

LEGISLATIVE REQUIREMENTS AND CONSIDERATIONS

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A. Introduction

The province's gaming licensing policies are based upon federal and provincial gaming laws, specifically the *Criminal Code* (Canada) and the *Gaming and Liquor Act* (Alberta).

Criminal Code (Canada)

The legal foundation for all gaming in Canada is the *Criminal Code*. This law “starts with the philosophy that all gambling is illegal unless specifically exempted through legislation in the Criminal Code” (Judge Peter Griffiths, 1992). For purposes of the Gaming Licensing Policy Review, the key *Criminal Code* exemptions are the provisions that permit the provincial government to:

- (a) conduct and manage “lottery schemes” such as ticket lotteries and electronic gaming devices (the code permits only provincial governments to conduct and manage electronic gaming devices such as video lottery terminals and slot machines);
- (b) issue licences to eligible charitable and religious organizations to conduct and manage “lottery schemes” such as bingo, casino table games, raffles and pull tickets, but only if the proceeds are to be used for charitable or religious purposes; and
- (c) prescribe terms and conditions related to the conduct, management and operation of a lottery scheme under the licences that it issues.

Application of Common Law

The *Criminal Code* does not specifically define various terms whose meanings are critical to the proper administration of gaming activities by the province, including what constitutes “charitable purpose” for purposes of issuing licences for “charitable gaming events.” In that regard the province is guided by the common law in determining the eligibility criteria of an organization for gaming licences.

Gaming and Liquor Act (Alberta) and Regulation

The *Gaming and Liquor Act* (Alberta) and its accompanying regulation deal with both gaming and liquor activities in Alberta. The act and regulation establish the province's specific regulatory framework for gaming, in conformance with the *Criminal Code* gaming provisions.

The act establishes the Alberta Gaming and Liquor Commission as the regulatory authority of provincial lotteries and gaming activities. Under the act the Commission may raise revenue for the Alberta Lottery Fund through provincial lotteries. It gives the Board of the Commission the authority to issue gaming licences and establish conditions upon those licences.

The act requires all gaming workers be registered and all gaming supplies be approved by the Commission. Anyone dealing in gaming supplies must be authorized by the Commission to do so

and may include those specifically registered for that purpose, a facility licensee or a gaming licensee.

The provincial legislation addresses the matter of VLT plebiscites and the removal of VLTs from certain municipalities that by plebiscite voted in favour of their removal.

Under the act various penalties may be imposed by the Commission upon licensees and registrants that contravene the legislation, regulation or its policies.

The *Gaming and Liquor Regulation* (Alberta) establishes gaming licences for bingo, pull ticket, raffle and casino and the respective fees for those licences. It establishes licences for bingo and casino facilities. It defines who is a gaming worker and establishes classes of registration of gaming workers.

Key Legal Considerations for Gaming Licensing Policy

The province's gaming licensing policies must operate within the legal foundation and framework established for the province.

The *Criminal Code* sets forth the requirements for the conduct and management of lotteries and gaming activities.

Those requirements are that gaming must be regulated by the provincial government or its appointed authority. The province may determine which lottery schemes to conduct and manage, and those which may be conducted by charitable and religious organizations under licence. The province has the authority to impose terms and conditions upon gaming licences.

The *Criminal Code* specifically permits only government, non-profit, charitable and religious groups to conduct and manage gaming activities. As a consequence, the primary beneficiaries of gaming must be charitable, non-profit, public and community-based initiatives. As the code does not provide guidelines as to meaning of the term "charitable" or "charitable purpose" the province has been guided by common law to arrive at eligibility criteria for the issuing of gaming licences to charitable organizations.

Private service providers may *assist* in the conduct and management of gaming activities or lottery schemes, but there is no allowance in the legislation for them to conduct and manage lottery schemes.

Various provisions of the *Gaming and Liquor Act* and the *Gaming and Liquor Regulation* that deal with gaming in the province refer to the *Criminal Code*, the legal foundation for all gaming in Canada. Other gaming-related provisions in the provincial act and regulation must either conform to those of the federal legislation or be consistent with them.

B. *Criminal Code* of Canada

Criminal Code - A statute, first enacted in 1892, that gives the Cdn. federal government exclusive power to legislate on criminal offences in Canada and defines most kinds of crimes as well as judicial procedures and penalties. (*Canadian Dictionary of the English Language*)

A crime is a clear and strict prohibition enforced by a penalty, which serves a typically criminal *public purpose*. Public peace, order, security, health, safety and morality are some of the ordinary ends served by the criminal law. (Bowal, *Criminal Regulation of Gambling*)

Background

The *Criminal Code* was enacted by Parliament in 1892, which codified the criminal common law and miscellaneous criminal law statutes.

