

**THE ROLE OF LOCAL GOVERNMENT IN GAMBLING  
EXPANSION IN BRITISH COLUMBIA**

by

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## **ABSTRACT**

This thesis examines the role of local governments in British Columbia in gambling expansion, during the period 1994 to 2004. In particular, it tries to explain why municipalities in BC are able to define gaming policy to an extent unparalleled in Canada and posits three reasons for this: 1) the historical roles of BC municipalities, particularly through the Union of British Columbia Municipalities (UBCM), their province-wide association; 2) the role and influence of charitable organizations, who while defending their interests have struck strategic partnerships with local governments; and 3) the increasing reliance on gaming revenues on the part of provincial governments has required partnerships with local governments.

This thesis concludes that while recognizing the limiting constitutional constraints of local governments in Canada, municipalities in British Columbia have nonetheless managed to assert a role in the development of public policy, with gambling policy being a good example of this development.

## **ACKNOWLEDGEMENTS**

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# INTRODUCTION

Over the last decade, the discussion about gambling<sup>1</sup> policy issues in British Columbia (BC) has come to the forefront of public concerns. The casino industry has grown from a small number of charity-casinos holding low stakes, tables-only types of games and functioning a few hours a night, to a situation where 70-table and 1,000 slot casinos are functioning 24 hours a day, and offering high stake gambling opportunities to local gamblers. Events this decade have included the rejection of a massive casino proposal from a Las Vegas casino promoter, the spectacular growth of a small local casino company into one of the most profitable enterprises in Canada and the fall of two provincial Premiers, forced to vacate office, in part, due to controversies surrounding gambling policy. During this period, alliances of both likely and unlikely groups formed in response to proposed gaming initiatives and expansion plans; local and provincial politicians, church groups and community groups were aligned in their opposition to gambling expansion, while bingo charities, organized labour and casino promoters united to provide support for gaming activities. Most significant, however, of the developments this past decade has been the municipalities' successful demand that local interests and powers be integrated into the provincial government gaming policy. It is this last development that will be the focus of this thesis, for despite the significance of these past ten years in terms of public policy there has been little research into this area. This study, therefore, contributes to the body of knowledge, so necessary in the development of

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<sup>1</sup> Gambling and Gaming are used interchangeably in this document, and both refer to the participation in "games of chance" for money.

sound public policy, particularly in relationship to the agenda-setting component of the policy cycle.<sup>2</sup>

This thesis, then, looks at the role of local government in gambling expansion in British Columbia. In particular, it tries to explain why municipalities in BC are able to define gaming policy to an extent unparalleled in Canada and posits three reasons for this: a) the historical roles of BC municipalities, particularly through the Union of British Columbia Municipalities (UBCM), their province-wide association; b) the role and influence of charitable organizations; and c) the increasing government reliance on gaming revenues. Municipalities in British Columbia not only have the right to determine the location of gaming facilities, as recognized in the Provincial *Gaming Control Act* (2002), but also, as signatories to the 1999 Memorandum of Agreement (MOA)<sup>3</sup> with the provincial government, have the right to define the type and scope of gaming in their jurisdictions. This same agreement sanctions a revenue-sharing formula that gives a significant portion of the casino revenue to municipalities in which casinos are located.<sup>4</sup>

Chapter One outlines the methodological and research design of this thesis and also provides a theoretical and conceptual framework related to the development of public policy, and the nature of the policy cycle with a particular focus on the agenda-setting stage. Different models of agenda-setting are described. The theoretical contributions of Michael Howlett and M. Ramesh are central to this analysis, particularly their assessment of the different forces that influence policy development.<sup>5</sup> Some views on the role of gambling in society are also provided, particularly as analysed by Peter Collins.<sup>6</sup> Supporting and opposing arguments are presented, and different conceptual

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<sup>2</sup> A more detailed discussion on the stages of the policy cycle is found in the theoretical and conceptual component of this thesis.

<sup>3</sup> Memorandum of Agreement signed between the Union of British Columbia Municipalities (UBCM), and provincial government on June 17, 1999

<sup>4</sup> Municipalities hosting “community casinos” receive ten percent of the net revenue, and municipalities hosting “destination casinos” receive 1/6 of the net revenue. This is done through the signing of “Financial Host Agreements” for each individual casino.

<sup>5</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995.

<sup>6</sup> Peter Collins, *Gambling and the Public Interest*, Praeger Publishers, 2003.

approaches to understanding gambling development are commented upon. This Chapter also has a brief review of the most relevant literature, particularly in the Canadian context.

Chapter Two provides information on the legal and historical background of the gambling industry in Canada. Amendments to the *Criminal Code of Canada* in 1969 are presented as a pivotal point in the development of lotteries, casinos and bingo types of gaming. A summary of the inventory of the industry in Canada is presented, and the importance of government revenue derived from this industry is analysed, particularly as it developed through the 1990's. Social issues associated with gambling are also analysed, with a particular focus on problem gambling and its effects on society. The development of gaming in British Columbia is also an important component of this Chapter, and finally, a brief description of legislation and the role of local governments in other provinces is provided. The unique model in existence in British Columbia is highlighted.

Chapter Three discusses the historical relationship between the provincial government and local municipalities. Municipalities are now formally recognized as a third order of government.<sup>7</sup> In the late 19<sup>th</sup> century and early 20<sup>th</sup> century, local municipalities and townships, physically isolated within a politically young province, capitalized on provincial turmoil to define their relationship with the provincial government. Barely 30 years after British Columbia had gained provincial status, municipalities joined together to form a very powerful political association - the Union of British Columbia Municipalities (UBCM), - which they have successfully used to lobby and pressure the provincial government on a variety of local government issues. The role of UBCM is analysed and some of the historical highlights of the organization are provided. An acknowledgment of the different perspectives on the relevance of UBCM is also discussed.

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<sup>7</sup> Protocol of Recognition Amongst Government of British Columbia and UBCM, September 18, 1996

Chapter Four explores the significant role that charitable organizations, quite often in close association with local municipalities, have played in legitimizing gambling activities. Charitable organizations were the first to receive licenses to engage in casino and commercial bingo gaming in British Columbia. Both an historical and legal perspective about the charities involvement with gambling is provided. A brief analysis on the role of charities in society is also commented upon in this Chapter, as well as an analysis on the advantages and disadvantages of reliance on gaming dollars is provided. Colin Campbell's<sup>8</sup> view that charities have been primarily reactive to gaming expansion is discussed.

Chapter Five discusses the significant revenues available to governments through gaming and their increasing dependence on this revenue. As have most provincial governments in Canada, the provincial government in British Columbia has come to rely on revenues from the gambling sector to help increase the provincial treasury, without having to increase traditional taxes, and to achieve this task they have needed the political consent of the municipalities. This Chapter provides an in-depth analysis of this reality and highlights some issues that may require further analysis, such as the governance issues surrounding Internet gambling, and theoretical discussions about the redefinition of the role of the state and the importance of government.

Chapter Six presents the particular experience of the City of Vancouver as an example of how a municipality in British Columbia has been able to develop its own gambling policy, including the first casino regulations contained in a land use by-law in the province. The historical progression of the City, from its rejection of the proposed casino at Vancouver's waterfront in 1994 to its ultimate acceptance and support of gambling expansion in two different venues, the casino at the Plaza of Nations and Hastings Racetrack, is also analysed. The strategy of developing local by-laws and guidelines, and the consequential court challenges are also discussed. The interaction of

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<sup>8</sup> Colin Campbell, "Non-profits and Gambling Expansion: The British Columbia Experience," Canada West Foundation, December 2000

the City with business, charities, and social groups - including neighbourhood-based community groups, is described and analysed.

This thesis concludes that municipalities, acting as agents outside the provincial government decision-making circle, inserted themselves into the provincial government agenda-setting process to the extent that they successfully influenced provincial policy to their benefit. During this process – which unfolded over a ten year period – municipalities made alliances with charitable and community organizations, asserted their land-use rights through zoning by-laws, harnessed the political clout of the UBCM and responded to provincial challenges in court. Municipalities were further abetted in their goal by the provincial government’s desire for and ultimate reliance on increased revenues; a desire which ultimately necessitated a cooperative and conciliatory approval to the municipalities, and which resulted in a gaming model that is unique in Canada.

# **CHAPTER ONE: METHODOLOGY, RESEARCH DESIGN, THEORETICAL AND CONCEPTUAL FRAMEWORK**

## **(1) Methodological and Research Design**

The main research question and the central focus of this thesis is an examination of the reasons why municipalities in British Columbia are able to define gaming policy to an extent unparalleled in Canada. In answering this central research question, three main hypotheses are advanced. The first reason is that municipalities in BC have been allowed, by design and by de facto, to play a significant role in the definition of public policy in areas of municipal interest. The second reason is that municipalities in BC have counted on the support and collaboration of local charities, which in their own right have played a significant role in the legitimization and implementation of gambling activities. The third reason is that the provincial government, in its search for additional revenue, has come to rely on gambling proceeds and has needed the municipalities' collaboration. The particular case of the City of Vancouver is analysed. In Vancouver, we see a convergence of the above three elements, leading to a situation whereby both the provincial government and the local government have become partners in the expansion of the gambling sector.

A review of existing literature in this area revealed that while some important work has analysed the development of gambling in Canada, little has been done on the issue of the role of local governments in relationship to gambling expansion. References

to some of the existing body of work are provided throughout this thesis. A brief summary of some of the literature that contributes the most relevant Canadian context is provided below.

Colin Campbell, in his Doctoral Thesis *Canadian Gambling Legislation: The Social Origins of Legalization* (1994),<sup>9</sup> conducts an important examination of the historical origins of gambling in Canada. Most significantly, Campbell's research discusses the developments of the horse racing industry over the last one hundred years, the role of charities, and the changes to the *Criminal Code of Canada*, the main piece of legislation regulating this industry. One of the central arguments in Campbell's dissertation is the assertion that "early accommodations to the horseracing sector allowed the moral, political, economic, and legal context for later amendments to the *Criminal Code of Canada* regarding other forms of gambling."<sup>10</sup> Campbell conducts an in-depth analysis of developments during the 1900 to 1925 period.

The research conducted by Jason Azmier from the Canada West Foundation, a "non-partisan" think tank based in Calgary, has contributed significantly to the understanding of the economic and social implications of gambling in Canada. Studies such as "Triumph, Tragedy or Trade-Off? – Considering the Impact of Gambling," 2001,<sup>11</sup> explore many of the contradictions associated with this industry. Similarly, the "Gambling in Canada 2001: An Overview" also provides an extensive inventory of gambling in Canada. Finally, the "Ethics of Charitable Gambling," 2001,<sup>12</sup> provides a good summary of the charities' involvement with gambling in Canada.

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<sup>9</sup> Colin Campbell, *Canadian Gambling Legislation: The Social Origins of Legalization*, Doctoral Thesis, School of Criminology, Simon Fraser University, June 1994.

