impact of problem gambling involves illegal acts committed to obtain money to gamble or to pay gambling-related debts (Volberg, 2001). Since electronic gambling machines have been shown to be the most addictive gambling format (Griffiths, 1993; Breen & Zimmerman, 2002; Dickerson, 2003; Smith & Wynne, 2004), the presence of electronic machine gambling in a jurisdiction is widely believed to add to the crime rate.

Anecdotal evidence from clinical, welfare, and judicial sources links problem gambling to criminal behaviour (O’Connor & Jones, 1998); whereas data from general population surveys show only a modest association between problem gambling severity and the commission of criminal acts. Data from Gamblers Anonymous (GA) members, problem gamblers in treatment, and incarcerated populations, however, indicate a much closer correspondence between the two behaviours. For example, in two Alberta general population surveys respondents were asked if they had ever had trouble with the law because of their gambling activities. Only 2% (Wynne Resources, 1998) and 5.6% (Smith & Wynne, 2002) of the problem gamblers admitted to having committed illegal acts to support their gambling participation.

Conversely, 68% of a sample of Quebec GA members reported committing illegal acts to finance their gambling (Ladouceur *et al.*, 1994). Similar results were obtained in American (Lorenz & Politzer, 1990; Polzin *et al.*, 1998), German (Meyer & Fabian, 1992) and Australian (Blaszczynski *et al.*, 1989; Blaszczynski & McConaghy, 1994) studies. North American incarcerated populations exhibited significantly higher problem gambling prevalence rates than those found in general population surveys (Lesieur & Klein, 1985; Walters, 1997). The American National Gambling Impact Study (1999) indicated that among those who had not gambled in the past year, only 7% had ever been incarcerated, while 21.4% of individuals who had been pathological gamblers at any point during their lifetime had been incarcerated. Despite these substantial differences, the incidence and extent of gambling-related criminal activity may be more acute than these estimates suggest, because gambling is often not identified in official records as underlying the offence, not all gambling-related offences are detected or offenders apprehended and, some victims - especially family members, friends and employers - are reluctant to press charges (Blaszczynski & Silove, 1996; Productivity Commission, 1999).

An Australian crime and gambling study chose 63 gambling-related property crime cases from an intensive examination of court records (Crofts, 2002). Crofts concluded that the preferred formats for problem gambling criminal offenders were electronic gambling machines, casinos and betting on horse races. The economic and social costs associated with gambling-related crime for the offenders, their families, and their communities were considerable: lost homes, jobs, property, and relationships. Appreciable costs were also associated with problem gambler treatment services and with related criminal justice system resources.

Crime Associated with Legal Gambling Expansion

The preponderance of research dealing with possible links between the availability of gambling and community crime rates has focused on casino gambling and produced equivocal results depending on the research methods used and time period and location studied. This subject has been studied more extensively in the United States and Australia, but in this section we review only studies done in Canada.

In a *One-Year Review of Casino Windsor* prepared by KPMG Management Consulting (1995) for the Ontario Casino Corporation, Casino Windsor's impact on crime in the local community was considered minimal. Two factors that help explain this finding are Casino Windsor's pre-emptive funding of 25 new full-time Windsor Police Department positions to work within a five-block radius of the casino and the fact that the vast majority (approximately 80%) of the casino patrons came from across the Canada-United States border, which is only two miles away.

Room, Turner & Ialomiteanu (1999) surveyed adults in Niagara Falls, Canada before the destination casino opened in 1995 and a year following. Prior to the casino opening, 77% of respondents predicted an increase in the number of serious crimes; a year after the casino opening, only 44% of the sample thought this expected crime wave had actually happened. As was the case with the other two Ontario mega-casinos (Windsor and Rama), the Ontario Casino Corporation paid for 25 new police officers to patrol the casino area.

Piscitelli & Albanese (2000) examined trends in the number of persons who were denied entry to Canada at western New York state border crossings after the opening of Casino Niagara. Their findings showed: (1) total crossings of the four bridges that connect Canada to western New York state increased by 10% the year after the casino opening, (2) the number of persons with criminal records denied entry to Canada by Canada Customs officials increased initially by 100% and subsequently by 300% one

year after the casino opened, and (3) the proportion of persons seeking entry to Canada that had convictions related to organized crime dropped from 80% prior to the casino opening to 60% after. So, in effect, more persons with criminal records were seeking entry into Canada from western New York State after Casino Niagara opened, but a smaller percentage of these individuals had committed offences related to organized crime.

Crimes Spatially or Situationally Co-Incidental with or Co-Symptomatic of Gambling Venues

Gambling formats and ambiances draw a variety of participants and on-lookers. Some gambling venues are thus rendered more susceptible to criminal activity than others. Organized crime penetration of casinos for the purposes of “skimming” profits and controlling the labour unions that supply and operate casinos was another commonplace form of gambling venue criminal activity⁴.

Some on-site criminal activity is tangential to the gambling action per se, and more a result of opportunistic criminal types being attracted by the free flowing cash, throngs of customers, and relative ease with which the proceeds of crime can be legitimated (Smith & Wynne, 1999). Racetracks and casinos are cited as popular venues for money laundering schemes (Beare & Schneider, 1990). Despite a law requiring an official report for cash transactions over \$10,000, casino money launderers avoid detection by making several smaller cash exchanges so as not to arouse suspicion (Smith & Wynne, 1999). Casinos are also focal points for crimes such as robbery, passing counterfeit currency, prostitution, pandering, and drug trafficking (Calgary Police Commission, 1996). Similarly, VLT gambling has been associated with an increase in criminal activity.

⁴ We use the past tense here because it is assumed that modernized regulatory procedures such as background checks, triplicate accounting forms and “eye in the sky” surveillance strongly deter these improprieties (Albanese, 1995).

For example, break-ins at facilities housing VLT machines where monies in the VLTs are the target are common place (McDonald, 1998).

Employee theft is common in gambling venues and has been attributed to the volatile combination of low-paid workers exposed to the temptation of large amounts of rapidly circulating legal tender. While not endemic in Canada, criminal activity associated with casino ownership has surfaced in both the United States and United Kingdom regarding tax evasion and hidden ownership whereby criminals “disguise their interests through the use of nominee shareholders holding shares on trust” (Pinto & Wilson, 1990:3).

Crimes that Occur in the Course of Legal Gambling Operations

Offences that occur in and around gambling facilities constitute a major category of gambling-related crime. Some criminal behaviour in gambling venues is a by-product of the games themselves such as cheating at play. For example, cheating at play generally occurs in the following ways: (1) tampering with the instruments of gambling (e.g., marking cards, using loaded dice, recalibrating gaming machines, unbalanced roulette wheels, drugging horses); (2) player-employee collusion (e.g., signalling the dealer’s hole card in blackjack, introducing an un-shuffled deck, race fixing involving jockey-trainer conspiracies); and (3) miscellaneous scams such as altering bets after the outcome is known, using a computer or mechanical device to keep track of the cards played, and overpaying winners -- again, a prearranged ploy between player and dealer.

Behaviourally Co-incident with or Co-symptomatic of Gambling-Related Crime

Pathological gambling coincides with other disorders such as depression, bipolar personality, panic and anxiety, and anti-social conduct (Volberg, 2001). Complications arising from a gambling addiction include (1) financial distress -- staggering debt, loss of savings and bankruptcy; (2) marital and familial problems -- lack of trust, poor problem

solving and communication skills, child neglect/abuse, spousal abuse and divorce; and (3) health concerns -- insomnia, intestinal disorders, high blood pressure, cardiac problems and suicide rates three times higher than the general population (Lesieur, 1998). Taken altogether, these stressors can combine to affect the gambler's judgment and self control and result in criminal behaviour.

Graft and Corruption Associated with Commercial Gambling

Canada has had its share of gambling-related political scandals in the past decade. In what he called a "recipe for disaster," Hutchinson (1999:204) suggests that an explosive cocktail is created when ultra-competitive gambling promoters aggressively lobby cash-strapped, morally challenged governments. Two celebrated cases in British Columbia support Hutchinson's premise: in the first instance, New Democratic Party officials fraudulently channelled gambling proceeds into political party coffers resulting in a conviction for a former provincial NDP Finance Minister. Although not personally implicated in the scandal, an NDP Premier was forced to resign over the issue (Campbell, 2000a).

In the second incident, a sitting NDP Premier was accused of using his influence with provincial regulators to ensure that a friend received a casino licence in return for free home renovations from the casino applicant. The Premier was forced to resign as a result of the charges. After lengthy court proceedings (over three years), he was exonerated of the criminal charges; his friend, however, was found guilty on six charges, including attempt to influence an elected official. Despite the Premier being cleared of influence peddling charges, the court ruling was silent on the matter of how an inferior casino licence application, which was initially rejected, later received approval.

A Montreal Gazette investigative reporter revealed how the Quebec government's own contradictory policies helped gangsters gain a foothold in the VLT industry. Individuals with a history of criminal convictions for gambling offences had hidden

ownership links to a Quebec City VLT emporium (Norris, 2002). Also noted was the emergence of politically connected “Quebec VLT Kings” -- entrepreneurs who make huge profits from the large number of video-lottery licences they have been granted by Quebec’s politically appointed gaming board.

The RCMP Commercial Crime unit in Saskatchewan investigated alleged malfeasance in regard to operations of the Saskatchewan Indian Gaming Authority (SIGA). SIGA’s former CEO and Board Chairman was removed from office amid charges of misappropriation of funds and questionable business practices. In an effort to redress SIGA’s “lack of adequate rules and procedures to safeguard and control its assets” the Saskatchewan Provincial Auditor (2001 Fall Report, Vol.2:172) made 13 recommendations dealing with such basics as conflict of interest policies, a proper code of conduct, appropriate guidelines for dealing with Board and executive management travel, tendering and awarding contracts and delegation of authority.