The legislation declared most forms of gaming to be illegal except for pari-mutuel racetrack betting and games of chance. The frequency of those activities was to be determined by each province. Games of chance during this period tended to be confined to agricultural fairs and exhibitions.

Amendments to the *Criminal Code* in 1925 formally exempted agricultural fairs from some of the prohibitions against gambling.

Between 1938 and 1970, the code excluded from the definition of a “common gaming house” a place “while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is charged to the players if the proceeds are to be used for the benefit of any charitable or religious object.” This exclusion permitted charities and religious groups to operate bingo on an occasional basis.

In 1970, Parliament enacted Section 190 (now 207) of the *Criminal Code*. This amendment authorizes the Lieutenant Governor in Council or specified authority in each province to issue gaming licences to charitable and religious groups if the proceeds are used for charitable or religious purposes. Agricultural fair and exhibition operations retained their right to hold gaming events under certain conditions of play, subject to provincial regulation.

The 1970 amendments to the code also gave the right to the federal and provincial governments to operate lottery schemes individually or in cooperation with each other.

In 1985, under an agreement between the federal government and the provinces, the federal government gave up its right to conduct lottery schemes.* As well, amendments to the *Criminal Code* in that year paved the way for provinces to introduce electronic gaming machines.

* The federal government withdrew entirely from regulating gaming activities except for pari-mutuel betting on horse races, which it continues to regulate.

Section 207 - Permitted Lotteries

The *Criminal Code* deals with gaming under “Part VII: Disorderly Houses, Gaming and Betting” (*Criminal Code*, R.S.C. 1985, Chapter C-46). The relevant sections are 197 to 209 which are described in a table that follows.

The *Criminal Code* makes all gaming illegal except that which is specifically permitted through various exemptions provided for in the code. For purposes of the Gaming Licensing Policy Review the key provisions are those of section 207, which deal with “permitted lotteries.”

Section 207(1)

Section 207(1) legalizes the creation and operation of lotteries run by any of the bodies specified in 207(1)(a) to (d). Lotteries may be created by a provincial government, or under licence by charitable or religious organizations, by a board of a fair or exhibition or any other person to whom a licence has been issued as long as the ticket costs no more than \$2 and the prize does not exceed \$500.

Section 207(1)(a) provides it is lawful:

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

This provision gives the provincial government the discretion to determine what types of lottery schemes it may conduct and manage. In Alberta, the Commission is the designated to conduct and manage lottery schemes, which include ticket lotteries and electronic gaming devices.

Section 207(1)(b) makes it lawful:

for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose; ...

The Commission is the licensing authority in Alberta. It establishes certain criteria for what constitutes a charitable or religious organization and charitable or religious object or purpose. It refers to the common law in arriving at the proper criteria, as described in more detail later in this section.

Section 207(1)(c) makes it lawful for a board of a fair or an exhibition to conduct and manage a lottery scheme under a licence from the provincial authority, in this case the Commission.

Section 207(1)(d) makes it lawful for any person who first obtains a licence from the provincial authority (in Alberta the Commission) to conduct and manage a lottery scheme at a public place of amusement if the amount paid to play does not exceed \$2 and the prize does not exceed \$500.

Section 207(4) defines lottery scheme as follows:

...a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than

- (a) three-card monte, punch board or coin table;
- (b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or a pari-mutuel system, on any race or fight, or on a single sport event or athletic contest; or
- (c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device or slot machine, within the meaning of subsection 198(3), or a dice game.

Section 206 describes many types of lottery schemes which are permitted under the provisions of section 207. The activities that are not permitted are specified in paragraphs (4)(a) and (4)(b) including three-card monte, punch board, coin table, bookmaking, pool selling or the making of bets as specified.

Paragraph (4)(c) makes it illegal for anyone except the provincial government to conduct and manage dice games, and to operate what it refers to as a “slot machine” as defined under subsection 198(3), as long as the lottery scheme falls within the meaning in paragraphs 206(1)(a) to (g). Subsection 198(3) reads as follows:

In subsection (2), “slot machine” means any automatic machine or slot machine

- (a) that is used or intended to be used for any purpose other than vending merchandise or services, or
- (b) that is used or intended to be used for the purpose of vending merchandise or services if
 - (i) the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator,
 - (ii) as a result of a given number of successive operations by the operator the machine produces different results, or
 - (iii) on any operation of the machine it discharges or emits a slug or token but does not include an automatic machine or slot machine that dispenses as prizes only one or more free games on that machine.

Section 198(2), which is referred to in 198(3), reads as follows:

For the purpose of proceedings under this Part, a place that is found to be equipped with a slot machine shall be conclusively presumed to be a common gaming house.

The definition of “slot machine” includes any electronic gaming device, which in Alberta includes video lottery terminals (VLTs) as well as slot machines.