<sup>10</sup> Colin Campbell, *Canadian Gambling Legislation: The Social Origins of Legalization*, Doctoral Thesis, SFU, School of Criminology, 1994, p.iii.

<sup>11</sup> Jason Azmier, "Triumph, Tragedy or Trade-Off? – Considering the Impact of Gambling," Canada West Foundation, August, 2001.

<sup>12</sup> Jason Azmier, "The Ethics of Charitable Gambling," Canada West Foundation, 2001.

Colin Campbell and John Lowman's anthology of gambling issues in Canada is provided in *Gambling in Canada: Golden Goose or Trojan Horse?* (1989).<sup>13</sup> This is a good compilation of papers presented at the First National Symposium on Gambling in Canada, held at Simon Fraser University in 1988. While a wide variety and diversity of issues are discussed, including a number of articles related to the costs and benefits of gambling, no specific analysis of the role of local government is provided. This thesis seeks to fill some of this gap.

Another important compilation of articles on gambling policy, which includes some interesting articles of relevance to the Canadian context, is found in William Eadington and Judy Cornelius's compilation of papers presented at the 9<sup>th</sup> International Conference on Gambling and Risk taking, in June of 1994 in Las Vegas, Nevada. The publication *Gambling: Public Policies and the Social Sciences* (1997),<sup>14</sup> includes articles on the spread of gambling, gambling in new jurisdictions, Indian gaming, the history and culture of gambling, lotteries, and legal and regulatory issues. This compilation of articles according to Eadington, help us to perhaps better understand the "fundamental question" related to gambling, and that is: "What is the appropriate presence and role of gambling in society?" This thesis does not, however, seek to answer the important question of the appropriate role of gambling in society, but rather seeks to examine society's response to gambling and the role of local governments in shaping that response.

An important resource in understanding the role of local governments in Canada and in British Columbia is found in Richard Tindal and Susan Tindal's *Local Government in Canada* (2004),<sup>15</sup> where the authors provide an overview of local government developments across Canada and analyse the different roles they fulfill, including service provision and policy development. The most recent edition of their classic text expands this discussion by including an additional chapter on municipal

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<sup>13</sup> Colin Campbell and John Lowman, (eds.), *Gambling in Canada: Golden Goose or Trojan Horse?* School of Criminology, Simon Fraser University, 1989.

<sup>14</sup> William Eadington and Judy Cornelius, *Gambling: Public Policies and the Social Sciences*, Institute for the Study of Gambling and Commercial Gaming, University of Nevada, Reno, 1997.

<sup>15</sup> Richard Tindal and Susan Tindal, *Local Government in Canada*, 6<sup>th</sup> Edition, Thomson Nelson, 2004.



policy making, and the constraints and the complexities associated with it. It also addresses issues such as economic influences, interests groups, and the sometimes paternalistic approach of provincial governments.

Author Robert L. Bish, in his *Local Government in British Columbia* (1987),<sup>16</sup> provides perhaps, the best account of the role of local government in British Columbia, including an historical perspective, as well as an analysis of the structure and role of local governments, including municipalities, regional districts, and special purpose governments such as School Districts, Hospital Districts, The Islands Trusts, and Local Areas. Central to Bish's study is an assertion of the tremendous importance of local governments as a major component of British Columbia's public sector, followed by a recognition of the dual role performed by local governments, whereby they are administrative extensions of the provincial government as well as "mechanisms through which local residents can undertake preferred collective activities."<sup>17</sup> It is in this last role, where this thesis seeks to expand the body of knowledge of the local government as an agenda setter in the evolution of public policy.

Authors Katherine Graham, Susan Phillips, and Allan Maslove, in their *Urban Governance in Canada* (1998),<sup>18</sup> present an analysis of contemporary challenges facing local governments in Canada, including issues of representation, resources and urban restructuring. Central to their understanding of cities in Canada, is the fact that urban governance is an evolutionary process, where economic, political, and ideological forces are at play. Of particular interest, is the authors' analysis of the role of social groups, or grass-roots organizations, in the setting of agendas for local governments. The interaction of local governments with groups such as issue-oriented groups, NIMBY<sup>19</sup> organizations, and business organizations are a relevant part of their analysis. The understanding of

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<sup>16</sup> Robert L. Bish, *Local Government in British Columbia*, UBCM and School of Public Administration, University of Victoria, 1987, 1990, 1997.

<sup>17</sup> Ibid. p.4

<sup>18</sup> Katherine Graham, Susan Phillips, and Allan Maslove, *Urban Governance in Canada*, Harcourt Canada, 1998.

<sup>19</sup> NIMBY: Not In My Back Yard.

these dynamics is an important component of this thesis, particularly as they relate to the experiences of the City of Vancouver.

In addition to reviewing relevant literature, other data and information gathering techniques utilized in this thesis involve the analysis of policy reports and gaming data, a review of archival material, particularly from the City of Vancouver, reviews of periodicals and magazines, and visitations to relevant Internet sites. Also, twelve interviews were conducted with individuals from the following groups: former provincial elected officials; local government elected officials, current and former; senior provincial and local government public servants; senior official from the BC Lottery Corporation; casino operators; and charity representatives. The interviews were semi-structured and the questions posed to the interviewees were divided into two categories: comments on the specific aspects of their involvement with gambling policy (i.e. regulator, operator, legislator), and feedback on the hypotheses of this thesis.

This thesis' conclusion was arrived at after a thorough analysis of the literature, documents, and opinions voiced by those interviewed. The ability to analyse a single municipality as the place where the elements of the hypotheses were tested was conducive to a sound conclusion. The following section provides more detailed information on the theoretical and conceptual framework utilized in this thesis.

## (2) Theoretical and Conceptual Framework

*“Good public policy – which is sorely needed as gambling spreads – can be a natural by-product of the process of expanding our base of knowledge about gambling in many directions. Good public policy – in terms of finding the appropriate presence and role of gambling in society – is a responsibility shared by all concerned participants in the gambling game. Providing the base of knowledge is a most challenging but most important task.”*

Bill Eadington<sup>20</sup>

Increasingly, both the provincial government and local governments in British Columbia are playing a major role in the development of gaming policy. The local government role – which is the main focus of this study – is to be understood not only as one which ensures the provision of traditional municipal services, and facilitates land use decisions, which are typical to the functioning of a local government, but also as one which decides policy matters such as how best to use gambling revenues, and how to assess and deal with social and economic impacts that arise from the expansion of this industry.

Government’s role in defining public policy on gambling issues is at the very core of what is understood as public policy. Howlett and Ramesh in their *Studying Public Policy* (1995), refer to Thomas Dye as having provided, perhaps, the most simplified definition of what constitutes public policy: “Anything a government chooses to do or not to do.”<sup>21</sup> Imbedded in this definition is the understanding that government is indeed the agent of public policy, which means that decisions made by other groups or individuals, like business associations, charities, social groups or individuals, are not public policy.<sup>22</sup> Other groups or individuals can certainly influence the government’s agenda, and, as this study will attempt to demonstrate, this has certainly been the case in the development of gambling policy.

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<sup>20</sup> William Eadington, *Gambling: Public Policies and the Social Sciences*, p.8

<sup>21</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.4

<sup>22</sup> *Ibid.*, p.5

A more precise and perhaps sophisticated definition of public policy is provided by William Jenkins (as quoted in Howlett and Ramesh), who indicates that public policy is “a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should, in principle, be within the power of those actors to achieve.”<sup>23</sup> This definition acknowledges the limitations that the decision maker may have; this is a clarification of significant importance in understanding the public policy role of municipalities and their limited powers, which are explored in detail in the background chapter (Chapter Two) of this thesis.

The understanding of the development of public policy as a process is further described by author John Kingdon (*Agendas, Alternatives, and Public Policies*, HarperCollins College Publishers, Second Edition, 1995), who views the public policy making process as having four basic components, namely: 1) the setting of the agenda, 2) the specification of alternatives, 3) a choice, and 4) the implementation of the decision.<sup>24</sup> This understanding is not dissimilar to the Howlett and Ramesh description of the stages in the policy cycle, which they describe as having five different stages: 1) agenda setting, 2) policy formulation, 3) decision making, 4) policy implementation, and 5) policy evaluation.<sup>25</sup> The five different components of this particular model are described as:

- *Agenda Setting* refers to the process by which problems come to the attention of governments;
- *Policy Formulation* refers to the process by which policy options are formulated within government;
- *Decision Making* refers to the process by which governments adopt a particular course of action or non-action;
- *Policy Implementation* refers to the process by which governments put policies into effect; and

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<sup>23</sup> Ibid., p.5

<sup>24</sup> John Kingdon, *Agendas, Alternatives, and Public Policies*, HarperCollins College Publishers, Second Edition, 1995, p.3

<sup>25</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.11

- *Policy Evaluation* refers to the processes by which the results of policies are monitored by both state and societal actors, the result of which may be re-conceptualization of policy problems and solutions.<sup>26</sup>

This analytical model of policy cycles provides a good framework for understanding the development of gaming policy in British Columbia, particularly in reference to the agenda setting process, which is the component of the policy development process on which this thesis is mostly focused. In summarizing the various theories on how issues appear on the governmental agenda for action, Howlett and Ramesh list three different analyses of policy development and the forces that influence it: economic and technological determinism, the interplay of politics and economics, and ideas and ideologies.<sup>27</sup>

*The economic and technological determinism* concept implies that “public policies originate in the level of ‘development’ of a society, and that particular sets of problems are common to states at similar levels of development.” Howlett and Ramesh point out that “In its extreme form this line of analysis led to the emergence of the *convergence thesis*,”<sup>28</sup> which argues that as states develop; they “tend to converge towards the same policy mix.”<sup>29</sup> According to this analysis, the development of welfare policies is a clear example on how states with similar levels of economic wealth and technological development emerge with similar policy responses.