3. Problem Gambling as Unwanted Behaviour

Independent of problem gambling’s association with criminal activity, problem gambling has increasingly become viewed as an undesirable consequence in its own right. Since the mid-1990s, and concurrent with gambling expansion, research interest in problem gambling has increased dramatically. While it is not the intent of this review to provide a summary of the current knowledge of problem gambling, some findings from Canadian research are offered to illuminate concerns about the issue of problem gambling.

In the aftermath of widely expanded forms of legal gambling in Canada and elsewhere, much effort has recently been directed toward understanding, measuring and mitigating problem gambling. For example, the Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM IV, 1994) of the American Psychiatric Association defines “pathological gambling” as a mental health impulse control disorder. More

recently, “problem gambling” has been viewed as a public health issue (Korn, 2001; Korn & Skinner, 2000; Korn & Shaffer, 1999), with much research focused on measuring the prevalence of this gambling disorder in community populations. To measure the prevalence of problem gambling in population studies, a recent Canadian inter-provincial task force commissioned research to develop the *Canadian Problem Gambling Index* (CPGI).

Problem gambling prevalence studies utilizing the CPGI have been conducted in several Canadian provinces. Table 2 compares the problem gambling prevalence rates for select provinces.

Table 2: Select Provincial CPGI Comparisons

GAMBLER SUB-TYPE	PROVINCE						
	BC	AB	SK	MB	ON	NB	Canada*
	Dec 02 (n=2500)	Feb 02 (n=1804)	Jan 02 (n=1848)	Apr 01 (n=3119)	Dec 01 (n=5000)	Aug 01 (n=800)	Spring 00 (n=3120)
Non-gamblers (past year)	15.0%	18.0%	13.4%	15.0%	16.8%	19.8%	
Non-problem gamblers	69.3%	67.0%	71.4%	75.6%	69.8%	72.1%	
<i>Total Non-Problem</i>	<i>84.3%</i>	<i>85.0%</i>	<i>84.8%</i>	<i>90.6%</i>	<i>86.6%</i>	<i>91.9%</i>	<i>89.9%</i>
At risk gamblers	11.1%	9.8%	9.3%	6.0%	9.6%	4.9%	6.8%
Moderate problem gamblers	4.2%	3.9%	4.7%	2.3%	3.1%	1.8%	2.4%
Severe problem gamblers	0.4%	1.3%	1.2%	1.1%	0.7%	1.4%	0.9%
<i>Total Problem Gamblers</i>	<i>4.6%</i>	<i>5.2%</i>	<i>5.9%</i>	<i>3.4%</i>	<i>3.8%</i>	<i>3.2%</i>	<i>3.3%</i>

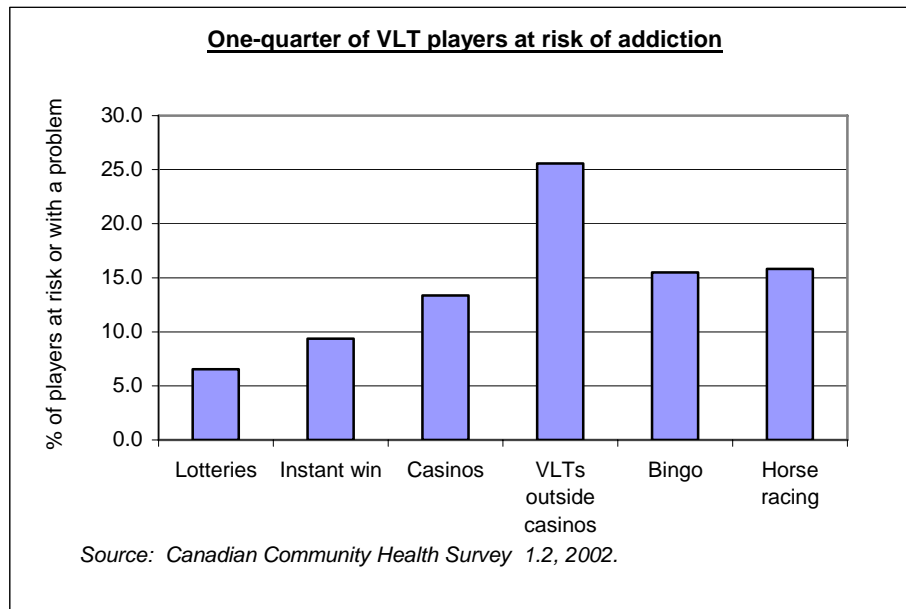
* CPGI National Validation Study.

Source: Ipsos-Reid & Gemini Research (March, 2003). *British Columbia Problem Gambling Prevalence Study*. Final Report

Canadian problem gambling prevalence rates thus reveal a significant number of adult gamblers who are either moderate risk or severe problem gamblers. That problem gambling results in dire consequences for individuals and their families is clearly supported in the gambling literature and in Canadian prevalence studies. Problem gamblers may experience physical and mental health problems; financial hardship; loss of a relationship, including divorce; the need to go on welfare and/or to visit food banks; and, ultimately, thoughts of suicide. In terms of suicide, it is evident that some of these tragic outcomes are related to a gambling problem. Notwithstanding that some problem

gamblers commit suicide, it is unclear how prevalent this most tragic negative consequence is; moreover, it is not easy to attribute the suicide entirely to a gambling problem, as other factors are often at the root cause. For example, based on an examination of Edmonton Police Service files, Smith, Wynne and Hartnagel (2003) were able to attribute only 3 of 95 suicides in the City of Edmonton in 2001 to a gambling-related problem. Furthermore, although these three suicides were related to gambling, as a note was left behind, it is unclear whether there were other underlying disorders or related circumstances that at least partially caused these tragedies. There is yet to be a systematic method developed for collecting data on gambling-related suicides in Canada.

Finally, research literature clearly shows a link between electronic gambling machines (EGMs) and problem gambling. Prevalence studies provide evidence that the most severely disordered gamblers are the gamblers most likely to prefer playing video lottery terminals (VLTs) or slot machines in casinos. This finding has been strengthened by the most recent Statistics Canada national survey (Marshall & Wynne, 2003) that showed VLT play is a significant risk factor that predisposes the gambler to developing a problem. Based on the available data as indicated in Chart 1 below, it would appear that the greatest risk factor for problem gambling is associated with play on VLTs situated outside of casinos, that is, in “convenience gambling venues” such as taverns and cocktail lounges.

Chart 1:

Excerpted from Marshall & Wynne (2003).

In a recent study of video lottery terminal (VLT) gamblers in Alberta, Smith and Wynne (2004) presented a thorough discussion of the literature on electronic gambling machines (EGMs) and problem gambling. Based on their review of the literature, Smith and Wynne (2004:54) concluded:

The academic literature on electronic machine gambling is, with few exceptions, faultfinding. While there is unanimity about the superior revenue generating capacity of electronic gambling machines for both the state and gambling venue proprietors, there is also concurrence on the distress these machines can visit on the public.

VIII. CONTENTIOUS ISSUES IN CANADIAN GAMBLING POLICIES

This section broaches several contentious issues related to how Canadian provincial governments conduct, manage and regulate legal gambling. In addition, key issues regarding the control and prevention of gambling-related crime and problem gambling are considered.

Ontario Gaming Legislation Review

In 1996 the law firm Morris, Rose & Ledgett was retained by the Ontario Lottery Corporation to provide a legal analysis of Ontario's gaming market. A private sector proposal seeking the implementation of video lottery terminals (VLTs) based on the Casino Windsor model triggered the review. The analysis ultimately led the provincial government to abandon an intended introduction of VLTs. However, because the analysis challenged the way that existing gambling formats were conducted and managed, the report was not submitted to an all-party provincial justice committee as originally intended. Nor was it released to the public.⁵

In reviewing the VLT proposal, the authors found it necessary to analyze the Casino Windsor model on which the VLT proposal was premised, assess charitable gaming and evaluate the overall legislative framework for gaming in Ontario (Morris, Rose and Ledgett, 1996). The legal analysis identified the following matters that the authors deemed to be possible contraventions of the gambling provisions of the *Criminal Code*:

a) Broad Interpretation of Criminal Code Gambling Provisions

⁵ Even though the report was never released officially to the public, leaked copies became available (Donovan & Welsh, 1998). The report is available online at http://www.citizenvoice.ca/members/Portals/0/Ontario_Gaming_Legislation_Review.pdf. (accessed 1 July, 2005)

When Ontario implemented casino gambling in Windsor in the early 1990s, the province adopted a hybrid ownership, management and operation model. Under this model, casinos are owned, controlled, and regulated by the Ontario government but run by private sector operators acting as agents of the government (Alfieri, 1994). As part of the regulatory structure, two provincial government Crown agencies were initially formed to divide the responsibility for casino gambling oversight. The Ontario Casino Corporation was made responsible for the business and operating functions of casinos. As well, the Gaming Control Commission was mandated to undertake registration, enforcement and audit duties. Interested private sector casino operators were invited to respond to a request for proposals, specifying how they would meet various economic, tourism, security and civic improvement objectives.

The authors of the *Ontario Gaming Legislation Review* argued that this structural arrangement for the management and operation of the Windsor Casino was inconsistent with *Criminal Code* provisions on the grounds that it was unclear just who was actually *conducting and managing* the gambling operation.