Flanagan elaborates on section 198(3) as follows:

Under s. 198(3)(b)(i), the player must control the game with no element of chance or uncertainty attributed to the machines [sic] operation. If the player has only partial control over the ball, the machine is illegal because partial control means that the result of one or any number of operations of the machine is a matter of chance of uncertainty to the operator. Amusement machines do not fall under this subsection.

Amusement machines fall under s. 198(3)(b)(ii) where as a result of successive operations by the operator the machine produces different results. However, through legislative amendment, machines that dispense free games as prizes only are not slot machines under the section. The operator referred to in ss. 198(b)(i) & (ii) is the average person who would ordinarily be the operator and not the expert.

Machines under s. 198(3)(b)(iii) that discharge or emit slugs are slot machines. The fact that a coin slot is covered does not change the character of the machine.

It should be noted however, that the conclusive “slot machine” presumption in s. 198(2) has been held to violate the Charter [in an Ontario court].

The Criminal Code’s Gaming Provisions

The following table describes the provisions in the Criminal Code that specifically deal with gaming. They comprise Part VII: “Disorderly Houses, Gaming and Betting” (*Criminal Code*, R.S.C. 1985, Chapter C-46).

Table A2-1: Gaming-Related Provisions of the *Criminal Code* (Canada)

CRIMINAL CODE SECTION	PROVISIONS RELATED TO GAMBLING ¹
197	<p><i>Definitions</i></p> <ul style="list-style-type: none"> • This section defines terms of various gaming and gambling related activities. Among others, those terms include the following: <ul style="list-style-type: none"> • “place” - includes any place • “game” - a game of chance or mixed chance and skill • “gaming equipment” - anything that is used or may be used for the purpose of playing games for betting • “common betting house” - place opened, kept or used for purposes of (a) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or (b) enabling any person to receive, record, register, transmit or pay bets or to announce the results of betting
198	<p><i>Presumptions</i></p> <ul style="list-style-type: none"> • The presumptions made in this section recognize “the difficulties the investigator faces in making observations of the illegal activity to which generally, the public have not access.” Certain provisions have been legally challenged as being unconstitutional. (Flanagan) <ul style="list-style-type: none"> • 198(2) For the purpose of proceedings under this Part, a place that is found to be equipped with a slot machine shall be conclusively presumed to be a common gaming house.” • 198(3) - “Machines that are used or intended to be used for any purpose other than vending merchandise or services are slot machines under s. 198(3)(a). Amusement machines do not fall under this subsection” (Flanagan).

¹ The table contains synopses from *Martin’s Annual Criminal Code* unless indicated otherwise.

CRIMINAL CODE SECTION	PROVISIONS RELATED TO GAMBLING ¹
199	<p><i>Warrant to Search</i></p> <ul style="list-style-type: none"> creates search, seizure and forfeiture provisions relating to Part VII offences.
200	<i>Obstruction</i> [Repealed, R.S., 1985, c. 27 (1 st Supp.), s.30]
Gaming and Betting	
201	<p><i>Keeping Gaming or Betting House</i></p> <ul style="list-style-type: none"> an indictable offence to keep a gaming or betting house. The maximum sentence upon imprisonment is two years.
202	<p><i>Betting, pool-selling, book-making, etc.</i></p> <ul style="list-style-type: none"> Offences pertaining to betting, pool-selling, book-making and wagering. <ul style="list-style-type: none"> 202(1)- Every one commits an offence who <ul style="list-style-type: none"> (b) imports, makes, buys, sells, rents, leases, hires or keep, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, <u>or any machine or device for gambling or betting;...</u> [emphasis added]
203	<p><i>Placing Bets on Behalf of Others</i></p> <ul style="list-style-type: none"> Prohibits the activities of the actions of “bookies” and other off-track betting schemes and sets out a schedule of available sentences based on whether the accused is a repeat offender.
204	<p><i>Exemption</i></p> <ul style="list-style-type: none"> Section 204 creates exemptions from liability which would otherwise arise under s. 201 or 202, and also creates a system of legalized pari-mutuel betting.
205	[Repealed, R.S., 1985, c. 52 (1 st Supp.), s. 1]
206	<p><i>Offence in relation to lotteries and games of chance</i></p> <ul style="list-style-type: none"> Combined with s. 207, creates liability for acts in relation to lotteries and games of chance, and creates exceptions to such liability. <ul style="list-style-type: none"> s. 206(1) - create indictable offence of doing the acts specified on paras. (a) to (j). No purpose beyond the doing of the acts described need be proven. The maximum sentence upon imprisonment is two years. s. 206(2) - defines “three-card monte” for purpose of this section. s. 206(3) - creates exception from s. 206(1)(f) to (g) for use of a board located at an annual fair or exhibition or the operator of such a board. However, the exemption does not include dice games, three-card monte, punch board or coin tables. s. 206(4) - creates a summary conviction offence applicable to any one who takes or receive a lot, ticket or other item mentioned in subs. (1). s. 206(5) - provide that any right of property involved in the specific acts relating to lotteries and games of chance is void and is forfeited to the Crown. However s. 206(6) is a saving provision which states that if a person acquires the property as a bona fide purchaser for valuable consideration without notice their rights are protected. s. 206(7) - sets out that application of this section is a foreign lottery. s. 206(8) - sets out additional general exemptions to the operation of this section.