Colin Bennett in his article “What is Policy Convergence and What Causes It?” further defines policy convergence as:

Policy convergence probably means one of five things. First, it can signify a convergence of *policy goals*, a coming together of intent to deal with common policy problems. Secondly, it can refer to *policy content*, defined as the more formal manifestations of government policy – statues, administrative rules, regulations, court decisions, and so on. Thirdly, there may be a convergence on *policy instruments*, i.e. the institutional tools available to administer policy whether regulatory, administrative or judicial. Fourthly, convergence may occur

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid., pp.105-109

<sup>28</sup> Ibid., p.105

<sup>29</sup> Ibid. Howlett and Ramesh referencing Colin Bennett p.106

on *policy outcomes*, impacts or consequences – the results (positive or negative, effective or ineffective) of implementation. Finally, there may be a convergence of *policy style*, a more diffuse notion signifying the process by which policy responses are formulated (consensual or conflictual, incremental or rational, anticipatory or reactive, corporatist or pluralist, etc.).<sup>30</sup>

Although Bennett does caution that these distinctions “tend to slice policy making into overly mechanistic and linear stages and are probably insensitive to the shifting and interactive processes of feedback that shape policy content,” they are, nonetheless, useful here in analysing the “convergence towards the same policy mix,” that provincial gaming policy represents. Gaming expansion in Canada has often been justified on such a convergence; as gaming is expanded in neighbouring jurisdictions, whether at the provincial or local level, this has been viewed as partial justification for expanding as well. This became apparent during interviews with a number of elected officials in the Lower Mainland. Mayor Larry Campbell from the City of Vancouver, for example, acknowledged that the proximity of slots in neighbouring municipalities, coupled with the provincial government’s ability to authorize relocation of a casino from one municipality to another, were some of the determinant factors in Vancouver’s ultimate decision to allow slots.<sup>31</sup>

*The interplay of politics and economics* concept as a policy determinant argues that both political and economic factors must always be studied together when analysing the origins of and influences on policy development. Howlett and Ramesh acknowledge, however, that scholars have developed different versions of this understanding on how agendas are set. These range from the idea of political-business cycles developed by Bruno Frey,<sup>32</sup> who argues that business cycles could be altered by political interference, to a more holistic concept of political and economic relationships, where it is argued that

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<sup>30</sup> Colin Bennett, “What is Policy Convergence and What Causes It?,” *British Journal of Political Science*, Vol. 21, No 2 (Apr., 1991), p. 218

<sup>31</sup> Interview with Larry Campbell, current Vancouver Mayor, November 10, 2004.

<sup>32</sup> Bruno S. Frey, “Politico-economic models and cycles,” *Journal of Public Economics*, Volume 9, Issue 2, April 1978, pp. 203-220

the ideology of the government in power may respond differently to social pressures.<sup>33</sup> It is interesting to note that in Canada, the push for gambling expansion has come from all sectors of the political spectrum. It was under New Democratic Party (NDP) leadership that the Ontario government promoted Casino Windsor in 1994, whereas in Alberta it was a Conservative government, which created a vast Video Lottery Terminals (VLT) program in 1995. Similarly, here in B.C., while it was an NDP government that introduced slot machines in 1997, it is the governing BC Liberals, in power since 2001, who have doubled the amount of gaming in the province.<sup>34</sup>

*The Ideas and Ideology* policy determinant implies that the ideas held by individuals influence significantly, the decisions they make.<sup>35</sup> Howlett and Ramesh argue that the individual and collective set of beliefs and attitudes about the world influence political decisions, and that “this set of ideas or ideologies, therefore, can be construed to have a significant impact on public policies, for through these ideational prisms individuals conceive of social or other problems that inspire their demands for government action.”<sup>36</sup> In practical terms this may mean that policy makers are also driven by subjective or personal considerations in the enunciation of how a problem is created, and therefore the solution could be manipulated to fit this understanding. The authors refer to Deborah Stone’s<sup>37</sup> view that “agenda setting usually involves constructing a ‘story’ of what caused the policy problem in question.”<sup>38</sup> In the case of the development of gambling policy at the local level, this could have been the case, in the mid 1990’s (Vancouver in particular), where worries about the ills associated with gambling addiction and the potential for criminal activities were in part responsible for early municipal opposition to gaming expansion.<sup>39</sup>

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<sup>33</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.108 referencing Bruno S. Frey, “Politico-economic models and cycles,” *Journal of Public Economics*, Volume 9, Issue 2, April 1978, pp. 203-220

<sup>34</sup> The doubling of gaming activities in the province is happening despite the fact the BC Liberal ‘New Era’ document promised no expansion of gaming. There were 2,200 slots in 2001 and 5,500 in December, 2004.

<sup>35</sup> Howlett and Ramesh, p.109

<sup>36</sup> Ibid.

<sup>37</sup> Deborah A. Stone, “Causal Stories and the Formation of Policy Agendas,” *Political Science Quarterly*, Vol. 104, No. 2 (Summer, 1989), 281-300

<sup>38</sup> Howlett and Ramesh, p.110 citing Deborah A. Stone’s, p.295

<sup>39</sup> Interview with Jennifer Clarke, former Vancouver City Councillor, September 2, 2004.

This thesis attempts to demonstrate that some of the principal agents for setting the agenda on gaming expansion have been groups outside the provincial government, most significantly, local governments, and, to a lesser extent, local charities. (see Chapter Four). The theoretical framework for agenda setting mentioned by Howlett and Ramesh, when referencing the agenda-setting model developed by R. Cobb, J.K. Ross, and M.H. Ross,<sup>40</sup> indicates that typically in the agenda process, there are three models or basic patterns of agenda setting: “the outside initiation model, the mobilization model, and the inside initiation model, each associated with a particular type of political regime.”<sup>41</sup>

*The outside initiation model* is where the agenda setting is driven by groups outside government, who can articulate a grievance or identify a problem, and are able to set the agenda through direct pressure to government representatives, and sometimes utilizing alliances with other social groups.<sup>42</sup> Author John Kingdon, who presents a similar theoretical model lists five different types of groups: interest groups; academics, researchers, and consultants; the media; election-related participants; and public opinion.<sup>43</sup> All of these groups can (and often do) exercise significant pressure on government to have their agenda considered – whether they represent a union, a research institute or a political party. A clear example in terms of gambling policy, where this outside initiation model has been successfully applied, is found in the City of Vancouver, where local bingo charities created an alliance with casino operators and the racetrack’s employees union, to lobby and advocate for gaming expansion at the racetrack and at a local casino.<sup>44</sup>

*The mobilization model* describes how issues are “simply placed on the formal agenda by the government with no necessary preliminary expansion from a publicly

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<sup>40</sup> Roger Cobb, Jennie-Keith Ross, and Marc Howard Ross, “Agenda Building as a Comparative Political Process,” *The American Political Science Review*, Vol. 70, No. 1 (Mar., 1976), 126-138

<sup>41</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.113

<sup>42</sup> Ibid.

<sup>43</sup> John Kingdon, *Agendas, Alternatives, and Public Policies*, pp. 46-65

<sup>44</sup> This activity relates to two rezoning proposals in front of Vancouver City Council to allow slot machines in Vancouver (see Chapter Six). Interview with Wendy Thompson, Planet Bingo, September 21, 2004.



recognized grievance.”<sup>45</sup> This is a situation where typically, political leaders in government may develop a particular policy without significant public involvement at first. It could be a policy issue that is debated within government at length, but is only when seeking support for implementation, or needing to appease public opinion after the fact, that the policy is exposed fully.<sup>46</sup> Alan Howard, in his scathingly tongue-in-cheek essay, “The Great Participation Fallacy”<sup>47</sup> is scornful of the “bogus camaraderie” that such false debates and consultation sessions engender and argues – with Swiftian clarity – for an alternate approach; “instead of arguing endlessly about participation, it would be better if all concerned recognise the futility of it and agreed to go back to its well-tried, time honoured predecessor – confrontation.” Howard’s point being that the confrontational model at least provides for clarity of positions and alliances.

The BC provincial government’s decision to allow bingo halls to have slot machines comes to mind as an example of the mobilization model approach. The policy decision, which would have significant repercussions for local governments and charities, was casually announced by the Minister in charge of gaming at a press conference in the interior of the province.<sup>48</sup> It is interesting to note that the Minister’s announcement occurred the very same evening that Vancouver City Council approved a casino expansion at Plaza of Nations in Vancouver’s downtown. The Vancouver bingo charities believing themselves to be prohibited from operating slots had supported the proposal for a local casino development with slot machines, in return for a negotiated provision for a new bingo hall.

*The inside initiation model* is where “influential groups with special access to decision-makers initiate a policy and do not necessarily want it to be expanded and contested in public.”<sup>49</sup> Typically this is an approach that is initiated by a group close to

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<sup>45</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.114

<sup>46</sup> Ibid.

<sup>47</sup> Alan Howard, “The Great Participation Fallacy”, *The Planner*, September 1976, p.6

<sup>48</sup> Press conference given by Rich Coleman, BC’s Solicitor General and Minister responsible for gaming, in Penticton, on January 21, 2004.

<sup>49</sup> Michael Howlett and M. Ramesh, *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 1995. p.114

government or a government agency, and the policy proposal is usually kept away from the public eye due to technical or political reasons. Issue identification and solutions are enunciated simultaneously. No efforts are made to truly involve the public.<sup>50</sup> Echoes of this are found again in Alan Howard's essay "The Great Participation Fallacy" where he lists "twelve basic anti-participation ploys" of which the first is "Act Now-Argue Later." A good example of this approach, perhaps, is presented by the provincial government's unilateral and undebated decision to allow liquor on gambling floors in British Columbia's gaming facilities, thereby reversing a long term ban on liquor at gaming facilities.<sup>51</sup>

British Academic Peter Collins, in his study *Gambling and the Public Interest* provides another important component of the theoretical framework that guides this study.<sup>52</sup> Professor Peter Collins acknowledges that gambling is a very controversial policy issue where a wide variety of arguments, judgements and claims are advanced. One methodological approach to understanding people's positions on gambling issues, according to Collins, is found in the philosophical writings of Hume and Kant,<sup>53</sup> where three types of judgements or claims are categorized. These are:

*analytic claims* where the truth or falsity of what is claimed depends on the meaning of terms; *empirical claims* where truth or falsity depend on the facts of experience, on the way the world as a matter of fact is regardless of how we might like it to be; and *normative claims* which appeal to norms or principles or ideals and purport to tell us how the world ought to be regardless of how it in fact is.<sup>54</sup>

All of these categories play a significant role in the discussions surrounding policy development on gambling issues.

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<sup>50</sup> Ibid.

<sup>51</sup> BCLDB Operational Bulletin 04-02, liquor Licensing for Casinos and Commercial Bingo Halls. Part of the rationale behind this policy change relates to the desire on the part of casino operators, to develop a "level playing field" with other jurisdictions (e.g. Washington State) where liquor is available on gaming floors.

<sup>52</sup> Peter Collins, *Gambling and the Public Interest*, Praeger Publishers, 2003.