As noted earlier, the *Criminal Code* places the onus for conducting and managing “lottery schemes” on provincial governments. The only exemptions are for charitable or religious organizations and fairs or exhibitions licensed by the province. Given that the Ontario casino model is not charity-based, and it is arguable whether the Ontario government is in fact conducting and managing the casino games, the Windsor casino model may be in violation of *Criminal Code* gambling provisions. By the same logic, the report authors held that the proposed Ontario VLT implementation plan, based on the Windsor Casino operation was also of questionable legal status. Because the legal principles underpinning the hybrid government ownership/private sector operated model

have never been tested in court, Ontario casinos continue to operate under this arrangement.

b) Delegation of Authority to Conduct and Manage Gaming Events

As noted earlier, while licensed charities or religious groups can be authorized to conduct and manage lottery schemes to raise monies for worthy causes, the legal challenge involves the private operators hired to run licensed gambling events. Private operators are allowed to help run gambling operations, but the authorized agent (government/charity/exhibition association) must take “an active and direct participation in the supervision of, and day-to-day operations” (Donovan & Welsh, 1998:A26). The issue then becomes; with hands on involvement in running gaming events by private operators, can licensed organizations truly claim to be conducting and managing the proceedings as required under Section 207 (1)(b) of the *Criminal Code*? The *Review of Gaming Legislation in Ontario* makes the case that licensed charities are usually too far removed from the gambling activity, thus giving the private operator *defacto* control over the gaming event. While approved by the Ontario government in its *Policy Manual* and *Terms and Conditions of the Licence* documents, this practice seemingly breaches *Criminal Code* Section 207 (1)(b) which states that the authority to lawfully conduct and manage lottery schemes must derive from the *Criminal Code*, not provincial legislation. In other words, the authority to conduct and manage gambling events cannot be delegated to a third party, neither by the provincial government nor by licensed charitable or religious organizations.

Patrick (2000) concurs that only provincial governments have a *Criminal Code* exemption to conduct and manage lottery schemes and, this authority cannot be

delegated to another party. In Patrick's view, Canadian entrepreneurs who participate in the profits of gambling machines and who provide business plans, management skills, premises and staff to facilitate machine gambling are indeed conducting and managing an electronic gaming lottery scheme, and in so doing, are violating the *Criminal Code*. However, in a contrary view, Monahan and Goldlist (1999) have suggested that with respect to gaming conducted under section 207(1)(a) of the *Criminal Code*, provinces are not constrained in how they distribute revenues derived from provincial gaming schemes.

c) Use of Proceeds from Charitable Gambling

The *Criminal Code* dictates that the proceeds from a licensed gambling event are to be used for charitable or religious purpose. At issue is the involvement of private sector interests who are afforded significant portions of gambling proceeds. The *Ontario Gaming Legislation Review* (Morris, Rose & Ledgett, 1996) claimed that 42.5% of the annual gross wager on Ontario bingos in 1995 was diverted to the private sector in the form of expenses and obviously not used for charitable and religious objects or purposes. In making this point, the authors cite the Windsor Casino contract compensation formula, which provides for performance bonuses and opportunities to participate in casino profits for the operators. Given that government casinos have a monopoly in their regions; sizable private sector profits are virtually guaranteed.

In an interpretation of section 207(1)(b) that parallels the interpretation suggested in the *Ontario Gaming Legislation Review*, a 1998 ruling in the Supreme Court of British Columbia held that the provincial government could not appropriate revenues generated by charitable or religious organizations under section 207(1)(b) of the *Criminal Code* (See *Nanaimo Community Bingo Association v. British Columbia (Attorney General)*).

The provincial government in British Columbia sought to introduce electronic gaming machines in order to increase its revenues from gambling. New regulations were introduced in 1997 that would have increased the overall level of gaming revenues for charitable organizations but would also have directed the largest proportion of the revenues to government coffers. Under the province's plan, proceeds from existing licensed charity bingo events were to be pooled with revenues from electronic games. One third of the revenues were to be directed to charities to a guaranteed minimum of \$118 million annually. The province would direct two-thirds to its Consolidated Revenue Fund.

A number of charitable groups in British Columbia challenged the province, successfully arguing that the plan contravened section 207(1)(b) which does not authorize proceeds from charity lottery schemes to be directed to government. The trial judge agreed but also noted that the government's plan for gambling expansion authorized for-profit management companies to receive a proportion of the proceeds of gaming derived from charitable lottery schemes without regard to what constitutes a reasonable charge for their gaming services. The ruling thus determined that the percentage of revenues allocated to private operators granted them an entitlement regardless of the actual value of the services they provide. This too breached the intent of section 207(1)(b) which specifies revenues be directed to charitable or religious purposes.

In short, the Supreme Court of British Columbia decision had significant repercussions for charitable gaming in British Columbia. In response to the ruling, the province, through the British Columbia Lottery Corporation, was compelled to assume direct control under 207(1)(a) of casino and bingo operations in order to introduce electronic gaming machines. As well, it was apparent that the private sector companies

could no longer assume such a large share of gambling revenue that is legally intended for the benefit of community-based charitable or religious organizations.

In other provinces, such as Alberta and Ontario, private sector companies also play a role in providing gaming services to charitable organizations under arrangements similar to that which has been held to contravene the *Criminal Code* in British Columbia. Questions therefore arise regarding the consistency and legality of the interpretations of the *Criminal Code* across the country. Furthermore, questions arise regarding who has the ability and authority to challenge the varying interpretations that are evident across the provinces.

In addition to the concerns broached in the *Ontario Gaming Legislation Review*, other concerns have become apparent.

Regulation of Electronic Gambling Machines (EGMs)

The *Criminal Code* stipulates that provincial governments have exclusive jurisdiction over electronic gaming machines (including computers or video devices used for gaming purposes), and that the exemptions for religious and charitable organizations and fairs and exhibitions that hold for other gambling formats do not apply to electronic gaming. In other words, exempt groups cannot be licensed to conduct and manage electronic gambling machines. Nevertheless, in some provinces electronic gambling machines are housed in casinos, racetracks and liquor licensed premises, which means that some exempt groups (e.g., exhibition associations) are profiting from electronic gambling. Similarly, so are the owners of bars and lounges where machines are located. In Alberta, for example, VLT retailers receive 15% of the annual net profits per machine (the remaining 85% goes to the government). With an average VLT retailer profit per machine of approximately \$20,000, entrepreneurs with multiple EGMs on site can make upward of \$400,000 per year with little effort and minimal financial risk (Smith

& Wynne, 2004). Again, the intent of the provisions of the *Criminal Code* that grant exclusive jurisdiction over gambling to provincial governments may be compromised since sizable portions of gambling revenues are directed to private sector interests for allowing EGMs on their properties.

A new twist on the division of EGM proceeds question stems from what gaming manufacturers call the “recurring revenue model.” In addition to selling EGMs outright to Canadian provinces, some manufacturers lease the machines in return for a proportion of the profits (a percentage of the profits as opposed to a flat daily rate). This joint partnership arrangement raises several fundamental questions: (1) can provinces grant a proportion of revenues to EGM suppliers within the existing provisions of the *Criminal Code*; (2) is the “conduct and manage” requirement for provincial governments breached if they do not own the machines; and (3) can the public interest in terms of product safety and gaming machine integrity be protected when provincial governments and manufacturers have vested interests in revenue maximization?

The Integrity of EGMs & the Integrity of Regulation

In computer software programming jargon, an “Easter egg” is a piece of programming code deliberately and secretly embedded within a software application. Easter eggs (also known as “Trojan Horses”) are designed to produce a hidden option for software users who know how to access them. The presence of Easter eggs in electronic gambling software can have fraudulent financial consequences; for example, when Easter eggs enable players to access large payouts at will. Such Easter eggs alleged to have been discovered in electronic gambling machines commercially distributed in both Canada and the United States.⁶ Their presence in the software is

⁶ See Livingston, Brian (2000) “Discover a security Flaw? Get a lawyer” http://news.com/cp/2010-1071_3-281365.html (accessed: 8 February 2005)

assumed to be the work of rogue programmers in the employ of gaming machine manufacturers, whose motivations may range from wanting to exploit the machines for financial gain as part of a conspiracy to commit fraud, retaliating against an employer for real or imagined grievances, or simply for the sake of perpetrating an insider's joke. As a consequence, reputable gaming machine manufacturers may be unaware of the existence of such hidden features in their machine software.

It is generally believed to be extremely difficult for the average EGM player to detect an Easter egg. Easter eggs are most likely to be exploited for financial gain by programmers 'in the know' or by computer experts who can identify irregularities in a machine's operation and, through a trial and error process, discover a pathway that permits them to win jackpots at will. In short, players who have knowledge of Easter eggs can exploit gaming machines for financial gain.

As a policy issue, the matter of Easter eggs or other gaming software irregularities raise fundamental questions about the Canadian regulatory oversight with regard to legal gaming. More specifically:

- How have Easter eggs been inserted into gaming machines used in Canadian jurisdictions? Do provincial governments and their regulatory agencies have the capacity and competency to objectively verify the integrity of electronic games independently of gaming machine manufacturers before they are put into the marketplace?
- If a player discovers the existence of an Easter egg and uses it to financial advantage to win money, has the player committed an offence? Is a player entitled to the "winnings" earned from an Easter egg or are such "winnings" void? Who decides? By what authority is such a determination made? How transparent are such determinations?
- Are Easter eggs considered to be a "defect" in the machine? Who is liable for losses that may occur before they are discovered and corrected – provincial governments or the gaming machine manufacturer?
- How do payouts that have been won through Easter eggs subsequently affect the odds that particular games are programmed to pay? For example, do payouts resulting from Easter egg access diminish the odds for other players? That is, does the presence of Easter eggs affect the overall payout of particular games and create an element of unfairness depriving other players from winning?

The matter of Easter eggs also raises other concerns regarding the control of gambling machines in Canada. Critics have questioned whether or not the terms of the *Criminal Code* are strictly applied to gaming machines. For example, Roger Horbay (2004), a software developer, has doubts about who really conducts and manages electronic gaming. In Horbay's view, conducting and managing EGMs entails complete control over the gaming software. Since gaming machine manufacturers retain proprietary rights to their software, questions arise as who is the real "controlling mind."

Questions pertaining to electronic machine integrity also arise over establishing the odds and payout rates. Who actually controls the odds of winning in electronic gaming machines? By what authority or standard are pay out rates determined and set?