CRIMINAL CODE SECTION	PROVISIONS RELATED TO GAMBLING ¹
207	<p data-bbox="396 275 591 302"><i>Permitted lotteries</i></p> <ul data-bbox="396 331 1338 1058" style="list-style-type: none"> • legalizes creation and operation of lotteries run by any of the bodies specified in s. 207(1)(a) to (d). It also provides for the regulation of such schemes and creates an offence of operating or participating in a lottery not created or run in accordance with s. 207. <ul data-bbox="493 445 1338 1058" style="list-style-type: none"> • 207(1) - permits lotteries to be created 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. The last-mentioned category only applies to lotteries in which the ticket cost no more than two dollars and the prize does not exceed \$500. • 207(1) (e) to (h) - permits persons to do specified activities required to carry out the operation of lawful lotteries under this section. • 207(4) exhaustively defines the term lottery scheme for the purposes of this section and also specifically excludes the activities noted in s. 207(4)(a) to (c) which are dealt with (either by way of prohibition or regulation) in ss. 202 to 206. • 207(5) - clarifies the scope of the exclusion in s. 207(4)(b) in relation to pari-mutuel schemes. • 207(2) - permits terms and conditions to be imposed on a licence under this section to regulate the conduct, management, and operation or participation in a lottery scheme. • 207(3) - makes it an offence to do anything not authorized by this section if the act is done for the purpose of a lottery scheme. It is a summary conviction offence or an indictable offence punishable by up to two years imprisonment if the act is done in relation to the conduct, management or operation of such scheme. It is a summary conviction offence to participate in an unlawful scheme.
208	[Repealed, R.S., 1985, c. 27 (1 st Supp.), s. 32]
209	<p data-bbox="396 1119 591 1146"><i>Cheating at play</i></p> <ul data-bbox="396 1176 1338 1318" style="list-style-type: none"> • This section makes it an indictable offence to cheat at play. The <i>actus reus</i> (the criminal act that, with mens rea, renders one criminally liable) of the offence is to cheat while doing any of the following: playing a game; holding the stakes; or betting. The requisite mental element is the intention of defrauding any person. The maximum sentence upon conviction is two years.

Applying the Common Law

Common Law - The system of laws originated and developed in England and based on court decisions, on the doctrines implicit in those decisions, and on customs and usages rather than on codified written laws. In Canada, it is the legal system of all provinces except Quebec (*Canadian Dictionary of the English Language*).

What is “Charitable Purpose”?

The *Criminal Code* uses various terms whose meaning is important to the administration of gaming activities in the province. However, the code does not provide guidelines on some key terms, such as “charitable purpose,” to which the proceeds raised by charitable gaming activities must be applied.

A common-law guide in this situation is the “Pemsel test” which the Supreme Court of Canada has approved and adopted for use in Canada. The test is derived from an English legal case* and has been used to determine what constitutes “charitable or religious object or purpose.” That test identifies four categories as follows:

1. Relief of poverty
2. Advancement of education
3. Advancement of religion
4. Other purposes beneficial to the community

These criteria have been adopted by the Commission in determining eligibility for gaming event licences.

The fourth category, “other purposes beneficial to the community,” poses the greatest difficulty because such purposes are subject to change with social priorities.

The difficulty was noted by the Bingo Review Committee, chaired by the Hon. Sam Lieberman, retired justice of the Appeal Court of Alberta, in its report of September 1999 entitled *Alberta Bingo Industry Review: Findings and Recommendations of the Bingo Review Committee*. One of committee’s recommendations is: The definition of a charitable organization, or of “charitable purpose or object,” should be examined by a committee of the appropriate provincial agencies, in keeping with the review of such matters now occurring at the national level.

In explaining the recommendation, the Committee notes:

...purposes beneficial to the community may change with social priorities and shifting, shrinking roles of government. Measuring such benefits is difficult because the definition itself is found wanting. In a recent decision, a justice of the Supreme Court of Canada wrote:

* *Commissioners for Special Purposes of the Income Tax v Pemsel*, [189] A.C. 531 (H.L.).

The courts have on several occasions emphasized that the categories of charity are not closed, and that the purposes considered to be charitable at law evolve with social developments. ... This innate flexibility has enabled the courts to illustrate purposes seen as proper objects of charity, having regard to the social needs of the time (*Per Gonthier, J.* (dissenting on other grounds), in *Vancouver Society of Immigrant Minority Women v Canada.*).