<sup>53</sup> Peter Collins cites Immanuel Kant (1787), *Critique of Pure Reason*, translated by Paul Guyer and Allan Wood, Cambridge University Press, Cambridge, UK, Second Edition, 1998, pp.136-146

<sup>54</sup> Peter Collins, p.4

A good example of an analytical discussion can be found in the argument about whether gambling revenue collected by government is a tax or not. Collins argues that the answer to such a question very much depends on our definition of both “gambling” and “taxation.”<sup>55</sup> The fact that governments raise money from lotteries, which is a form of gambling, and use it for government purposes, make it a form of taxation, despite any efforts on the part of those who want to disassociate themselves from the perceived negative connotation of taxes.<sup>56</sup> Similarly, casino operators may want to claim that their business is not “gambling” but rather “gaming,” and therefore linking their activity to a perceived more acceptable behaviour like entertainment and thrill seeking activities.<sup>57</sup> Collins warns us about the merits of causal empirical statements, an example of which would be “if problem gambling exists in places where gambling is legal, we should conclude that gambling should be banned.”<sup>58</sup> We do not know for sure, argues Collins if that would solve the issue. Gambling can just move underground. Before reaching conclusions, this empirical matter would require further study.<sup>59</sup> Collins also argues that normative or moral claims do have a place in the development of public policy, but those who hold those views, need to defend those claims with rational arguments and avoid discriminatory practices. “Merely asserting one’s views does not make it true.”<sup>60</sup>

Societal views on gambling issues usually have guided the role of government in this policy area. Historically, governments have adopted five different positions in respect to gambling:

*Gambling is a vice.* It is the business of government to promote virtue and to eradicate vice. Therefore, it is the business of government to stamp out gambling.  
*Gambling is undesirable.* The moral and material costs of enforcing the prohibition of gambling are unacceptably high. Therefore, government should do what it can to contain and discourage gambling.  
*Gambling is a harmless pastime for most people.* Government should therefore treat it as a normal part of the entertainment industry except to the extent that

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<sup>55</sup> Peter Collins argues that government gambling revenue is indeed a form of tax, p.4

<sup>56</sup> Peter Collins. P.5

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., p.6

special measures are needed to keep the industry crime-free and to deal with the dangers of addiction.

*Gambling is a good way for governments to raise money for public interest projects.* Therefore, an abnormally large share of gambling revenues should accrue to government and gambling should either not be discouraged or should be encouraged.

*Gambling is a good way for a jurisdiction to earn money from foreigners.* Therefore, gambling should be treated as an export business – like tourism.<sup>61</sup>

The notion of gambling as a vice is still a very popular view of this activity. It is a prevalent view in Islamic countries and some state and local jurisdictions in North America (e.g. Utah).<sup>62</sup> Examples of gambling as an undesirable activity, according to Collins, are many states in the United States where while lotteries are tolerated, machine type of gambling is prohibited.<sup>63</sup> The view of gambling as a harmless pastime is common in North America, Europe and Australia. It requires a highly regulated model, where minors are prohibited from gambling and programs for treating problem gamblers are available.<sup>64</sup> The view of gambling as a good way for governments to raise money for public interest projects is common in most countries where national lotteries or state/provincial lotteries are available, which is the case in most Canadian provinces.<sup>65</sup> The last view, of gambling being a mechanism to attract visitors, made Monte Carlo the centre for casino gambling in Europe during the 19<sup>th</sup> century, and is the prevalent policy in Nevada.<sup>66</sup> In summary, most jurisdictions in North America have adopted public policy perspectives based on the last three understandings. Not all jurisdictions, however, are in a position to take advantage of foreigners or visitors from other jurisdictions.

Peter Collins has also developed a very profound analysis on the different reasons and approaches taken by both gambling opponents and gambling advocates advancing their views on this important policy area. Six different arguments advocating for gambling to be declared illegal are analysed by Collins. These six views indicating that

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<sup>61</sup> Ibid., p.7

<sup>62</sup> Ibid. No gambling is allowed in the State of Utah.

<sup>63</sup> Ibid., p.8

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid., p.8

gambling should be illegal are: “the enforcement of morality argument; the paternalist argument; the human costs argument; the social costs argument; the democratic argument; and the practical difficulties argument.”<sup>67</sup> Many of these arguments were presented during the different stages of gaming expansion in British Columbia, and in particular during the Vancouver public hearings regarding the introduction of slot machines in 2004: “the proposed location will bring in people who would otherwise not consider gambling”; “gambling addictions can be devastating to families”; “gambling addictions require even more intense treatment than drugs or alcohol”; “it is a sad situation that non-profit groups and charities have to run after gaming revenues because government funding is no longer there.”<sup>68</sup> In analysing the arguments in favour of legalized gambling, Collins argues:

The positive case for having a legal gambling industry is composed partly of utilitarian considerations about what as a matter of empirical fact will make for the greatest good or happiness of the greatest number of people, and partly of considerations relating to two absolute moral principles, namely, the requirements of justice and the right to liberty.<sup>69</sup>

Again, many of these arguments were also present during the many debates surrounding gaming expansion in Vancouver and in the province: “majority of people who frequent the track and casinos are simply regular people who choose to spend their free time and entertainment dollars in that activity”; “people have the right to choose how to spend their time and money”; “the track is a unique and vibrant part of the city's fabric.”<sup>70</sup> Collins goes on to suggest a number of strategies for appropriate regulation of this industry. Although an important element in any discussion of this industry, regulation is, nonetheless, beyond the scope of this thesis.

Another important theoretical approach that is integral to this thesis is found in Patrick Smith and Kennedy Stewart's analysis of the increasingly significant public

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<sup>67</sup> Ibid., pp.28-40

<sup>68</sup> City of Vancouver, Public Hearing Minutes for Plaza of Nations Casino, January 20, 21 and 22, 2004 and Public Hearing Minutes for Hastings Racecourse, July 15, 19, 20 and 21, 2004.

<sup>69</sup> Ibid., p.42

<sup>70</sup> City of Vancouver, Public Hearing Minutes for Plaza of Nations Casino, January 20, 21 and 22, 2004 and Public Hearing Minutes for Hastings Racecourse, July 15, 19, 20 and 21, 2004.

policy role of local governments despite their constitutional constraints. The “mushy middle” thesis refers to “the capacity of local governments to act despite constitutional and statutory inferiority.”<sup>71</sup> Smith and Stewart assert that local governments in British Columbia, and Vancouver in particular, have managed to proactively give themselves “considerable room” and perhaps carve out important pieces of public policy.<sup>72</sup> Smith and Stewart argue that often this is accomplished by pure sheer will:

The reality is – and indeed, has been for some time – that local governments are often more limited by their own lack of imagination, political will or capacity to act as much as by either strict constructionism or constitutional and legislative hindrances of senior jurisdictional authority. [Though here, money and revenue-raising capacity continue to matter.]<sup>73</sup>

Smith and Stewart are not alone in understanding power relationships in this fashion. Paul Villeneuve and Anne-Marie Séguin, referencing Michel Foucault state, “strictly speaking, power is not possessed, it is exercised.”<sup>74</sup> Smith and Kennedy, however, while acknowledging the Swainson Rule that “both levels of government have the capacity to frustrate the other, but neither benefit from such,” present the Smith Corollary to this which asserts that given the powers of senior government, local governments should, nonetheless, understand that playing the game of conflict involves potential peril.<sup>75</sup>

This thesis will analyse the role of municipalities in inserting themselves into the agenda-setting process against these theoretical frameworks. The thesis asserts that local governments, although clearly an order of government, were nonetheless agents acting outside the gaming policy decision making circle of the provincial government and, as such, any influence that they exerted can be described as an example of the *outside initiation* model. Their success at influencing policy and demanding powers firmly

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<sup>71</sup> Patrick Smith and Kennedy Stewart, “Beavers and Cats Revisited vs The Mushy Middle Thesis,” paper presented at Victor Jones Seminar, Canadian Studies, University of California, December 1, 2004.

<sup>72</sup> Ibid. p.37

<sup>73</sup> Ibid. p.2

<sup>74</sup> Paul Villeneuve and Anne-Marie Séguin, “Power and Decision-Making in the City: Political Perspectives,” in *Canadian Cities in Transition*, Oxford University Press, 2000, p.544

<sup>75</sup> Patrick Smith and Kennedy Stewart, “Beavers and Cats Revisited vs The Mushy Middle Thesis,” paper presented at Victor Jones Seminar, Canadian Studies, University of California, December 1, 2004, p.36

places them in the *mushy middle*, that place where power exercised becomes power realized. This thesis will examine why local governments were successful at the perilous game of inter-governmental conflict and the ways in which they were able to do that, the alliances they created, the associations they leveraged, and the national gaming environment in which they have operated.

## CHAPTER TWO: BACKGROUND AND CONTEXT

### (1) Gaming Expansion in Canada: A legal and historical background

With the exception of horse racing, and occasional small lotteries and raffles, gambling in Canada was illegal until 1969 when the *Criminal Code of Canada* was amended, allowing the provinces to conduct and manage lotteries and casino types of games. The approval of lottery schemes was part of an omnibus bill first introduced in 1967 by the then Minister of Justice, Pierre Trudeau. The bill also dealt with issues of abortion, and homosexual behaviour, which until 1969 were subject to criminal sanctions. The bill was eventually approved in 1969 when Pierre Trudeau was Prime Minister and John Turner was the Minister of Justice.<sup>76</sup> The fact that lotteries were already approved in some American States (e.g. New Hampshire, 1963), that Canadians were buying mail-order lottery tickets in record numbers<sup>77</sup> and that the City of Montreal was lobbying for an approved lottery to offset the 1967 World Expo deficit, were also factors in the decision to eventually allow lotteries and casino type of games in Canada.<sup>78</sup>

Author, Suzanne Morton asserts that during the early 1960s there was a strong lobby in support of lotteries in Western Canada, particularly in Calgary, where an organized campaign had been started in 1962 by a “spunky” grandmother named Mary English, who “began her campaign for ‘Operation Sweepstakes’ to establish a Canadian

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<sup>76</sup> Colin Campbell, *Canadian Gambling Legislation*, Doctoral Thesis, SFU, 1994, p.237-238

<sup>77</sup> Thomas Klassen and Jim Cosgrave, “Look Who’s Addicted to Gambling Now,” *Policy Options*, July-August 2002. In 1961, there were more than 75,000 pieces of mail intercepted by the post office that were associated with a Jamaican sweepstakes.