In Canada a group called Gambling Watch Network⁷, frustrated by provincial government indifference to their concerns, has formally registered a complaint with the Canadian Competition Bureau, alleging that EGMs are deceptive and fraudulent.

Finally, questions regarding conflicts of interest arise in regard to provincial government involvement in electronic machines and in other gaming operated formats more generally. That is, is it appropriate that provincial government agencies operate gambling ventures like casinos and EGMs, garner the largest share of revenues and simultaneously regulate themselves? Furthermore, since police departments do not generally have the technical expertise to investigate complaints about the integrity of EGMs, police are invariably dependent on technical advice from provincial gaming regulators -- the very authorities that approved the machines, or from gaming manufacturers. This raises questions about the adequacy and independence of checks and balances in the overall regulatory process.

Internet Gambling

⁷ See: <http://www.gamblingwatch.ca> (accessed 28 June, 2005)

The *Criminal Code* of Canada clearly specifies that only provinces in Canada can operate computer-based lottery schemes. Thus the Code as presently crafted does not allow for charitable organizations or for private sector operators to operate online gambling within Canada. Moreover, an Internet-based gambling operation conducted and managed by a provincial government cannot take bets from residents of other provinces without the consent of the other provincial governments. Recently, however, the governments of Nova Scotia and British Columbia through their lottery Crown corporations have initiated online lottery schemes restricted to residents of their respective provinces and thus in compliance with existing law.

What critics find troublesome in Internet betting schemes is the relative openness of access. Internet gambling games are offered free of charge to anyone who has a computer and Internet access. To wager for money, however, players must register and establish an account, typically using a deposit drawn on a credit card. Given the private and solitary nature of computer betting on the Internet in tandem with the universality of access to the Internet, online gambling is extremely difficult to police. While the *Criminal Code* may prohibit Canadians from participating in gambling on a website located in another country, there is no mechanism to effectively enforce the prohibition (Kelly, Todosichuk & Azmier, 2001).

According to a report prepared by the Canada West Foundation on Internet gambling, it is a breach of the *Criminal Code* for a private, commercial, Canadian based gambling site to accept bets from Canadian Citizens. While the Starnet Communications International case discussed earlier sets a precedent that enables police and prosecutors to proceed against commercial Internet gambling sites that operate in Canada, the fact remains that Canadians have the ability to gamble at offshore Internet sites with relative impunity (Lipton, 2003).

It is also to be noted that the Quebec-based Kahnawake Mohawk First Nation have operated extensive online gambling sites since the late 1990s. Located on the outskirts of Montreal, the Kahnawake Mohawks assert that they are a sovereign nation and entitled to grant gaming licences for lottery schemes. The Kahnawake Mohawks themselves do not operate Internet sites but have established the Kahnawake Gaming Commission (KGC) to license and regulate some 30 gambling websites operated through Internet servers physically located on their tribal lands (Lipton, 2003; Kelly, Todosichuk & Azmier, 2001).

While the Kahnawake Mohawks are allegedly violating the *Criminal Code*, and while the Quebec and federal governments, together with the provincial police have investigated their Internet gambling activities, no action has been taken to halt the operations. Even though Internet gambling is not yet a popular activity for Canadians, (less than 0.5% of the adult population report having gambled on Internet sites), nevertheless policy and law enforcement dilemmas are posed for Canadian authorities (Kelly, Todosichuk & Azmier, 2001). Of course, as provincial governments continue to expand their repertoire of gaming products through online media, it is likely that Canadian provinces will assert their legal monopoly in this domain as well.

Internet Horse Race Wagering

Critics of the Woodbine Entertainment Group website that facilitates online betting on horse races in Ontario formally sought to have federal and provincial authorities explain how and why the online betting operation received approval, alleging that it violates section 207 of the *Criminal Code* which restricts operation of betting via computers and the internet to provincial authorities.

Permission had been granted to the website operators based on the Minister of Agriculture's interpretation that the 1985 amendment to the *Criminal Code* allowing

betting on horseracing via telephone also extended to betting via the Internet (another telecommunications device). Queries by a Montreal-based problem gambling counselling firm, Viva Consulting, regarding the legal status of the online betting site to the federal Minister of Justice and the Ontario Provincial Police illegal gambling unit were ignored.

Relevant legal and ethical questions thus arising include: (1) Does the Minister of Agriculture's ruling on Internet betting contravene provisions of the *Criminal Code*? (2) How can non-governmental interests be permitted to conduct online betting schemes? (3) Are regulatory and law enforcement agencies capable of acting impartially and independently on complaints against government approved gambling operations?⁸

Quebec VLT Class Action Lawsuit

In 2001, Quebec City lawyer Jean Brochu brought a class action law suit against Loto Quebec, claiming it failed to warn players about the potential dangers of the 15,000 video lottery terminals housed in over 4,000 bars in the province. The genesis of the legal action stemmed from Brochu's own battle with gambling addiction. As a result of his out-of-control VLT play, Brochu lost his car and home and was disbarred from practicing law because he stole \$50,000 to cover his gambling debts.⁹

Brochu is suing on behalf of 119,000 Quebecers (a figure derived from a Quebec problem gambling prevalence survey) and asking for \$700 million in damages and an admission of liability from Loto Quebec and the EGM manufacturers who provided the machines. At present, five defence law firms are involved (Loto Quebec's and four representing machine manufacturers).

⁸ See Bailey, S (2004) "Woodbine Internet betting site under fire as Justice investigates" <http://www.vivaconsulting.com/advocacy/woodbine.html> (accessed 8 February, 2005)

⁹ See Thorne, D. (2002) "Quebec lawsuit a warning to Alta researcher" in *Newscan*, Vol. 4, Issue 16, Friday, April 19. http://www.responsiblegambling.org/articles/041902_16.pdf (accessed 8 February, 2005)

Whatever the outcome, this will be a watershed case. A decision that favours the plaintiffs likely will lead to a spate of similar lawsuits. However, a decision in favour of the gaming operators may lead to government's willingness to increase the number and availability of EGMs.

Bill S-11

A private members Bill sponsored by Senator Jean LaPointe calls for a *Criminal Code* amendment to change the legislation under which decisions on video lottery terminals (VLTs) are left to provinces and territories. In essence, Senator LaPointe wants VLTs removed from convenience locations such as bars, lounges and restaurants and restricted to designated gambling venues such as casinos and racetracks. Bill S-11 is currently under consideration by the Standing Senate Committee on Legal and Constitutional Affairs.

The impetus for Bill S-11 was Senator LaPointe's belief that readily accessible VLTs are a major contributor to problem gambling and hence create negative social impacts. Debate on Bill S-11 has included expert testimony from Hal Pruden, Counsel, Criminal Law Policy Section, Justice Canada; Jason Azmier, Senior Policy Analyst, Canada West Foundation; and Drs. Jeff Derevensky and Rina Gupta, International Centre for Youth Gambling Problems and High-Risk Behaviors. So far, discussion on this Bill has focused on two main issues: (1) how dangerous are VLTs? And, (2) what repercussions would there be for the federal government, provincial governments and private business owners if this Bill was enacted?

Compelling evidence has been presented to the Senate hearings on this issued suggesting that: (1) 70% of Canadians agree that VLTs should be restricted to gambling venues only; (2) there is no positive economic outcome associated with VLT play, in that VLT revenues exit communities into provincial coffers, while the community is left to deal with the social damages created by problem gamblers; and (3) that VLTs are responsible for almost three-quarters of the negative costs of gambling (Canada, 2004, Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Dec. 2).

While committee members generally agree that VLTs are hazardous, they have been presented with the following scenarios that would likely occur if this legislation came to pass: (1) the prospect of provincial litigation against the federal government on the grounds that the 1985 agreement which gave provinces the exclusive authority to manage and conduct lottery schemes contains a clause stating “this agreement may only be amended or terminated by the unanimous consent of the provinces and the Government of Canada” (Canada, 2004, Proceedings of the Standing Committee on Legal and Constitutional Affairs, Dec. 1); (2) ambiguous terminology in the *Criminal Code* dealing with “slot machines,” “video devices,” “computers” and “dice games” would need clarifying; and (3) the provinces may hold back their annual gambling revenue payment (of approximately \$60 million in current dollars) to the federal government which was part of the 1979 and 1985 agreements.

While still under deliberation, Bill S-11 presents an interesting dilemma for legislators, to wit: Are the social problems created by convenience location electronic gambling machines worth provoking federal-provincial acrimony?

IX. CROSS NATIONAL LESSONS FOR CANADA

The comparative analysis presented in this section begins with a brief review of the nature and scope of gambling in three countries (Australia, Great Britain, and the United States), followed by a synopsis of each country's national gambling study and the identification of key regulatory issues. The section concludes with suggestions for improvement to Canada's regulatory structures based on policies and practices in the countries we observed. This analysis was undertaken to gain insights into: a) illegal gambling and crimes associated with legal gambling; b) the probity and integrity of gambling regulation; and c) the social costs of gambling.

The countries were selected for comparison for particular reasons. All three countries are English speaking nations and have similar legal systems and traditions. In addition, they are industrialized countries with free market economies and broadly espouse similar cultural values. They also evidence a variety of legal gambling formats, considerable annual wagering totals and high per capita gambling expenditures.

Notwithstanding these parallels, there are significant differences among the countries in terms of their gambling operations and regulatory frameworks. These differences derive largely from the fact that Australia and the United States, like Canada, have federal systems of government while Great Britain, on the other hand, has a unitary system. In other words, the division of legislative powers between central and state or provincial governments in the Australian, the United States and Canada has generally resulted in less federal government control over gambling and its regulation.

1. Nature and Scope of Gambling in Comparative Countries

Table 3 highlights similarities and differences in the way in which gambling is managed and conducted in Canada and the comparative countries.