The Committee recommended: “Determining the priority of charitable programs and services in a provincial context should rest at the political level and involve the charitable sector itself.” The Committee felt, apart from legal guidelines provided in common law, for example, the Commission (or AGLC) could be guided by practical considerations in issuing gaming licences. It noted:

It may be difficult for the AGLC to say whether an amateur athletic program, for example, is more or less deserving of a bingo licence than a medical, cultural or arts program. However, it is possible for the AGLC to determine the eligibility of each individual organization by examining new, practical criteria, such as proven delivery of services or programs in community, its budget, and need, as recommended in [the Bingo Review Committee’s] report.

C. *Gaming and Liquor Act (Alberta) and Regulation*

Background

The following background discusses the relevant legislation governing gaming activities in general in the province prior to the introduction of the *Gaming and Liquor Act* in 1996.

Interprovincial Lottery Act

Beginning in June 1974, lotteries in the province were operated by the Alberta Division of the Western Canada Lottery Foundation.* That occurred under a licence granted by the provincial ministers responsible for the *Interprovincial Lottery Act*.

The licensee was a partnership of Edmonton Northlands and Calgary Exhibition and Stampede Limited, which operated as an agent of the Government of Alberta. It acted as the provincial marketing office, administering the sale and distribution of lottery tickets, to assist the Corporation as authorized by the Minister for Alberta. The Alberta Division operated under the direction of an eight-person board comprising representatives from the two partners.

The province's lottery fund, to which lottery proceeds were directed, was established under the *Interprovincial Lottery Act*.

In 1991-92, all gaming-related agencies were incorporated under one provincial cabinet minister. Those agencies included Alberta Lotteries, the province's lottery organization that assisted the Western Canada Lottery Corporation, and the Alberta Gaming Commission.

Those entities operated separately and reported to one minister until they were formally amalgamated with other entities, including the Alberta Liquor Control Board, under the new *Gaming and Liquor Act* in July 1996.

Orders in Council

The function of issuing gaming licences and enforcement was authorized by the province through order in council, as permitted under the *Criminal Code*. There was no specific provincial legislation prior to the *Gaming and Liquor Act* that governed licensing or enforcement of gaming activities.

* The Western Canada Lottery Foundation was formed in 1974 by the provinces of B.C., Alberta, Saskatchewan and Manitoba. B.C. withdrew its membership on March 31, 1985 while the other provinces, and the associate members of the Yukon and Northwest Territories, continued to operate together in the sale of lottery tickets. In 1985-86, the name Foundation was changed to Corporation to reflect more accurately the nature of its operation.

In the early 1970's, senior police personnel were designated by order in council to issue gaming licenses. However, they were not required to review the background of organizations to determine if their objectives were in fact charitable or religious and there was no requirement for financial returns.

The authority was transferred to the Lotteries Licensing Unit of the Criminal Justice Section, Attorney General Department, from 1973 to 1976. The unit was formed with two licensing officers who introduced financial returns forms to be completed by each organization following its gaming event. The size of the unit prevented it from auditing operations or to conduct investigations.

The Gaming Control Branch replaced the Lotteries Licensing Unit in 1976. It operated with three sections: Licensing, Audit and Investigations.

In 1981, the Alberta Gaming Commission was formed and assumed responsibility for issuing gaming licences and for developing gaming policy. The Gaming Control Branch retained responsibility for licensed gaming enforcement including licence application review, audit and investigations. The Branch provided technical advice to the Commission on gaming matters and made recommendations to the Commission on eligibility of groups for licences.

Gaming and Liquor Act

In March 1995, the government announced the consolidation of the Alberta Liquor Control Board, Alberta Lotteries, the Alberta Gaming Commission and the Gaming Control Branch under a single administrative and organizational structure, the Alberta Gaming and Liquor Commission.

The newly-formed Commission was given legal force with the passing and enactment of the *Gaming and Liquor Act* in July 1996. The legislation was the first in the province that dealt with both lotteries and gaming activities. The legislation consolidated the authority that previously was granted under the *Interprovincial Lottery Act* and through orders in council.

Specifically the new act repealed the *Interprovincial Lottery Act*.

The *Gaming and Liquor Act* comprises eight parts. The ones most relevant to the licensing policy review are those that relate to gaming, specifically:

- Part 1 regarding the powers, duties and status of the Commission, its board, and financial matters;
- Part 2 regarding gaming and provincial lotteries;
- Part 4 regarding board hearings and sanctions; and
- Part 5 regarding enforcement.