<sup>78</sup> Colin Campbell, *Canadian Gambling Legislation*, Doctoral Thesis, SFU, 1994, p.237



lottery and stop money from leaving the country. She and nineteen other Calgary women organized a national petition and collected more than 500,000 signatures.”<sup>79</sup>

Horse racing, however, has been permitted since 1886 when betting in horse racing was officially sanctioned. According to research conducted by Colin Campbell: “Canadian legislation exempted private credit betting between upper-class gentlemen in racecourse clubhouses, while paternalistically condemning cash betting by members of the working class.”<sup>80</sup> Later in 1892, the *Criminal Code* permitted, as an exception, betting between individuals on live horse racing.<sup>81</sup> Further amendments to the *Criminal Code* in 1906 permitted betting at a racetrack that was operated by an incorporated association.<sup>82</sup>

In 1979, the provinces and the federal government, under the leadership of Prime Minister Joe Clark, of the newly elected Conservative Party and fulfilling an election promise, agreed that the federal government would vacate the field of gambling.<sup>83</sup> This agreement came with a price. The provinces agreed to pay an annual instalment of \$24 million to the federal government (about \$60 million in current dollars).<sup>84</sup> The Provinces provided a further one-time only payment of \$100 million to the federal government in 1985, as a contribution to the 1988 Calgary Olympic Winter Games, when the federal government was attempting to promote a national lottery to support the Olympics.<sup>85</sup> This time, the federal government vacated the field undisputedly. Amendments to the *Criminal Code* in 1985, also allowed for the introduction of electronic gaming into Canada (with the proviso that only government can manage electronic gaming).<sup>86</sup> As a

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<sup>79</sup> Suzanne Morton, *At Odds: Gambling and Canadians 1919-1969*, University of Toronto Press, 2003, p.188

<sup>80</sup> Ibid, p.87

<sup>81</sup> Ibid. p.88

<sup>82</sup> Horse Racing Review, Province of British Columbia, 1999, p.23

<sup>83</sup> Colin Campbell, Doctoral Thesis, p.247

<sup>84</sup> Sharon Jeannotte, “Gambling on Culture in Canada: Gaming as a Source of Funding for Culture, the Arts and Heritage,” Department of Canadian Heritage, August, 2002, p.7, Note: The actual amount has increased due to cost of living indexing.

<sup>85</sup> Sharon Jeannotte, p.7

<sup>86</sup> *Criminal Code of Canada*, Section 207(1)(a).

result of this amendment, there are currently more than 90,000 gambling machines in Canada.<sup>87</sup>

## **(2) Gaming in Canada: Financial and Social implications**

It is estimated that Canada now has 44 permanent horse race tracks, over 50 permanent casinos, 20,000 bingo events per year, 38,000 video lottery terminals (VLTs), and 43,052 slot machines. Slot machines are primarily located in casinos (33,052) yet are increasingly found in horse race tracks (10,000) and are soon to be added in BC bingo halls.<sup>88</sup>

At present, in British Columbia, there are 19 casinos in operation, 33 commercial bingo halls in operations (41 approved), seven horse racing tracks, 21 teletheatres (26 licenses approved), and over 4,000 lottery retailers. According to estimates from the BC Gaming Policy and Enforcement Branch, the gaming activity generated by all of these facilities will produce \$850 million in net gaming revenue to government in 2004/05, and 62 percent of that revenue will be generated by casinos.<sup>89</sup>

A recent study released by Statistics Canada (June, 2004), entitled *Fact-sheet on Gambling*, and authored by Katherine Marshall, provides some interesting data that helps to identify the increasingly significant role of the gambling industry as a source of provincial governments revenues. Provincial governments are the main beneficiaries of the gambling industry, followed by private operators, charities, and local governments. In the province of British Columbia, for the fiscal year 2003/04 the provincial government received a total \$728 million, from which \$132 million was allocated to charities, \$8 million to the Government of Canada, and a further \$45 million went to

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<sup>87</sup> Canadian Gaming News, November 2004.

<sup>88</sup> Data compiled from Canadian Gaming News, July, 2004 and Canada West Foundation, 2001

<sup>89</sup> Gaming Policy and Enforcement Branch: <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 27, 2004.

local hosting municipalities.<sup>90</sup> The provincial government allocation is derived after private casino operators, bingo hall operators, and lottery retailers have received their allocation, which in 2003/04 amounted to \$357 million.<sup>91</sup>

The Statistics Canada study indicates that revenues from non-charity gambling rose from \$2.7 billion in 1992 to \$11.7 billion in 2002; a 430 percent increase. This increase, which has taken place in the last decade, is particularly significant in the provinces of Saskatchewan (700 percent increase), Alberta (647 percent increase), Ontario (547 percent increase), and Quebec (390 percent increase). In the province of British Columbia, gambling revenue grew 293 percent during the same period.<sup>92</sup> The national revenue increases from gambling activities are due, for the most part, to the rapid increase of revenues from casinos and VLTs, while revenues from lotteries have remained constant during the study period.<sup>93</sup>

British Columbia's perceived lag in generating gaming revenue could perhaps have caused provincial gaming officials to rationalize further gaming expansion – thereby demonstrating the “convergence thesis” outlined by Howlett and Ramesh.<sup>94</sup> Vic Poleschuk, President of the British Columbia Lottery Corporation, claims, however, that governments never make decisions about gambling expansion without looking at it holistically: “I think its always going to be a mix between the financial, the social, and the political objectives of the government. Case in point, if it was strictly on financial you'd have VLTs probably everywhere in every province.”<sup>95</sup>

While Lottery revenues in Canada have more or less stabilized, the provinces have experienced dramatic increases from the other main sources of gaming revenues,

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<sup>90</sup> British Columbia Lottery Corporation (BCLC) Annual Report 2003/04, p.11

<sup>91</sup> Ibid. Note: The revenue to operators and retailers is distributed before the provincial government allocation; therefore the provincial government revenue is entirely profits.

<sup>92</sup> Fact-sheet on gambling, Statistics Canada, June 2004

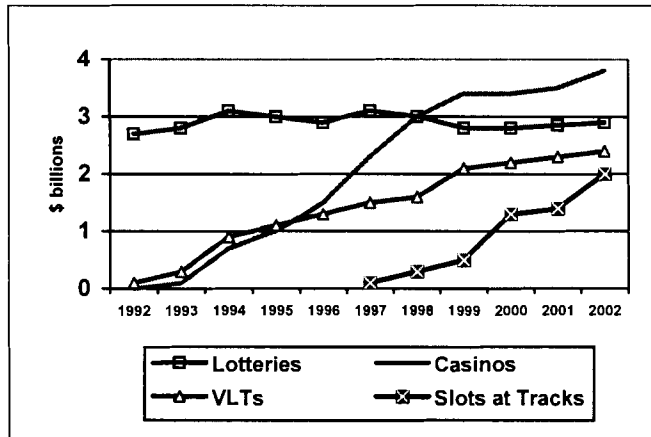
<sup>93</sup> Ibid., p.2

<sup>94</sup> In the *Report of the Gaming Policy Review* of 1994 the government justified its recommendation to introduce VLT's into the province on the basis that most other Canadian provinces had already done so (p.3).

<sup>95</sup> Interview with Vic Poleschuk, September 13, 2004.

namely: casinos, video lottery terminals, and slot machines at racetracks, as the following chart indicates:

Figure 1: Revenue from government-run gambling in Canada, 2002<sup>96</sup>



Source of data: Fact-sheet on gambling, Statistics Canada, 2004

Since 1997 in Canada, revenue from slot machines outside casinos, located mostly in horse racing venues, has reached over \$2 billion. The fact that two racetracks in B.C. have installed, or are in the process of installing slots, will add to this figure.<sup>97</sup> When measured in terms of annual gambling expenditure per capita (measured in current dollars), the per capita expenditure in Canada grew from \$130 in 1992 to \$483 in 2002. Meanwhile, per capita expenditures in British Columbia increased from \$155 to \$366 in the same period.<sup>98</sup> Gambling revenue has become an important component of the provincial treasury in many provinces. In Alberta for example, it constitutes 6.3 percent of the total government revenue<sup>99</sup>, while Nova Scotia, Manitoba and Ontario, all depend on gambling revenue for more than five percent of their general revenues.<sup>100</sup> The following is a summary revenue and expenditures table produced by Statistics Canada:

<sup>96</sup> Fact-sheet on gambling, p.2

<sup>97</sup> Slots were installed at Surrey's Fraser-Downs racetrack in May 2004, and slot machines for Hastings racetrack were approved on July 2004.

<sup>98</sup> Statistics Canada – "Fact-sheet on Gambling," Catalogue no. 75-001-XIE, June 2004

<sup>99</sup> Alberta Budget – 2003. Gaming revenue in Alberta is double the revenue received from liquor tax. Gaming and liquor revenue combined contribute \$2 billion dollars to Alberta's \$22 billion budget.

<sup>100</sup> Statistics Canada, "Fact-sheet on Gambling," 2004

Table 1: Gambling Revenue and Expenditures in Canada, 1992 to 2002, and Provincial Revenue Derived from Gambling in 2002/03

	Gambling Revenue \$ millions (current)		Per capita Expenditures \$ current		Revenue derived from Gambling*
	1992	2002	1992	2002	
<i>CANADA</i>	2,734	11,734	130	483	
Newfoundland	80	198	190	483	2.6%
P.E.I.	20	31	205	296	1.9%
Nova Scotia	125	366	180	499	3.5%
New Brunswick	117	197	210	333	2.1%
Quebec	693	2,701	130	460	2.8%
Ontario	853	4,666	105	502	3.1%
Manitoba	153	494	185	568	3.4%
Saskatchewan	62	437	85	589	5.7%
Alberta	225	1,456	120	620	4.8%
<b>British Columbia</b>	<b>403</b>	<b>1,182</b>	<b>155</b>	<b>366</b>	<b>3.1%</b>
Yukon & N.W.T.	5	7	80	103	

Fact-sheet on Gambling, Statistics Canada - Catalogue no. 75-001-XIE, June 2004.

\* Nadine Kauffman and Phil Mun, Canadian Gambling Digest, Canadian Partnership for Responsible Gambling, 2004, p.5

The number of jobs in the gambling industry - meaning establishments primarily engaged in operating gambling facilities, such as casinos, bingo halls and video gaming terminals; or providing gambling services, such as lotteries and off-track betting - (as opposed to horse race tracks and hotels, bars and restaurants that have gambling machines on the premises) - also increased from 11,900 in 1992 to 50,000 in 2002. The bulk of the jobs are located in Eastern Canada, with Ontario holding 45 percent of the jobs and Quebec 21 percent. B.C. has ten percent of the jobs.<sup>101</sup>

<sup>101</sup> Fact-sheet on Gambling, June, 2004

According to data presented by Bill Eadington at the Conference “VLTs and Electronic Gambling” held in Edmonton, Alberta, on February 18, 1998, the growth of revenue generated by casinos and gambling machines, including slots and VLTs, is not just a Canadian experience, but also a worldwide phenomena.<sup>102</sup> As recently as 1989 there were only two states with casinos in the United States (Nevada and New Jersey)<sup>103</sup>, and there are now casinos in 36 States.<sup>104</sup> In the 1960’s in Nevada, only 30 percent of casino revenue was generated by slots, and by 1997, slots were generating 70 percent of the revenue.<sup>105</sup> To better understand the revenue generating power of gambling machines, one needs only to look at Spain, where there is a casino program (mostly on coastal towns) and a parallel program for VLTs and slots (dispersed in a variety of locales). In 1996, Spanish casinos generated revenue of US\$300 million and VLTs and Slots generated US\$4 billion in revenue.<sup>106</sup>

As the gaming industry continues to grow in Canada, provincial governments and municipalities are faced with the dilemma of having to rely on the revenue generated by the industry, at the same time that they have to confront some serious social impacts, arising from it; for with the jobs and their attendant economic benefits also come some heavy social costs. Most significant of these social impacts is the incidence of addiction and the extent to which it afflicts those suffering from it.