Table 3: Cross-national Comparisons:

Variable:	Australia	Great Britain	United States	Canada
1. Legislative Authority:	Individual states and territories determine which gambling formats are allowed. In 2000 the federal government implemented a goods and services tax (GST) designed to lessen state reliance on gambling revenue. States were to reduce their gambling taxes in accordance with GST payments received from the federal government.	Gambling is governed by the federal Gaming Act passed in 1968. A process for reforming this Act has been in place since 2000 and has included a review (the Budd Report), government responses to the review and draft legislation. Pending legislation is aimed at implementing many of the recommendations from these sources.	Individual states determine the legal gambling formats offered within their borders; the federal government is involved only if the gambling issue is related to a power granted it by the U.S. Constitution; e.g., regulating interstate commerce, Indian affairs, federal taxation, the U.S. Treasury or use of the U.S. mail.	The federal Criminal Code of Canada dictates which gambling formats are legal; provinces are granted authority to manage, conduct or licence permitted formats.
2. Legal Gambling Formats*	Poker machines (over 200,000); casinos (14); thoroughbred, harness and dog racing through on-course pari-mutuel wagering and bookmakers and off-course betting shops; sports betting; lotto and scratch tickets; keno; bingo; and Internet gambling. Australia is reputed to have "probably the widest and most accessible variety of legal gambling opportunities in the world" (Costello & Millar, 2000:8)	National lottery; betting shops (private bookmakers who take wagers on sports events, horse races, election results, etc.); casinos (133); horse racing; bingo; slot machines that offer both small and large prizes (no minimum age is required to play the small prize machines). Collins (2003:180) describes the UK as having "one of the most peculiar gambling industries in the world."	Lotto and scratch tickets; slot machines and video lottery terminals; horse and dog racing; casinos (914**); bingo; sports betting and off-track horse wagering in a few states.	Lottery products such as lotto, scratch tickets and sports betting; pull-tabs; bingo; raffles; casinos (62); slot machines and video lottery terminals; and thoroughbred and harness racing.
3. Gambling on First Nation Lands	No concessions have been made to allow gambling on Aboriginal lands.	No recognized First Nation groups.	Indian tribes are considered to be sovereign entities with powers that are at least as great and sometimes greater, than the states where they reside. Under the terms of the federal statute, the <i>Indian Gaming Regulatory Act</i> , commercial gambling already authorized by a state can be offered on tribal lands. At present, over one-third of American tribes provide casino	First Nations require provincial approval to offer commercial gambling on their reserves. Currently, three provinces (Ontario, Saskatchewan and British Columbia offer casinos; proposals for the creation of First Nation casinos have been approved in Manitoba and Alberta; and in Nova Scotia, 50% of revenues from the Sydney Casino are split among First

			gambling and two-thirds of them offer bingo.	Nations who have signed gaming agreements with the province.
4. Problem Gambling Prevalence Rates	In a national study using a variant of the South Oaks Gambling Screen, the Productivity Commission (1999) reported that 2.1% of Australian adults had “significant or severe problems” as a result of their gambling behavior. A further 2.8% of the sample were considered to be “at-risk” gamblers	A British gambling study conducted by GamCare showed between 0.6% and 0.8% of those aged 16 and over to be problem gamblers.	A survey conducted for the U.S. National Gambling Impact Study Commission (1999) using the NODS (a DSM-IV based measure of problem gambling) showed that a combined 4.2% of adult Americans scored as “at-risk,” “problem” or “probable pathological” gamblers.	A national survey using the Canadian Problem Gambling Index indicated that 5% of adult Canadians qualified as “at-risk” or “problem gamblers” (Marshall & Wynne, 2004).
5. Problem Gambling Support Services Funding	The primary responsibility for providing problem gambling treatment services rests with state and territorial governments. The funds to pay for these services come from levies on the gambling industry. Counselling and group support agencies, clinics and hospitals are the main providers of these services. The total funding for problem gambling support services for all of Australia in 1999 was \$15 million (Productivity Commission, 1999).	A “Responsibility in Gambling Trust” of 3 million pounds per year is contributed by the gambling industry to pay for problem gambling services. GamCare, a national counselling agency, is the primary provider for these services.	Most individual states that have an established gambling industry provide some funds for problem gambling services. These funds come from gambling licence fees, taxes or operations. Generally, state contributions to problem gambling services have been modest and well below that given to other human service programs. For example, the state most dependent on gambling revenues, Nevada, allocates \$0 for problem gambling services.	All provincial governments subsidize problem gambling prevention, treatment and research programs; however, the funding varies considerably from province to province (e.g. Quebec allots \$18 million compared to PEI’s \$15 thousand. See Campbell & Smith, 2003). Typically, the responsibility for providing problem gambling services resides with the government agency that delivers substance abuse programs.
6. National Gambling Study	Productivity Commission Report (1999).	Gambling Review (Budd) Report (2001).	National Gambling Impact Study Commission (1999).	None.

*The legal gambling offerings noted may not be available in all areas of the country.

**U.S. casinos range widely in terms of size, elegance and density per state (for example, some states do not allow casinos, while Nevada with 366 casinos, has 40% of the nation’s total).

2. Comments on the Nature and Scope Comparisons

Legal Authority: In Australia, United States and Canada the authority to license and/or operate gambling ventures is decentralized to the state or provincial level of government. Federal governments in these countries could, if they so chose, exert more control over gambling, but appear reluctant to do so. Great Britain is thus distinct in that gambling laws and regulations have always been under central government control (Dixon, 1991).

Legal Gambling Formats: Each of the four countries offer similar gambling formats, albeit to different degrees and under varying circumstances. Australia is reputed to be the most gambling tolerant nation in the world because it has provided most forms of legal gambling longer than the other countries. The profusion of electronic gambling machines and high annual per capita gambling expenditures also distinguish Australia from other nations (Costello & Millar, 2000). Until recently, Great Britain took the most conservative approach to legal gambling, as it operated on the principle of “unstimulated demand.” That is, a limited number of gambling venues were allowed but could not be advertised or promoted. As well, Great Britain was the last of these countries to permit a lottery. Plans are now in place in Great Britain to expand the number and size of casinos. Both Australia and Great Britain license on-track bookmakers and private betting shops where wagers can be made on individual sports events and horse races; whereas this practice is disallowed in almost all North American jurisdictions. A striking anomaly in Great Britain’s gambling regulations is that there is no minimum age restriction for playing prize-based electronic gambling machines.

The United States offers a regional patchwork of legal gambling opportunities ranging from saturation (Nevada and Atlantic City, New Jersey) to prohibition (Utah and Hawaii). Provincial gambling offerings in Canada are relatively uniform although three provinces (New Brunswick, Prince Edward Island and Newfoundland) do not permit

casino gambling and two provinces (Ontario and British Columbia) eschew video lottery terminals.

Gambling on First Nation Lands: For the purpose of stimulating economic development, gambling is allowed on American tribal lands in the United States. Under the *Indian Gaming Regulatory Act* passed by the federal government in 1988, American Indians can operate gambling ventures providing that the state where the tribe resides has already approved the gambling format. This concession has led to approximately five hundred Indian gambling ventures and produced numerous conflicts over states' rights and sovereignty issues (Mason, 2000). On a much smaller scale, some Canadian provinces have granted licences to First Nation gambling enterprises, while Australia has not licensed Aboriginal gambling ventures. All three of these countries have sizable Aboriginal populations and problem gambling prevalence studies have shown Aboriginals to be at a much higher risk than the general population for developing problems with gambling.

Problem Gambling Prevalence Rates: Key variables related to the prevalence of problem gambling in a jurisdiction are availability of and accessibility to specific gambling formats. For example, research indicates a strong association between the presence of electronic gambling machines in convenience locations and high rates of problem gambling. This correlation is variously attributed to 1) the structural characteristics of EGMs (e.g., high "event frequency" or number of wagering opportunities in a given time period, alluring graphics and sounds and intermittent reinforcement schedules), 2) situational factors (e.g., location and density of machines, automatic teller machines (ATMs) on the premises, whether alcohol is served) and 3) individual factors that make some people more susceptible to a gambling addiction than others (e.g., coping skills, impulsivity, cognitive impairment and depression) (Smith & Wynne, 2004).

Problem gambling prevalence rates in Australia, Canada and the United States are similar to one another and are higher than those in Great Britain. However, caution must be used in comparing these prevalence rates because of: 1) different sample sizes; 2) different survey instruments; 3) varying response rates; and 4) different survey administration protocols (e.g. training/supervising interviewers and completing call-backs).

Problem Gambling Support Services Funding: Funding of problem gambling services occurs in all countries compared. However, in most instances the funding amounts to less than 1% of total gambling revenues. In Australia and Great Britain there is recognition of the fact that the gambling industry bears a fiscal responsibility for helping problem gamblers, whereas in Canada and the United States, problem gambling services are generally seen as a jurisdictional obligation. So far in North America, provinces and states generally have not engaged private sector gambling operators to help pay for problem gambling services

Problem gambling services vary amongst the four countries. Great Britain contracts a national provider. Australia engages community and private counseling agencies. The United States provides a diverse mix of state and private counseling agencies while in Canada provincially funded substance abuse agencies play a predominant role. At present, there is no way of ascertaining which of these models works best.

In general, Canadian jurisdictions offer better funding for problem gambling services than is the case in the comparative countries. However, a possible shortcoming of the Canadian model derives from the fact that the agencies mandated to deliver problem gambling services are affiliated with provincial governments, and in most instances, funded directly from provincial gambling revenues. If not in reality, at least in perception, this creates a conflict of interest. Under such funding arrangements,

problem gambling treatment providers tend to be reticent about commenting on government gambling policy or on the social and economic impacts of widespread gambling. Indeed, in some provinces (for example, British Columbia) treatment specialists, as a condition of funding, are contractually required to remain “gambling neutral.”