Part 1 - Commission

Section 3 of the *Gaming and Liquor Act* provides the objects of the Commission are to:

- administer the provincial legislation;
- conduct and manage provincial lotteries for the Government of Alberta;
- carry out gaming related functions delegated to it by the Lieutenant Governor in Council under the *Criminal Code* (Canada) or the provincial act;
- to control in accordance with the act the manufacturer, import, sale, purchase, possession, storage, transportation, use and consumption of liquor;
- generate revenue for the Government of Alberta.

The *Gaming and Liquor Act* specifies the Minister responsible for the act may make policies that must be followed by the Commission, the board or both in carrying out their powers and duties under the act.

The act establishes a board whose responsibilities are provided in Section 12 as follows:

- ensuring the powers and duties of the Commission are appropriately carried out;
- establishing the policies of the Commission;
- conducting hearings and making decisions respecting licences and registrations; and
- any function assigned to it under any enactment.

The responsibilities of an appointed chief executive officer of the Commission are set forth in section 18(2), and include

- administration of the Commission;
- ensuring that the policies of the board are implemented;
- advising and informing the board on the operation and affairs of the Commission; and
- performing the duties and exercising the powers assigned to the Commission or to the chief executive officer by any enactment or by the board.

The act establishes a Lottery Fund to be administered by the Commission, its income being revenue from provincial lotteries less prizes. The Commission may use the revenue in the fund to pay retailers' commission, federal taxes and amounts to be paid under federal-provincial agreement "respecting gaming and betting entered into on June 3, 1985, as amended or replaced from time to time."

Part 2 - Gaming and Provincial Lotteries

Part 2 of the act deals with Gaming and Provincial Lotteries.

The act establishes two general types of gaming in the province as follows:

"provincial lottery" means a lottery scheme referred to in section 207(1)(a) of the *Criminal Code* (Canada) that the Government of Alberta is authorized to conduct and manage by itself or in conjunction with the government of another province; ... [s. 1(1)(x)].

The provincial lottery schemes in Alberta are ticket lotteries and electronic gaming devices such as slot machines and video lottery terminals or VLTs.

“gaming activity”- a lottery scheme as referred to in s. 207(1)(b), (c), (d) or (f) of the *Criminal Code* (Canada). [s. 1(1)(h)]

In Alberta, such a lottery scheme is commonly referred to as “charitable gaming” and includes bingo events, casino events, raffles and pull ticket sales.

The act gives the board of the Commission the authority to issue a gaming licence or gaming facility licence as it deems appropriate and to establish conditions for those licences. The specific types of licences that may be issued, and their respective licence fees, are provided in the *Gaming and Liquor Regulation*.

Gaming workers must be registered with the Commission. These refer to people who are paid to assist a gaming licensee in the conduct or management of a gaming activity, other than someone who is paid to sell raffle or pull tickets or otherwise specified in the regulations.

Anyone who deals in gaming supplies must be registered, and the gaming supplies approved, by the Commission. Section 42 provides that the registration of gaming workers and gaming supplies are governed by the regulations.

Section 43 specifies the Commission may conduct and manage lotteries on behalf of the Government either alone or in conjunction with the government of another province.

Video Lottery Terminals

Various sections in Part 2 of the act deal with video lottery terminals. Section 1(1)(hh) provides:

“video lottery terminal” means a computer, a video device or a slot machine within the meaning of section 198(3) of the *Criminal Code* (Canada) that is used to play a game, scheme or plan referred to in section 206(1)(a) to (g) of the *Criminal Code* (Canada).

For legal purposes, the *Gaming and Liquor Act* uses the term video lottery terminal to include a slot machine under the *Criminal Code*.

There is in the province a video lottery terminal that possesses a particular feature that distinguishes it from other electronic gaming devices. That distinction is covered under Section 46.2 which deals with municipal plebiscites held in 1998. Subsection 46.2(5) provides:

In this section, “video lottery terminal” means a video device from which payouts are made by means of paper slips that may be redeemed for cash.

Such an electronic gaming device is located in bars and lounges under agreement between the video lottery terminal retailer and the Commission, and is commonly referred to as a VLT. This meaning distinguishes a VLT from what is commonly referred to as a slot machine in the province, the latter being a machine that pays out in coins dispensed in the machine’s tray and is located in casino facilities and racing entertainment centres (larger prizes are paid by cheque). Other policy-related distinctions between VLTs and slot machines are discussed in this report under the section “Video Lotteries.”

Section 45 of the *Gaming and Liquor Act* prohibits anyone from selling, advertising or distributing lottery tickets in the province unless authorized to do so by the Commission.