## **(2.1) Problem Gambling**

Addiction studies conducted in different provinces indicate an average of four percent of the adult population is defined as problem gamblers<sup>107</sup> – defined by Doctor

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<sup>102</sup> Gaming expansion in other countries can also be a component of the ‘convergence thesis’ approach. This was the case in British Columbia when higher betting limits were introduced in 1997, at a time when heavy competition was being felt by Washington State based casinos (*Assessing the Potential for Expanded gaming Opportunities in British Columbia*, KPMG Report, Victoria, January 23, 1997, p.15).

<sup>103</sup> Bill Eadington Keynote Presentation, VLTs and Electronic Gambling Conference, University of Alberta, February 18, 1998.

<sup>104</sup> There are now casinos in 36 states, American Gaming Association, “Survey of Casino Entertainment,” 2004.

<sup>105</sup> Bill Eadington Presentation, VLTs and Electronic Gambling, University of Alberta, February 18, 1998.

<sup>106</sup> Ibid.

<sup>107</sup> J. Azmier, *Triumph, Tragedy or Trade-Off? – Considering the Impact of Gambling*, August, 2001

R.J. Rosenthal as “gambling behaviour that has a negative effect on an individual’s personal, family or work life.”<sup>108</sup> Rosenthal, however, cautions, “Although problem gamblers often gamble frequently, not all frequent gamblers experience problems.”<sup>109</sup> Addiction experts argue about the best way to measure and categorize problem gamblers, and categories such as problem gambler, moderate risk gambler, and pathological gamblers continue to be used as valid categories. Rosenthal’s definition of the more acute problem gamblers, that is the one referring to pathological gamblers, continues to be utilized as an important benchmark:

Pathological Gambling is a progressive disorder characterized by a continuous or periodic loss of control over gambling; a preoccupation with gambling and with obtaining money with which to gamble; irrational thinking; and a continuation of the behaviour despite adverse consequences.<sup>110</sup>

Addiction studies are expensive, and those that control and regulate the industry, mostly provincial governments, have only recently begun to allocate significant resources both to understanding addiction issues, and to developing educational and treatment programs. Many provinces do not have up to date data quantifying the number of addicts in their jurisdiction. The Canadian Partnership for Responsible Gambling recently published a Canadian Gambling Digest, a publication in which they summarize the most recent and relevant information about gambling activities in all of the provinces. Included in the analysis is data about problem gambling rates, and the amounts of dollars allocated to problem gambling programs in the different provinces:

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<sup>108</sup> R.J. Rosenthal, “Pathological Gambling,” in *Psychiatric Annals*, Vol. 22(2), February 1992, pp.72-78

<sup>109</sup> R. Rosenthal, “Pathological Gambling,” 1992, p.72-78

<sup>110</sup> *Ibid*, p.72-78

Table 2: Problem Gambling Rates and Spending by Provinces, 2003 <sup>111</sup>

Province	Problem Gambling Rate	Year of latest study	Provincial Spending on P.G.
P.E.I.	3.1%	1999	\$115,000
Nfld.	1.9%	2002*	\$400,000
N.B.	3.2%	2001	\$652,966
Man.	3.4%	2001	\$1,898,000
N.S.	2.1%	2003	\$2,410,000
B.C.	4.6%	2002	\$4,000,000
Sask.	5.9%	2001	\$4,250,000
Alberta	5.2%	2001	\$5,757,000
Quebec	1.7%	2002	\$18,146,909
Ontario	3.8%	2001	\$25,250,000

\* Nfld. Data from National Prevalence Study. All other studies are provincial.

Source: Canadian Gambling Digest, 2004.

Comparative data between provinces on problem gambling is difficult to acquire or analyze, as different prevalence screens and methodologies to measure problem gambling rates are used.<sup>112</sup> At the same time that there are few studies measuring the different levels of addiction that gambling activities generate, there is also a lack of study and analysis of the social effects that arise from these levels of addiction. A recent study from the Canada West Foundation about the impacts arising from gambling clearly points out the dilemma facing policy makers involved with this industry: “Policy makers need to be aware of the impacts of gambling to balance the trade-off between the desire to provide gambling opportunities and the desire to minimize the harm to individuals.”<sup>113</sup>

Even though the provinces of Ontario and Quebec spend the greatest amount of monies on problem gambling programs, it is the province of Saskatchewan that spends the highest proportion of gaming revenue on problem gambling programs, as the following Figure indicates:

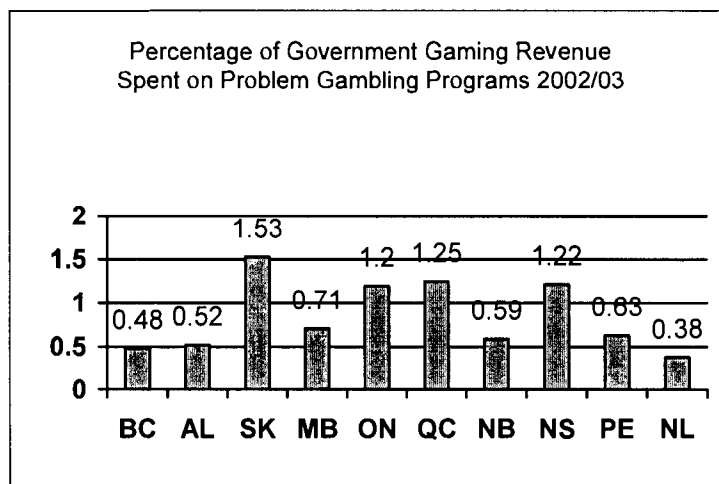
<sup>111</sup> Nadine Kauffman and Phil Mun, *Canadian Gambling Digest*, Canadian Partnership for Responsible Gambling, 2004

<sup>112</sup> *Ibid.* p.8

<sup>113</sup> Jason Azmier, *Triumph, Tragedy or Trade-Off? – Considering the Impact of Gambling*, Canada West Foundation, August, 2001



Figure 2: Percentage of Government Revenue Spent on Problem Gambling <sup>114</sup>



Many industry observers, including casino operators, see the allocation by provincial governments of more resources towards the mitigation of problem gambling, as a step in the right direction.<sup>115</sup> Currently, the province of British Columbia spends four million dollars annually on a variety of programs aimed at minimizing the impacts of problem gambling.<sup>116</sup> Some of these programs include education, prevention, referral and counselling activities. Without continuing research, however, it is difficult to assess whether these programs are having a real impact. This is particularly problematic because some of the impacts are not just measured in terms of financial losses, but may also have implications in areas such as family violence, absenteeism, job loss, and criminal involvement. The provincial government has recently hired a team of researchers, including Dr. Robert Williams and Rhys Stevens to conduct a longitudinal study on economic and social impacts arising from gaming expansion in four Lower Mainland municipalities: Vancouver, Surrey, Township of Langley, and District of Langley. Initial findings will not become available until the Spring of 2005.<sup>117</sup>

<sup>114</sup> Ibid. p.6

<sup>115</sup> Interview with Gary Jackson, co-owner of Edgewater casino at Plaza of Nations, October 19, 2004

<sup>116</sup> <http://www.bcreponsiblegambling.ca/other/about7.html>, Accessed on December 28, 2004

<sup>117</sup> Interview with Derek Sturko, BC Gaming Policy and Enforcement Branch, September 13, 2004. Having conducted the first survey, the researchers will provide a baseline analysis in May 2005.

In a position paper presented by the Canadian Public Health Association (CPHA) in 2000, Doctors David Korn and Harvey Skinner listed eight negative consequences associated with gambling: gambling disorders; family dysfunction and domestic violence; youth gambling problems and underage gambling; alcohol and other drug problems; psychiatric conditions; suicide, suicidal ideation and suicide attempts; significant financial problems; and criminal behaviour.<sup>118</sup> The authors further indicate:

Determining the causal relationship between gambling involvement and each of these activities is a thorny matter. Research suggests that gambling may have a negative impact on health as a result of associated crime, substance abuse, poverty and domestic violence. However, considerable study is necessary to resolve important questions regarding the uniqueness of pathological gambling, comorbidity with other mental disorders and the identification of significant biological, behavioural and environmental risk factors.<sup>119</sup>

The position paper from the CPHA also acknowledges potential health benefits associated with gambling, for individuals as well as for the community. While acknowledging the lack of empirical data to support this perspective, the authors of the position paper assert that “there is some theoretical basis to suggest the likelihood of positive health benefits,” and furthermore, it is indicated that “for the individual, gambling can provide a sense of connectedness and socialization through discretionary leisure time entertainment; this may be particularly important for older adults.”<sup>120</sup> This “sense of connectedness” was echoed at the City of Vancouver public hearing regarding the introduction of slots by a representative from the community: “the track is an important social gathering place for many Chinese Canadians, with 42 live simulcast Hong Kong racing nights per year.”<sup>121</sup> Another speaker expressed a similar view when stating: “Hastings Racecourse provides a safe, sociable, clean environment for the many seniors who frequent it on a regular basis.”<sup>122</sup>

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<sup>118</sup> David Korn and Harvey Skinner, *Gambling Expansion in Canada: An Emerging Public Health Issue*, Canadian Public Health Association, 2000.

<sup>119</sup> Ibid. p.3

<sup>120</sup> Ibid.

<sup>121</sup> City of Vancouver, Public Hearing Minutes for Plaza of Nations Casino, January 20, 21 and 22, 2004 and Public Hearing Minutes for Hastings Racecourse, July 15, 19, 20 and 21, 2004.

<sup>122</sup> Ibid.

The negative consequences, however, are the ones that usually concern, not only addiction professionals, but anti-gambling activists as well. In a interview with the Vancouver Courier newspaper, an anti-gambling community activist is reported as noting: “slots will only attract more loan sharks, create more opportunities for robbers and increase the number of people addicted to gambling.”<sup>123</sup> This kind of sentiment was also clearly stated at the Vancouver public hearing to approve a casino with slot machines at Plaza of Nations. One of the comments taken from the minutes of the public hearing indicates: “bringing slots to Vancouver, where there is already a high at-risk population, will create more addictive gambling which will lead to the break-up of families, increased violence towards women, and more women needing emergency shelter.”<sup>124</sup>

Evaluating the impact of gambling addiction programs on the addictive population, however, is hampered by the lack of data measuring the number of addicts seeking help. British Columbia and Canada are not alone in facing this dilemma. Author Michael Walker, when analyzing the same issue in Australia, could not find reliable data other than that obtained with Gambling Anonymous (GA), and even then, the rate of responses to questionnaires circulated by researchers with the endorsement of the Gambling Anonymous Board of Directors, was minimal.<sup>125</sup>

The social issues associated with the gambling industry are the major motivation for those opposing gambling expansion. And in response, some provinces, like Ontario and Alberta, have conducted massive referenda in matters related to gambling. In 1997 Alberta municipalities held referenda to remove VLTs from local communities. Many municipalities rejected VLTs, and machines were removed from the communities of Rocky Mountain House and Sylvan Lake. VLT operators later challenged, to no avail,

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<sup>123</sup> Vancouver Courier, October 22, 2003 – “Lease secured at Plaza of Nations.”