National Gambling Studies: Australia, Great Britain and the United States have each completed an extensive national review of their gambling operations, regulations and public policies within the past five years (Australian Productivity Commission, 1999; American National Gambling Impact Study Commission, 1999; Gambling Review Board for Great Britain, 2001). The Great Britain initiative was geared toward justifying and developing a comprehensive gambling expansion agenda, versus the Australian and United States reports which originated out of concerns that the negative impacts of widespread legal gambling may be outstripping the benefits. While each of the national gambling reviews highlighted historical trends and dissected a range of gambling-related issues, the Australian study stood out for its independence and comprehensiveness.

The Australian Productivity Commission is an independent federal agency whose mandate is to advise the Commonwealth government on microeconomic policy. In so doing, it conducts public inquiries and research into a broad range of economic and social issues of importance to Australians. The Commission’s independence is decreed in an Act of Parliament and its inquiries are open to public scrutiny.

In 1999, the Productivity Commission delivered its final report on *Australia’s Gambling Industries* to the federal government. The 1,000 page report was the product of a public inquiry that lasted 16 months and included 320 written submissions. It involved a draft report, two rounds of public hearings across all states and territories, six roundtables with interest groups and experts and 60 meetings on location with governments, the industry, community groups and individuals. The analysis in the report

drew on an extensive literature, both from Australia and overseas, supplemented by three national surveys and other original research by the Commission itself (Banks, 2002:1).

The Productivity Commission report provided a panoramic view of the economic and regulatory structure of Australia's gambling industry and documented the social impact of the rapid expansion of gambling in Australia in the latter one-third of the twentieth century (Banks, 2002:1). The report's fundamental message was that the liberalization and expansion of gambling had resulted in major social costs as well as economic benefits. However, the social impacts, particularly those related to problem gambling had not been adequately addressed in policy development, government regulation or in industry practices.

Key findings from the Productivity Commission report include:

- Nearly 300,000 Australian adults had significant problems with their involvement in gambling and 130,000 experienced severe problems.
- Approximately 15% of regular gamblers experienced some degree of problems as a result of their gambling.
- Problem gamblers accounted for approximately one-third of the gambling industry's total income.
- Social impacts varied by gambling format—lotteries showed a clear net benefit, while gaming machines created net losses due to the much higher prevalence of problem gambling associated with it.
- Seventy one per cent of problem gamblers mentioned EGMs as their preferred gambling format.
- Regulatory practices were found to be incoherent, fragmented and inconsistent.
- Regulation should be directed at effectively limiting the costs of problem gambling, without unnecessarily limiting the benefits for recreational gamblers.

Based on interviews with a convenience sample of Australian academics, gaming regulators and industry personnel, there was general agreement that the Productivity Commission report raised public awareness about the social impacts of gambling and

put an onus on the industry to share responsibility for ameliorating harms created by excessive gambling.

Initially, the Australian gambling industry took exception to the criticism leveled against it in the Productivity Commission report. However, given that public opinion was against it, the industry began directing its energy toward addressing the problems raised by the Commission. The report influenced regulators to make “harm minimization” a permanent feature of policies related to managing and conducting gambling in Australia.

The United States 1999 National Gambling Impact Study was commissioned by President Clinton and charged with conducting a comprehensive legal and factual study of the social and economic impacts of gambling in America. Included in the Commission’s mandate were assessments of: (1) Federal, State, local and Native American tribal government policies and practices; (2) the relationship between gambling and levels of crime; (3) problem gambling and its impact on individuals, families, businesses, social institutions and the economy; (4) gambling revenues garnered by State, local and Native American tribal governments and possible alternative sources of revenue; and (5) Internet gambling.

The appointed nine member Commission gathered information through hearings where expert testimony was presented, on site visits to gambling venues, invited submissions, contracted research and a comprehensive literature review. Noteworthy recommendations from the report included:

- A pause in gambling expansion to allow time for an assessment of the costs and benefits already visible, as well as those which remain to be identified.
- Legal gambling offerings should be restricted to persons 21 years of age and older.
- Penalties and enforcement standards for underage gambling should be greatly increased.
- Casino-style gambling should not be allowed in racetracks for the purpose of saving foundering pari-mutuel facilities.
- Stricter guidelines for gambling advertisements and promotions based on truth in advertising principles should be enacted.

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- Independent gambling impact assessments should be done before new gambling formats are introduced or expanded.
 - There should be a cooling off period of at least one year before state gambling regulators can take jobs in the gambling industry.
 - Individual states should be obligated to assess regularly the amount and types of gambling they permit to ensure that the public interest is being served.

The consensus among the American respondents who were interviewed was that the report contained worthwhile research and made numerous sound public policy recommendations. However, the overall impact of the report was underwhelming in terms of producing significant changes in state gambling policies or regulations. A major criticism concerned the composition of the Commission. The nine Commission members were appointed by three different branches of the U.S. government and unfortunately involved partisan politics. In addition, a strong lobby by the casino gambling industry ensured that their interests were well represented. Most Commission members were seen as advocates for special interest groups (either pro- or anti-gambling) which, in public perception at least, raised questions about the Commission's independence. Other important constituencies such as individual state perspectives, gambling interests other than the casino industry and problem gambling concerns were unrepresented. The interviewees also felt that there was insufficient media attention and minimal legislative follow-up to the report. This meant that Commission recommendations were not forged into public policy. Interviewees also suggested that there seemed to be a tacit agreement among commission members that casino gambling was off-limits and that little was done to constrain convenience gambling opportunities

The United Kingdom's Gambling Review Board for Great Britain (the "Budd Report") (Department for Culture, Media and Sport, 2001) was presented to Parliament and has been used as the basis for further discussion and the development

of draft legislation. The Budd review was asked to consider the current state of the gambling industry and how it might change in the next decade in light of economic pressures, the growth of e-commerce, technological developments and wider leisure industry and international trends. Specifically, the Gambling Review Board was instructed to make recommendations with regard to gambling regulations, bearing in mind their wider social impact. It was additionally directed to consider how the young and the vulnerable, as well as regular gamblers would be protected from unfair practices. Matters related to preventing crime (including organized crime and money laundering) and disorder or public nuisance activities were also to be considered. At the same time, creating an environment in which commercial opportunities for gambling could be maximized was to be explored.

The Gambling Review Board, which was established to represent a cross-section of public opinion, consisted of ten government appointed members. The review process entailed an extensive literature search, twenty hearings, over 200 written submissions, on site visits, and a commissioned report on “Attitudes Toward Gambling in Great Britain.”

The Budd Report produced 176 recommendations. The general thrust of the report was to simplify regulation into a single Act of Parliament covering all gambling activities, with the licensing of individuals and companies by a single regulator (a Gambling Commission), while the licensing of premises would continue to be done by local authorities.

Highlights of the Budd Report included:

- Extending choice for adult gamblers by (1) abolishing the demand (need) test for establishing new betting shops, bingo halls and casinos, as well as the 24-hour waiting period for new members; (2) allowing casinos to provide a wider range of gambling activities, including bingo and slot machines with unlimited stakes and prizes and live entertainment with alcohol permitted on the gambling floor; (3) permitting betting shops to have jackpot machines and bingo halls to offer unlimited prizes, rollovers and unlimited linked games; (4)

permitting credit cards for gambling purchases with the exception of direct use in gaming machines; (5) permitting the development of resort casinos; and (6) that a new category of on-line gambling be created, with operators permitted to set up on-line gambling sites in Great Britain provided they are licensed and regulated by the Gambling Commission.

- With respect to consumer protection, the report recommended that (1) where possible, players be fully informed of the odds, but added that competition between suppliers offers the most effective means for ensuring disclosure; (2) gambling should not be completely deregulated due to concerns for increasing problem gambling; specifically, that gambling should be restricted to dedicated gambling venues and gambling machines should be banned from convenience locations such as cafes and taxicab offices; (3) the impact of increased gambling opportunities on communities be limited by local authorities who should have the power to institute a blanket ban on all, or particular types of gambling premises in specified areas; (4) increased research on gambling behavior, problem gambling and effective treatment be funded; and (5) to organize and oversee this research program, a Gaming Trust with not less than 3 million pounds per year, ideally voluntarily funded by the gambling industry, but failing that, funded by a statutory levy.

The Budd Report was followed by several procedural stages: a) a government response in the form of a White Paper entitled “A Safe Bet for Success” which agreed with 143 of the 176 recommendations and generally endorsed the key principles in the report; b) draft legislation based on the White Paper; and c) a Joint Committee of Parliament review of the Draft Gambling Bill which proposed a more cautious approach to gambling expansion than what the Budd Report and the government White Paper recommended.

Great Britain’s proposed gambling legislation has not yet been enacted. In fact, citizen backlash against the perceived ultra liberal gambling expansion program may curtail the legislation altogether or result in a diluted version of what was first recommended.

The Gambling and Crime Nexus

Included in the mandate of all three national gambling studies was an examination of the impact of gambling expansion on crime rates, the extent of criminal infiltration into commercial gambling enterprises and ways to make legal gambling crime free. All three studies noted a historical connection between gambling and crime and cited various

aspects of commercial gambling that make the industry vulnerable to criminal involvement. There was also recognition of the fact that widespread legal gambling opportunities had led to relaxed monitoring of illegal gambling by police officials and lenient treatment by the courts for those charged with illegal gambling offences.

Despite the mandate of each review to explore the link between gambling and crime, the subject was given short shrift. That is, cursory literature reviews reported equivocal findings and no original research on the topic was commissioned.¹⁰ A drawback of the American study was that gambling industry sponsored gambling-related crime research was afforded the same credibility as independent academic research (for example Margolis, 1997 and Albanese, 1999). Notwithstanding the superficial analyses of gambling and crime issues, the three reports did suggest areas of concern. For example, in Great Britain “highly questionable and overly corrupt practices” in legal bookmaking operations were said to require tighter regulation, and greater enforcement powers were called for to shut down illegal gambling machines (Gambling Board Review Report, 2001:75).