Section 46 of the act prohibits the making, selling, advertising or distribution of VLTs unless the terminal is approved by the Commission and the person is registered to deal in VLTs. That section also requires no one may possess a VLT unless it is approved by the Commission and operated in an establishment authorized by the Commission or the person is registered to deal in VLTs or an employee or agent of a person who is thus registered.*

Various sections of the *Gaming and Liquor Act* were amended and passed in April 1999 (Bill 36, the *Gaming and Liquor Amendment Act*) to address the concern that the Commission, based on a court decision, was unauthorized to follow or consider government policy regarding VLT plebiscite votes held in various municipalities across the province. Government had indicated it would honour the wishes of communities that wished to remove VLTs, as expressed through VLT plebiscites.

The legislation authorizes the Commission's board to take and implement direction from the Minister of Gaming.

The Court of Queen's Bench of Alberta granted an interim injunction prohibiting the Commission from disabling or removing VLTs pending the hearings of a constitutional challenge of the legislation. The Commission has complied with that order.

The sections of the *Gaming and Liquor Act* that address the termination of VLT agreements with retailers, and the removal of VLTs from communities that voted by plebiscite in favour of their removal, are the following:

46.1 No action or proceeding may be instituted or continued against the Crown or Minister of the Crown, the Commission, the board or its members, the chief executive officer, inspectors or employees of the Commission based on any claim or cause of action, whether arising before or after the enactment of this section, for compensation, for loss or damages including exemplary damages or for injunctive or declaratory relief, whether based on contract, property, tort, equity, restitution, expropriation or otherwise, for

- (a) the removal of video lottery terminals from establishments;
- (b) the termination or cancellation of agreements with retailers;
- (c) the termination or cancellation of any rights of retailers connected with or arising from agreements with retailers, or
- (d) any act or omission authorized by this Act.

* Alberta courts established case law by clarifying Section 46(2) of the *Gaming and Liquor Act* (Alberta). The courts ruled that it was not an offence to be in possession of a slot machine as long as the slot machine was not being used for the purpose of gambling. This followed from the seizure of slot machines in Alberta.

46.2(1) All agreements between the Commission and retailers respecting video lottery terminals existing immediately prior to the coming into force of this section and any rights of retailers connected with or arising from those agreements are hereby terminated and cancelled in the following municipalities:

- (a) County of Lethbridge No. 26;
- (b) Town of Lacombe;
- (c) Municipal District of Opportunity No. 17;
- (d) Regional Municipality of Wood Buffalo;
- (e) Town of Canmore;
- (f) Town of Coaldale;
- (g) Town of Stony Plain.

(Note: The VLTs in the municipalities identified in section 46.2(1) have not been removed due to matters before the courts. The circumstances and other details of those matters are discussed in this report in the section “Video Lotteries.”)

46.2 (2) The Commission must remove all video lottery terminals from establishments located in the municipalities referred to in subsection (1).

46.2(3) Subject to subsection (4), if the Commission has removed video lottery terminals from a municipality before the coming into force of this section as the result of a vote held in the municipality, the Commission may not

- (a) enter into agreements with retailers respecting the video lottery terminals, or
- (b) place or replace any video lottery terminals in establishments

in that municipality.

46.2(4) The Commission may not, in respect of any of the municipalities referred to subsection (1) and (3), enter into an agreement with a retailer or place video lottery terminals in establishments unless a policy of the Minister under section 6.1 authorizes the Commission to do so.

Parts 4 and 5 - Board Hearings and Sanctions, and Enforcement

The following sections pertain to the lawful seizure of VLTs as well as gaming supplies that have not been approved by the Commission:

91(3) A person whose liquor, containers, video lottery terminals or gaming supplies have been seized under section 92 or 103 may apply to the board for a hearing.

103(1) An inspector who, while carrying out an inspection under section 100, finds any liquor, video lottery terminals or gaming supplies that the inspector believes on reasonable and probable grounds are unlawfully required or kept for unlawful purposes in contravention of this Act or a condition imposed on a licence or registration may immediately seize and remove the liquor and the containers in which it is held or the video lottery terminals or gaming supplies.

Section 113 is the general offence section. It also identifies contraventions not otherwise listed under the regulations to be an offence. The gaming related offences under this section are as follows:

- s. 36 - conduct or manage a gaming activity without a gaming or facility licence;

- s. 40(1) - make, sell, advertise or distribute gaming supplies without being registered or licensed to do so;
- s. 40(2) - possess gaming supplies not approved by the board;
- s. 41 - inducing a breach of contract;
- s. 45 - make, sell, advertise or distribute lottery tickets unless approved by the Commission;
- s. 46(1) - make, sell, advertise or distribute VLTs not approved by the Commission;
- s. 46(2) - possess a VLT not approved by the Commission.

Section 114(1) provides for penalties for individuals convicted under the general offence section. They are liable to a maximum fine of \$10,000 or to imprisonment for a maximum of six months, or both.

Section 114(2) provides for penalties for corporations convicted under the general offence section. They are liable to a fine of not more than \$50,000.