<sup>124</sup> City of Vancouver, Minutes from public hearing consider proposed amendments to the CD-1 By-law for 750 Pacific Boulevard (Plaza of Nations) and the Zoning and Development By-law, January 20-21, 2004.

<sup>125</sup> Michael Walker, “The Impact of Casinos in Urban Centres on Problem Gambling,” in *Gambling: Public Policies and The Social Sciences*, University of Nevada, 1997

the results arising from these referenda.<sup>126</sup> On April 28, 2003, following a Supreme Court decision in the province of Manitoba, where a similar challenge was turned down, bar owners in Alberta dropped their legal attempt to stop the removal of VLTs from the communities of Canmore, Lacombe, Coaldale, Lethbridge County, Stony Plain, and the Regional Municipality of Wood Buffalo. Two hundred machines were removed and placed elsewhere in the province.<sup>127</sup> A post-referenda survey conducted by the Canada West Foundation in 1998, found that most proponents of VLTs voted in favour with the argument of defending “freedom of choice,” while opponents were concerned with the “high social costs of VLTs,” and the “addictive nature” of VLTs.<sup>128</sup>

The province of Ontario conducted referenda on November 10, 1997 (municipal elections day) to determine which communities were willing to accept charity casinos in their communities. Most communities (15 out of 17 communities), including the City of Toronto, voted against the idea.<sup>129</sup>

The voices of opposition have been heard in almost every circumstance where expansion has been proposed. This has been particularly true in Vancouver during the last decade, and most significantly prior to the provincial government’s enactment of gaming legislation, which recognized the role of local government in determining future expansion. The community-based opposition started with almost 300 letters of opposition and 1,400 signed petitions against the proposed casino at Vancouver’s waterfront in 1994.<sup>130</sup> Several resident-based coalitions have been formed over the years, and perhaps the two better known are the Coalition Against Gambling Expansion (CAGE), formed in 1994, and the Multicultural Coalition Against Gambling Expansion (MCAGE). It is this last organization, which has been extremely active against gaming

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<sup>126</sup> Jason Azmier, *Gambling in Canada 2001: An Overview*, Canada West Foundation, 2001

<sup>127</sup> [http://www.abgaminginstitute.ualberta.ca/2003\\_news.cfm](http://www.abgaminginstitute.ualberta.ca/2003_news.cfm), accessed on December 29, 2004.

<sup>128</sup> Garry Smith and Harold Wynne, “VLT Gambling in Alberta,” January 2004, p.20.

<sup>129</sup> Canadian Gaming News, Newsletter, Ivan Sack (Editor) December, 1997

<sup>130</sup> Vancouver City Clerk listing of correspondence and speakers. First hand evaluation of submissions to Council, and occupation of Public Hearing Speakers, reveals that early opponents had a more broad base including, Churches, Academics, Chief of Police, and at least in 1994, the Board of Trade. The opposition as of late is mostly based at the neighbourhood level.

expansion in Richmond and Vancouver, especially with the expansion at Hastings Racetrack, where the MCAGE conducted a door-to-door poll of residents.<sup>131</sup>

In recognition of the harm that gambling creates for some of their citizens, a number of governments, including some in Canada, have begun to develop “responsible gambling programs,” which are usually supported by the gambling industry. Responsible gambling programs usually have three basic components, and they are, according to Peter Collins, understanding (research), prevention and treatment.<sup>132</sup> Authors Colin S. Campbell and Gary J. Smith have done extensive research in this area (“Gambling in Canada – From Vice to Disease to Responsibility: A Negotiated History,” 2004) and they caution about the potential exploitation of this strategy – both on the part of government and industry – as a public relations exercise. In order to have a meaningful responsible gambling program, Campbell and Smith argue that it “should be framed as a public health issue”, thereby allowing a more holistic view of gambling in society. Some key concepts in the development of a responsible gambling strategy include prevention, harm reduction, and quality of life considerations.<sup>133</sup> The recently formed Canadian Partnership for Responsible Gambling,<sup>134</sup> which is a coalition of non-profit organizations, gaming providers, research centres, and regulators, is also attempting to further develop strategies in this area of policy.<sup>135</sup>

### **(3) Gaming in Canada: The B.C. Response**

When compared to other provinces, British Columbia can be viewed both by government and by private gambling enterprises, as a market that still has a significant growth potential. The greatest contrast perhaps is with the neighbouring Prairie

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<sup>131</sup> <http://www.vancourier.com/issues03/103203/news/103203nn4.html>, accessed on December 27, 2004. Of the 317 responses obtained by the volunteer pollsters, 257 were in opposition to gambling expansion.

<sup>132</sup> Peter Collins, p.127

<sup>133</sup> Colin Campbell and Gary Smith, “Gambling in Canada – From Vice to Disease to Responsibility: A Negotiated History,” *Canadian Bulletin of Medical History*, p.31

<sup>134</sup> Canadian Partnership for Responsible Gambling, Formed on September 21, 2004. [http://www.mgcc.mb.ca/pdf/news\\_release\\_cprg\\_launch\\_e.pdf](http://www.mgcc.mb.ca/pdf/news_release_cprg_launch_e.pdf), accessed on December 29, 2004

<sup>135</sup> <http://www.responsiblegambling.org/articles/CPRGMovingForward.pdf>, accessed December 29, 2004

Provinces where per capita expenditures are between 55 percent and 80 percent higher than those of B.C. (see Table II:1).

The first sanctioned gaming activity in B.C. dates back to 1890 when the first major racetrack in British Columbia was built at East Park, now known as Hastings Park. Two more racetracks were built in Richmond in 1909 and in 1924. All racing operations in the Lower Mainland were eventually moved to Exhibition Park (Hastings Park) in 1961, when land development pressures made it difficult for the Richmond-based racetracks to operate.<sup>136</sup>

The first casinos and bingo halls appeared in B.C. after the 1969 *Criminal Code* amendment, which allowed the provinces to license charities to conduct and manage lottery schemes. The charities, in partnership with private casino operators managed these, until the provincial government took control of casinos in 1997 and later commercial bingo in 2002.<sup>137</sup> The government, however, continues to rely on private casino companies to run the day-to-day operations of casinos, mostly due to the fact that the government already had ongoing legal contracts with private operators, and they are the ones with the managerial and professional expertise to run these facilities.<sup>138</sup> This reliance on private operators is not unique to British Columbia. Regulators in other provinces such as Alberta and Ontario also have partnerships with private operators. The province of Quebec, however, has a gaming model where the province, through Loto Québec, conducts, manages, and operates all casino gaming activities, as well as lotteries.<sup>139</sup>

Some of the main casino operators in British Columbia are the Great Canadian Gaming Corporation, which presently owns and operates five casinos in British Columbia, and Gateway Casinos, which owns and operates four casinos. The Great

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<sup>136</sup> Horse Racing Review, Province of British Columbia, 1999, p.23

<sup>137</sup> The year 2002 is when the *Gaming Control Act* was enacted. The Act provides for BCLC to conduct and manage all gaming in British Columbia.

<sup>138</sup> BC Gaming Policy and Enforcement Branch: <http://www.pssg.gov.bc.ca/gaming>, accessed on December 28, 2004.

<sup>139</sup> <http://www.loto-quebec.com/corpo/nav/accueil>, accessed on December 28, 2004.

Canadian Gaming Corporation, which became a public company in 1997, and owns gaming establishments in Washington State as well, is one of the most profitable companies in Canada.<sup>140</sup> These private casino management companies have been advocating for gaming expansion for a number of years now, including providing submissions to the gaming review conducted by the province in 1993.<sup>141</sup> They have not been alone in their pursuit for expansion.

The BC government has been actively pursuing avenues for expanding gambling ever since the failed attempt in 1994 to introduce a major commercial casino on Vancouver's waterfront.<sup>142</sup> Until 1993, casinos in British Columbia were restricted to a maximum of 15 tables, eight-hour openings a day, and a \$25 maximum single bet.<sup>143</sup> The 1994 commercial casino proposal for the Vancouver Central Waterfront was a significant departure from what had been known as "charity casinos." Vancouverites and the City Council reacted negatively.<sup>144</sup> Hundreds of people wrote letters to Council, the Vancouver Board of Trade set up its own casino review committee and opposed the development, a coalition of citizens against gambling was formed, a public rally opposing the casino proposal was held, and a public opinion poll commissioned by the City indicated that a majority of residents were in opposition to the proposal. Only 30 percent of respondents declared themselves as supporting the proposed commercial casino.<sup>145</sup>

Similarly, later that year (1994), when the provincial government introduced the possibility of placing 5,000 video lottery terminals (VLTs) throughout the Province, 39 municipalities responded with declarations or bylaw enactments prohibiting such devices – pressuring the provincial government, and ultimately preventing the introduction of

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<sup>140</sup> Canadian Gaming News, December 2004.

<sup>141</sup> Province of British Columbia, "Findings of the Gaming Review Committee," Margaret Lord, MLA and Dennis Streifel, MLA, January 1993.

<sup>142</sup> A proposal for a 100,000 sq. ft. Casino and a Convention Centre at Vancouver's waterfront. A more detailed discussion is provided in Chapter Six.

<sup>143</sup> Casinos today have up to 70 tables, up to 1,000 slot machines, are open 20 hours a day and have maximum single bets of \$500 dollars. BCLC: <http://www.bclc.com/cm/casino/aboutcasinogaming.htm> accessed January 5, 2005.

<sup>144</sup> City of Vancouver, "Casino Review – Final Resolutions," December 1994, p.5

<sup>145</sup> Jennifer Clarke and Mario Lee, "Impact of the New Gaming Regime on Municipalities." Presentation to Pacific Business & Law Institute, March 3, 1999.