The Australian Productivity Commission Report concluded that street crime in or surrounding gambling venues was of no greater magnitude than in other public places of amusement and that organized crime had little opportunity to infiltrate Australian casinos. The chief gambling-related crime concerns in Australia were crimes committed by problem gamblers to support their addiction and the potential for loan sharking and money laundering in Australian casinos. Perhaps on a more ominous note, the report mentioned that widespread legal gambling negatively impacted on Australian society by creating changes in behavioral norms and social ethics. According to several data sources, when governments promote or facilitate gambling its role of protector of

¹⁰ In Australia, a roundtable with the Australian Institute of Criminology was held.

citizen's welfare is compromised and the community's trust in public institutions is diluted.

The United States National Gambling Impact Study Commission Report hedged its comments on gambling-related crime. The report claimed that research linking the two activities has been too narrow in scope and unable to differentiate the effects of gambling from the effects of tourism in general. As well, the report concluded that more research is needed because, at present, there are insufficient data to quantify or define the relationship between gambling and crime.

Lessons for Canada

Each of the three countries' gambling regulatory models has strengths and weaknesses. Based on our review of pertinent documents and on our discussions with leading gambling policy authorities, we considered ways of improving Canadian gambling policies.

Canada has experienced a rapid and radical expansion of gambling opportunities over the past three decades. As a result, gambling public policy has frequently been made without public input and on an *ad hoc* basis. This is not to say that Canada's gambling regulatory structure is in shambles. However, correcting some obvious shortcomings would make it better. Gleaning from what works and does not work in the countries we examined, the following observations on bolstering Canadian gambling policies and regulatory regimes are tendered.

Canadian Gambling Study

A Canadian national gambling inquiry is long overdue. Indeed, a recommendation for a national review of gambling activity in Canada was made in 2001 by the Canada West Foundation in its report *Gambling in Canada: Final Report and Recommendations* (Azmier, 2001).

As is the case with other controversial policy issues, gambling policy is entangled in a myriad of political, moral, social and economic concerns that polarize positions. Given that legal gambling is now an \$13 billion a year industry in Canada (Azmer, 2005), it behooves us to know the extent of this enterprise, who gains and who loses from the activity, whether net community benefits are being maximized, how gambling policy is rationalized and implemented, how gambling is regulated, whether gambling consumers are protected adequately and whether the social harms resulting from excessive gambling are being properly addressed.

Our observation regarding the need for a national gambling inquiry is tendered not just because the other countries have followed this path. Rather, a Canadian review is warranted because of perceived deficiencies in current Canadian gambling regulatory policies and practices. The need to assess and to provide guidelines on gambling policy for future generations is paramount. Supporting this view, Beare (1989:177) contended that the expansion of legal gambling in Canada has created a sense of ambiguity that has “resulted in inconsistent policy, limited research and evaluation, inadequate funding for gaming regulation and enforcement, and little concern for the potential social consequences of gambling.” Though now sixteen years old, Beare’s comments remain valid today.

Should such a study be approved, we support adopting the Australian approach -- an adequately funded, independent federal public inquiry along the lines of a Royal Commission with the power to subpoena testimony and a two year time frame to complete the task.

Clarifying Governments’ Roles and Obligations with Respect to the Provision of Gambling

Why are Canadian governments involved in providing gambling opportunities? Given the perceived inevitability of gambling, Canadian legislators have often claimed

that it is appropriate for governments to conduct, manage, license and regulate legal gambling as a way of constraining such negative impacts as organized crime involvement, corruption of public officials and unfair gambling practices. But, can it be assumed that Canadian provincial governments oversee gambling mainly to protect the public's welfare or are governments motivated more by revenue generation in spite of the harms that may result? Both positions are relevant given the official rhetorics used to justify Canadian governments' authority to operate and regulate gambling. However, there is an inherent conflict between revenue maximization and social responsibility objectives.

While democratic governments typically make policy decisions that seek to balance the 'greater good' against possible negative impacts on some citizens (for example, in the domains of health, education, social welfare, the environment and economic policy), the provision of gambling ventures is hardly an essential service. There can be little justification for seeking to maximize gambling revenues through policies that have the potential to jeopardize citizen well-being.

Canadian jurisdictions currently perform multiple roles in the provision of gambling goods and services, including licensing, managing, conducting, marketing, promoting, operating and regulating the activity, as well as garnering most of the profits. Government self-regulation in general, and particularly in regard to gambling where monopoly conditions exist, is unsound public policy. Self-regulation of provincial gambling has led to: a lack of transparency and accountability; special treatment for private sector gambling industry partners such as limiting competition; revenue imperatives receiving priority over a commitment to the reduction of social costs associated with gambling; a lack of uniformity between jurisdictions in terms of how gambling is regulated and how *Criminal Code* provisions are interpreted; and a failure to

consider the long-term impact on public welfare of such consequences as problem gambling.

Recognizing and correcting these policy dilemmas would mean that governments could not conduct, manage, regulate and profit from gambling at the same time. Except for the provision of lottery products, this conflict of interest is avoided in Australia, Great Britain and the United States by licensing private corporations and/or Indian tribes to conduct and manage gambling enterprises. Without the imperative to maximize gambling revenues, individual jurisdictions can regulate gambling rigorously and impartially. In this scenario, state gambling revenues are indirect, coming from licensing fees, from taxes on corporations that operate gambling and from income taxes paid by gambling industry employees. Overall, less state revenue is generated, but the profit maximizing and regulatory roles of the state are separated.

An alternative possible solution, though not currently in use in the other countries examined, is to allow states to manage, conduct and profit from gambling, but be regulated by a completely independent body with oversight powers akin to those of auditor generals or ethics commissioners.

Of the four countries examined, Great Britain is the only one with a national gambling policy and the only one where gambling is regulated by the national government. In Australia, where gambling regulation is decentralized, scholars have called for a greater federal government presence in gambling policy and regulation on the grounds that the federal government is more likely to be guided by principles of public and national interest and thus be in a better position to mitigate inter-state competition. Additionally, the federal government would be less likely to make hasty decisions based on short term economic pressures and be influenced by the gambling industry (Costello & Millar, 2000).

Accounting for Illegal Gambling

Wagering on individual sports events is illegal in Canada if one party in the transaction takes a percentage of the wager as a handling fee. Nevertheless, the bulk of illegal wagering in Canada is on sports events (Smith & Wynne, 1999). Canadian law is not intended to stop bets between private individuals. Current law seeks to prohibit bookmaking rather than betting.

Exempted from this law is a sport betting format provided by lottery corporations across Canada, known as "Sport Select." Sport Select is legal because it involves parlay betting in which a player must pick three or more winning results (and be correct on all choices) from a menu of professional hockey, football, basketball and baseball games. Sport Select, with a 35% house edge, does not compete well with illegal bookmaking operations for serious bettors. In addition to providing a far better pay out percentage, illegal bookmakers offer client-friendly services such as extended hours of operation, more extensive betting menus, telephone betting, credit and higher betting limits that Sport Select cannot match. This is an instance where ironically the introduction of a legal gambling format (Sport Select) has stimulated an interest in illegal gambling (Smith & Wynne, 1999).

Governments have three broad policy options in dealing with bookmaking: (1) prohibit and strictly enforce (i.e. adhere to the *Criminal Code*), (2) prohibit and tokenly enforce or (3) legalize and regulate. Canadian law enforcement agencies have generally adopted the second option; an unofficial policy of benign prohibition. Two of the countries we studied (Australia and Great Britain) have legalized sports and horse race betting through licensed private businesses. On the other hand, the United States has actively suppressed bookmaking except in Nevada where sports betting is legal.

According to police sources, strict enforcement of anti-bookmaking laws presents a dilemma for Canadian law enforcement agencies because: (1) illegal gambling

investigations are costly in terms of the time and personnel resources required to secure a conviction, and even when there is sufficient evidence for a conviction, lenient penalties are meted out by the judicial system; (2) public apprehension about illegal gambling has diminished over the past thirty years, which has led police agencies to concentrate on vices perceived as more serious such as prostitution, child pornography and drug trafficking; and (3) provincial gaming regulatory agencies have been encroaching on a basic police responsibility (i.e. enforcing the *Criminal Code* gambling provisions) by gradually assuming the role of monitoring and controlling illegal gambling (Smith, Wynne & Hartnagel, 2003).

Maintaining the status quo of not enforcing anti-bookmaking laws aggressively is a poor choice of options because when citizens flout the law with impunity, the law falls into disrespect. This problem can be addressed in one of two ways; (1) by bolstering municipal police forces so that they can reasonably uphold the letter of the gambling laws or (2) amend the *Criminal Code* to allow wagering on sports and racing events in licensed private betting shops as is done in Australia and Great Britain.

Responsible Gambling and Harm Minimization

Lately, the terms “responsible gambling” and “harm minimization” have been used by governments to indicate a concern for mitigating the individual and social damages associated with widespread legal gambling. While acknowledging that responsibility in this regard is a progressive step, however, efforts in this area have been tentative and inconsistent (hiring social responsibility directors and incorporating modest responsible gaming features (RGFs) in the design of new gambling machines). Ostensibly, the reason for moving slowly on the issue is that effective responsible gambling policies and practices may result in declining gambling revenues. It is a truism in the administration of legal gambling in Canada that when revenue generation priorities and social

responsibility clash, economic exigency wins. For example, the Ontario government recently reassessed its gambling policies in light of a study that found 35% of the province's gambling revenues come from the 5% of the population that are problem gamblers (Williams & Wood, 2004). The "New Gaming Strategy to Focus on a Sustainable Responsible Industry," is supposed to "put social responsibility front and centre in the delivery of gaming in Ontario." A critic of the publicized Ontario policy shift maintains that it gives the appearance of social responsibility objectives having a higher priority, but in reality, attention is diverted from the social and economic damages caused by "years of uncontrolled gambling expansion" (Horbay, 2005).