Section 115 provides for penalties of persons convicted of offences under sections 45, 46(1). They are liable to a maximum fine of \$500,000 or to imprisonment for not more than 12 months, or both.

Gaming and Liquor Regulation

The *Gaming and Liquor Regulation* comprises four parts. Two are most relevant to gaming activities, as follows: Part 1 “General Provisions” and Part 2 “Gaming and Provincial Lotteries.”

Part 1 - General Provisions

The first part of the *Gaming and Liquor Regulation* contains four divisions that deal with requirements for applications, including gaming licences; background checks regarding applicants of licences or registrations; requirements for facilities and premises and offences and conditions.

Sections 2 to 8 deal with application requirements. They require that anyone who applies for a licence or registration complete the appropriate documents. The Commission may also require an applicant to publish a notice of the application. Anyone may object to an application or registration, regardless whether it has been published, to the board of the Commission. The board must consider the objection and advise the person who submitted it as to its decision.

Only adults may be eligible for licences or to be registered. Licences may only be issued to individuals who are Canadian citizens or permanent residents.

Various requirements are set forth for corporations or partnerships to obtain a licence or to be registered.

Sections 9 through 13 deal with background checks. The board may refuse to grant a licence or registration if the applicant fails to pass a records check. If within the previous five years prior to the application the applicant has been convicted of specified offences, the person is deemed not to have passed the records check.

Section 13 gives discretion to the board to refuse a licence or registration if it is satisfied the applicant or any of the applicant's employees, associates or anyone else with connections to the applicant, is a detriment "to the integrity or lawful conduct of gaming activities. ..."

Sections 14 and 15 deal with gaming facilities and premises. Anyone who is issued a gaming facility licence or liquor licence must have the right to occupy the facility. The board may establish requirements for facilities or premises that must be met before a facility or liquor licence is issued. Those requirements must be met during the term of the licence.

Sections 16 to 18 deal with offences and conditions. For purposes of gaming, an offence under the regulation is contravention of section 34, allowing minors in a casino facility when a casino is being conducted. Board policies regarding registrations are considered conditions of the registration, a copy of which must be provided to the registrant. Licensees may apply to the board for hearing if the board has imposed a condition on the licence without a hearing.

Part 2 - Gaming and Provincial Lotteries

Part 2 of the *Gaming and Liquor Regulation* contains provisions regarding gaming and facility licences and eligibility requirements for those licences and the registration of gaming workers. Various general provisions are included, such as terms of licence or registration, cancellation of licences, posting of licences, etc.

Section 19 establishes licences for bingo, pull ticket, raffle and casino. Section 20 sets the basic criteria for applicants, that they must be a charitable or religious organization, and satisfy the board the proceeds from the gaming activity will be used for a charitable or religious object or purpose approved by the board.

Section 20.1 allows the board to defer payment of licence fees for a bingo or casino licence until after the licence is issued. Section 21 provides anyone receiving a licence may be required to provide an accounting of the gaming proceeds.

Two types of facility licences are established under section 22: bingo facility licence and a casino facility licence.

Section 23 specifies a bingo facility licence may only be issued to the volunteer executive of a bingo association ("an association of charitable or religious organizations formed for the purpose of conducting gaming activities"). It specifies a casino facility licence may only be issued to an individual, partnership or corporation.

Section 25 establishes classes of registration of gaming workers, those paid to assist a gaming licensee in conducting or managing a gaming activity. Excluded from this definition are those paid to sell pull tickets, raffle tickets or prize bonds; a person paid to manage a raffle in which the total ticket value is \$10,000 or less or a person who works at a licensed gaming activity in a facility not required to be licensed.

Classes of gaming workers are established. They are bingo worker, casino worker, raffle manager and pull ticket manager.

Section 26 provides a gaming worker must have the experience required for the function, and, if an exam is required, achieve the minimum score specified by the board.

Additional classes of registration are specified in section 27, including ones that authorize the registrant to provide gaming workers, authorize a person to deal in approved gaming supplies and authorize a person to deal in approved VLTs.

Sections 28 to 34.1 deal with general matters. They include fees and deposits for conducting background checks (s. 28), term of licence and registration (s. 29), licence or registration cancellation (s. 30), provisions on licence cancellation on dispossession of business (s. 31), provisions on the death of the licensee (s. 32), posting of licences (s. 33), minors in casinos (s. 34) and persons not admitted in licensed facilities (s. 34.1). The last section prohibits a facility licensee from allowing a person convicted under section 209 of the Criminal Code (cheating a play) from entering or remaining in the licensed premises.

E. Summary

The legislation regarding gaming activities are the basis upon which gaming licensing policies are established. It is a matter of legal and public interest that the gaming licensing policies conform to provisions in the *Criminal Code*. The provincial legislation and the regulation set the provisions for gaming in the province of Alberta in conformance with the provisions of the *Criminal Code*.