A key point raised about gambling regulation in the Australian Productivity Commission Report (1999, ch. 12:16) is that "governments' failure to follow good regulatory process and design principles, compounded by and combined with revenue raising imperatives, may well have led to perverse regulatory outcomes in gambling." Consequently, the Productivity Commission recommended that the overriding goal of all gambling public policy should be to maximize net community benefits. This has resulted in a concerted effort by Australian state governments and territories to implement stringent harm minimization strategies.

Making social responsibility the focal point of gambling policy requires a more forceful and pre-emptive approach than has been the case so far in Canada. A comprehensive responsible gambling policy implies a commitment to probity and addressing duty of care obligations, even if it means reduced gambling revenues. A recent report issued by the Independent Pricing and Regulatory Tribunal of New South Wales (2004) entitled *Gambling: Promoting a Culture of Responsibility*, provides a state of the art approach to responsible gambling policy. According to the New South Wales report, an exemplary responsible gambling strategy consists of three main elements:

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- Informed choice—being able to make decisions about a gambling format on the basis of adequate information about the nature and foreseeable consequences of the activity, and without controlling influences.
 - Consumer protection—implementing measures to discourage risky behaviors, and to minimize the incidence, prevalence and negative consequences of problem gambling.
 - Counseling Measures—various programs to assist those who are developing or have developed gambling problems to stop or control their intemperate behavior and to blunt the negative impacts of these behaviors on the gamblers themselves, their families and friends, employers and the wider community.

Along with these responsible gambling building blocks, the report calls for government transparency, active monitoring and enforcement of responsible gambling regulations and the need for evidence-based research to inform decision makers. In general, Canadian provincial governments do a satisfactory job of providing problem gambling counseling and prevention programs, but are deficient in the areas of informed choice and consumer protection. For example, Canadian gamblers are not well-informed about the probabilities of winning or gambling machine pay-out ratios, nor are they given instruction about how electronic gambling machines work.

Based on the New South Wales study's standards, Canadian jurisdictions have been lax in implementing certain consumer protection measures. For example, casinos in some provinces extend credit and offer cheque-cashing services; self-exclusion programs generally exist only for casino patrons and are relatively easy to circumvent; pre-commitment mechanisms such as smart cards are not available. Furthermore, research has shown that bill acceptors on gambling machines and gambling location ATMs exacerbate problem gambling behavior, yet they remain in Canadian gambling venues. As well, while the maximum bet on a New South Wales gambling machine is \$10, some Canadian provinces offer machines that take \$100 bets; and, as noted earlier in this report, the possibility of the existence of hidden programs (Easter eggs) in some

gambling machines means that governments are not always able to safeguard the integrity of the machines under their jurisdiction.

Canadian provincial governments also tend to lack transparency on gambling issues, are seldom open to public input about their gambling policies and are often averse to having research evidence guide policy decisions. Presumably, challenging questions and contrary research findings threaten gambling revenues. However, by adopting defensive stances with regard to their gambling policies and operations, governments violate their covenant to promote the public interest.

In this section we have sought to explore gambling policies and regulatory frameworks in three countries for the purpose of informing gambling policies and regulations in Canada. In our view, existing Canadian legal gambling regimes fall short of the laudable goal of maximizing net community benefits. Achieving this goal requires not only that gambling be regulated in an uncompromising and impartial fashion but that social responsibility becomes the paramount objective of all gambling policy.

X. FINAL OBSERVATIONS

This report has shown that there are substantial legal, constitutional, behavioural and policy issues raised by the legalization and expansion of many forms of gambling. For example, we have seen how questions have been raised concerning the legality of the interpretations by some provinces of certain of the *Criminal Code* provisions pertaining to gambling. There is an absence of consistency in the ways in which the gambling sections have been applied by provincial governments. Thus four different models for managing and conducting gambling have emerged. We have also observed that the *Criminal Code* amendments and their interpretation raise questions regarding the division of powers between the federal and provincial governments. How can a proper balance be maintained between local provision and regulation of gambling formats and national consistency in the interpretation and implementation of the *Criminal Code*? Our report has indicated how, despite the legalization of many forms of gambling, a number of unwanted and harmful behaviours associated with gambling have persisted and, in some cases, increased. In particular, we have reviewed how criminal behaviour and gambling remain linked in a number of ways and how new problems or forms of “deviance,” such as “excessive” or “problem” gambling have arisen, the latter associated with the availability of electronic gambling machines. As well, we have noted the emergence of a range of provincially-funded educational and therapeutic programs directed at preventing and ameliorating problems associated with these new forms of deviance. Finally, we have highlighted a number of public policy questions raised by the legalization and expansion of gambling. Most generally, how can the benefits and costs of legal gambling be balanced, and the unintended but negative consequences of legalization be mitigated? How should public opinion and values enter into the policy process with respect to the regulation of gambling? But perhaps the most crucial policy issue concerns the potential conflicts of interest that arise for provincial governments

when they both regulate and promote gambling. Provincial governments have become increasingly dependent upon the enhanced revenue generated by the expansion of legal gambling; therefore, they have a vested interest in the promotion and expansion of gambling. At the same time, these governments now have almost exclusive power to regulate and control gambling activity. The potential for conflicts inherent in this situation is of pressing concern from the perspective both of public welfare and respect for governmental institutions.

Social theory can help place these specific issues regarding the legalization and expansion of gambling within a broader context and result in a clarification and generalization of the questions involved. Each of the four theoretical perspectives we reviewed provides some insight into the sources and effects of the changes observed in the social control of gambling in Canada.

While it seems clear that public opinion did not play a major role in producing the 1969 and 1985 *Criminal Code* amendments, it is also evident that public attitudes toward gambling did shift over time toward greater toleration and acceptance of legalized gambling. Thus there appears to be evidence of some consensus for aspects of legalized gambling. However, it remains unclear to what extent such consensus facilitated the *Criminal Code* amendments or rather was the result of these legislative changes. Furthermore, Canadian public opinion remains generally ambivalent toward gambling, particularly with respect to certain types and locations, as well as the appropriate balance to be struck between benefits and costs. Thus public policy concerning some aspects of gambling lacks a strong consensus and could result in a backlash against some government regulations. Consensus or functional theory suggests, then, that there are limits on the extent to which legislation/regulation can diverge from the widely-held views of the public.

The interest group/conflict perspective seems to fit well with Morton's (2003) survey of twentieth century Canadian gambling history since she points to the role of both legislative reform groups and the anti-gambling lobby. With the *Criminal Code* amendments and subsequent expansion of legalized gambling, a number of "special interest" groups have arisen to exert influence on public policy regarding the social control of gambling. This perspective also focuses attention upon provincial governments as "interested actors" in the evolution of the social control of gambling in Canada. Provincial self-interest is certainly evident in our discussion of the federal-provincial struggle over gambling in the 1970s and 80s and it is perhaps even more apparent as provincial governments have increasingly taken on the dual role of major promoter and financial beneficiary of electronic gambling. This perspective suggests, then, that it is unlikely that provincial governments will cede any significant regulatory power over gambling back to the federal government, or indeed to any other agency.

The *Criminal Code* amendments of 1969 and 1985 with respect to gambling seem to exemplify the strategy of "managing consent" on the part of the federal government. Maintaining the criminal prohibitions on certain forms of gambling while decriminalizing a variety of widely acceptable gambling activities by placing them under provincial regulation is one way of managing the competing federal and provincial powers. But this may also have represented a way in which the federal government could "insulate itself from criticism" (Hatt *et al.*, 1992:247) from segments of the population opposed to gambling expansion and from concerns regarding possible increased social costs of such action. While ceding social control to the provinces, as well as much of the revenue-generating potential of legalized gambling, the federal government also effectively withdrew itself from responsibility for dealing with the various problems associated with gambling expansion.

Several aspects of the neo-liberal/minimal state perspective apply to key features of the changes observed in the social control of gambling. For example, “economic reasoning” has become an important feature of discussion regarding the regulation of gambling, particularly in view of the huge profits generated. But even at the outset of federal-provincial negotiations around amendments to the *Criminal Code*, economic more so than social considerations predominated. We have also observed, beginning with the amendments to the *Criminal Code*, several instances of the “minimal state defining deviance down.” The federal government has shifted much of the regulatory control to the Provinces who, in turn, have used various means for downloading control of licensed gambling to Crown corporations and private sector gambling interests. With this privatization of the social control of licensed gambling, along with the increased tolerance of gambling by the public, there is some evidence that the criminal justice system is assigning enforcement a lower priority. The “containment of risk” is another theme from this perspective which seems applicable to the social control of gambling. When the social costs involved in gambling expansion are considered, the relatively small percentage of “problem gamblers” often dominate discussion in lieu of a broader debate focused upon public welfare. In conjunction with this attention to risk assessment and harm minimization for “problem gamblers,” the degree of social control over gambling may actually be extended, at least for segments of the population through monitoring and/or restricting their gambling behaviour and instituting various treatment regimes.

Ultimately the delegation of authority over gambling from the federal government to the provinces, at the very least, is tacit admission that gambling no longer stands as a matter warranting criminal prohibition. As much of the preceding discussion has suggested, it is more than obvious that the delegation of authority over gambling to the provinces has not resulted in increased measures to prevent or to otherwise restrict

gambling. Indeed, as noted at the outset, Canadian criminal law in regard to gambling has been used principally to consolidate and legitimize a provincial government “expansionist monopoly” (Brodeur & Ouelett, 2004:27). This, of course, begs the fundamental question of whether or not this is an appropriate use of criminal law.

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