VLTs into the province.<sup>146</sup> The nature of the opposition was mostly related to the need for consultation with local governments, fears about potential social impacts arising from gambling, and concerns over charitable gaming revenues.<sup>147</sup> This opposition was also in the UBCM's agenda. On September 23, 1994 the UBCM unanimously endorsed a resolution, submitted to the annual convention by the City of Vancouver, requesting the provincial government to ensure municipal participation in the evaluation of community impacts arising from any gaming expansion.<sup>148</sup>

The reaction of British Columbia's communities to gambling expansion should not have been a surprise to the informed observer of this industry. As author Peter Collins notes, almost every time that gambling has expanded in a particularly community, strong arguments are brought forward:

Controversy about gambling and public policy acquires additional depth and intensity because for many people gambling is a moral issue. At one extreme there are those who simply think that gambling is immoral and that the law ought to do whatever it can to prevent people from gambling. At the other extreme there are those for whom gambling is a major source of pleasure and excitement. These enthusiasts are likely to think that the law has no business interfering with the pursuit of enjoyment by adults in a free society. In between are all those who view gambling with varying degrees of benevolence or distaste and believe that gambling should be permitted, subject to more or less strict regulation.<sup>149</sup>

The well-attended forums in Vancouver, New Westminster and Richmond following the provincial government's release, in February 1999, of a White Paper on Gaming and draft legislation demonstrated again the controversial nature of gaming and the strong public reaction that it invokes.<sup>150</sup> In Vancouver alone, over 200 delegations spoke to Council at the public meetings organized on this issue, and City Council

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<sup>146</sup> Jennifer Clarke and Mario Lee, *Political Conflict and Challenges Between Provincial and Local Governments: The Vancouver View*, June 2000. 11<sup>th</sup> International Conference on Gambling & Risk Taking, Las Vegas, Nevada.

<sup>147</sup> *Ibid.*

<sup>148</sup> UBCM, 1994 Convention, Resolutions.

<sup>149</sup> Peter Collins, *Gambling and the Public Interest*, Praeger Publishers, 2003. p.3

<sup>150</sup> The White Paper on Gaming in British Columbia and Draft *Gaming Control Act* was released in February 1999. A provincial Project Working Group chaired by Frank A. Rhodes wrote the White Paper and draft legislation. Upon receiving feedback from many municipalities and from UBCM, this version of the draft legislation was never tabled in the Legislature.



eventually opposed the draft legislation.<sup>151</sup> Controversy continues to be present today. Even as recently as July 2004, close to 200 speakers addressed Vancouver City Council at a Public Hearing on the issue of expanded gaming at Hastings Racetrack.<sup>152</sup> Further information about the details of the discussion in Vancouver, is provided in Chapter Six.

The public debate on gaming policy often arouses strong emotions and opinions and there is generally a heightened sensitivity surrounding any controversy stemming from gaming or associated with gaming activity. Mike Harcourt's resignation as Premier of the Province, in November 1995, is evidence of just such sensitivities. At that time, the Nanaimo Commonwealth Holding Society, a long time fundraising arm of the New Democratic Party (NDP), had come under investigation for misuse of charity bingo monies.<sup>153</sup> Although the incident provoking his resignation had occurred many years prior to his election as Premier and without his knowledge or involvement, the resultant pressure following a financial audit of the Society led to his resignation on November 15, 1995.<sup>154</sup>

One of the main reasons behind the provincial government's drive to move control of gambling operations away from charities and to the provincial government, was the need to increase gaming revenues. This goal was clearly stated as early as the government's review of gaming conducted in 1997.<sup>155</sup> The gaming policy announcement of March 13, 1997 acknowledges, "increased proceeds from gaming would be applied both to protecting and providing revenues to charities, as well as to enhancing government revenues."<sup>156</sup> The issue of the government's continuing search for gaming revenue is further analysed in Chapter Five.

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<sup>151</sup> Jennifer Clarke and Mario Lee, "Impact of the New Gaming Regime on Municipalities," March 3, 1999, Pacific Business & Law Institute, Vancouver.

<sup>152</sup> Hastings Racetrack is in the process of installing up to 600 slot machines. City Council was persuaded by the argument that the historic racetrack was worth keeping, and that gambling expansion was a good strategy to maintain and enhance the existing jobs at the site.

<sup>153</sup> Mike Harcourt, *A Measure of Defiance*, Douglas & McIntyre, 1996, p.1

<sup>154</sup> *Ibid.* p.5

<sup>155</sup> White Paper on Gaming, p.110

<sup>156</sup> Province of British Columbia, *Gaming Policy Recommendations*, Frank A. Rhodes, February 1998, p.4

Almost all of the provinces have enacted legislation regulating gambling in their jurisdictions. In the case of British Columbia, the main pieces of legislation are: the *Lottery Act* (1974), which authorizes a provincial Cabinet minister or a person authorized by the minister to conduct and manage lottery schemes in B.C.; the *Lottery Corporation Act* (1985), which established the BC Lottery Corporation to conduct and manage lottery schemes on the government's behalf; the *Horse Racing Act* (1996), which establishes the BC Racing Commission and authorizes the Commission to approve racing dates and license racetracks; and the *Gaming Control Act* (2002), which brings a comprehensive set of guidelines for the conduction of all types of gaming in British Columbia.<sup>157</sup> The *Gaming Control Act* (2002) superseded the Lotteries legislation as well as the provincial horseracing legislation.

Two years prior to the enactment of the *Gaming Control Act*, however, the Provincial government signed a Memorandum of Agreement (MOA) on Gaming policy with the Union of British Columbia Municipalities – the province-wide organization that represents all 182 local governments in British Columbia. This agreement would eventually, greatly influence the *Gaming Control Act*, and secure for municipalities both a share of gaming revenue and a role in determining the scope of gaming expansion within their jurisdictions. Further below (Chapter Three) more detail on the role of the Union of British Columbia Municipalities (UBCM) in the process of developing public policy in British Columbia is provided. In this section, the role of UBCM in the signing of a Memorandum of Agreement on Gaming policy is discussed.

The Memorandum of Agreement signed between the province and the Union of British Columbia Municipalities on June 17, 1999, ensured a significant role for local governments in determining the extent of gaming development within their jurisdiction and outlined a process for revenue sharing between the province and municipalities hosting casinos. Although Alberta, Manitoba and Ontario also have formal revenue sharing agreements, no other province grants local governments the kind of powers

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<sup>157</sup> White Paper on Gaming, p.10-11

recognized in the 1999 Memorandum of Agreement.<sup>158</sup> Some of the highlights of the MOA include:

- The province affirmed the jurisdiction of local governments, specifically with respect to their land use and by-law making powers.<sup>159</sup>
- The Province affirmed the ability of local governments to make decisions as to whether new facilities or re-located facilities will be permitted within their boundaries.
- The Province affirmed the ability of local governments to direct and define the extent, scope and type of casino and bingo gaming permitted within their boundaries, including the acceptance or rejection of slot machines.
- The Province would share gaming revenue with local governments as set out in the White Paper. In Vancouver, this means ten percent of the net income from local casinos goes to the City.
- The UBCM would actively work with the Province in the development of comprehensive gaming legislation.<sup>160</sup>

An important contextual factor that perhaps encouraged the provincial government to act was the fact that in the absence of comprehensive provincial gaming legislation, municipalities such as Vancouver and Surrey had already enacted bylaws covering matters related to gaming. The City of Vancouver was particularly successful, as it developed casino guidelines, as part of the Zoning and Development bylaw in 1997 restricting the amount of space to be used by a casino and prohibiting the use of slot

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<sup>158</sup> Canadian Gambling Digest, 2004 - p.8 - Municipalities in Ontario that host slots at racetracks get five percent of the gross revenue for the first 450 machines and two percent after that. Municipalities in Ontario, hosting charities casinos also get five percent of the gross revenue. In the province of Manitoba, the province distributes VLT revenue to both urban and rural municipalities. Alberta municipalities receive some funding from the Alberta Lottery Fund (\$24 million in 2003).

<sup>159</sup> The province is not always willing to oblige this approach. In 2003, the provincial government introduced farming related legislation that municipalities considered a violation of municipal land use powers. At the 2003 Convention, the UBCM delegates passed a resolution (Resolution A6) requesting that the provincial government withdraw Bill 48-2003 (*Right to Farm Act*), a Bill that could lead to a significant reduction in local government land use planning authority in farming areas and coastal waters.

<sup>160</sup> The province did have some minimal consultation with UBCM prior to the enactment of the Gaming Control Act, which incorporated the elements contained in the MOA.

machines in its jurisdiction.<sup>161</sup> In response, the province questioned the validity of this bylaw, and took the case to the Supreme Court of British Columbia late in 1997.<sup>162</sup> The Court ruling on December 19, 1997 favoured the City of Vancouver, a ruling later upheld by the Court of Appeal.<sup>163</sup> Legislating Vancouver out of the field after the Courts had upheld the bylaw would have been a politically costly affair.

The outcome of the Court cases as well as the agreement signed with UBCM motivated the province to appoint Dr. Peter Meekison, in July 1999, to conduct a gaming review and bring forward recommendations.<sup>164</sup> Meekison's recommendations (29 in total) covered a process of dealing with issues of relocation of and changes to existing gaming facilities. Some of the recommendations included a call for a prompt introduction of Gaming legislation, the establishment of an independent Gaming Control Commission to regulate and oversee all other gaming agencies, the enhancement of the role of municipalities, and particularly the role of UBCM, on deciding gaming related issues.<sup>165</sup>

It is, in particular, through the *Gaming Control Act* that municipalities are given a recognized role. Section 19 of the *Gaming Control Act* specifically indicates that local government approval is required for the location of gaming facilities:

**19 (1)** The lottery corporation must not, under section 18, develop, use or operate a facility, other than as permitted under section 18 (2), as a gaming facility, relocate an existing gaming facility or substantially change the type or extent of lottery schemes or horse racing at a gaming facility, unless the lottery corporation:

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<sup>161</sup> City of Vancouver Zoning and Development By-law, Casino Regulations, 1997

<sup>162</sup> Supreme Court of British Columbia, Vancouver Court Registry Docket: A972911, *The BCLC vs The City of Vancouver*.

<sup>163</sup> Court of Appeal of British Columbia, Docket: CA024053, Vancouver, January 14, 1999. *The BC Lottery Corporation vs City of Vancouver*. The main reason why the City of Vancouver's bylaw prevailed, was the fact that the Province had argued that clauses in the *Lottery Act* empowered the province to overrule the City's bylaw. The court ruled that both the *Lottery Act* and the *Vancouver Charter* were pieces of legislation at the same level and none had supremacy over the other. The province would have to enact specific legislation to remove Vancouver's power to legislate on land use questions, including casinos.

<sup>164</sup> Provincial government reports and publications: <http://www.labour.gov.bc.ca/annrep/ar99-00/gaming.htm>, accessed December 29, 2004. Section 11, BC Gaming Control Regulations. Note: Peter Meekison was a Professor of Political Sciences at the University of Alberta, former Deputy Minister for Intergovernmental Affairs for the Government of Alberta, and former Commissioner of the Royal Commission on Aboriginal Peoples.

<sup>165</sup> Province of British Columbia, *Relocation of and Changes to Existing Gaming Facilities in British Columbia: Review and Recommendations*, Peter Meekison, January 31, 2000.

(a) first receives the approval, in the prescribed form and manner,<sup>166</sup> of the municipality, regional district or first nation that has authority over land use planning at the place where;

(b) is satisfied that the municipality, regional district or first nation referred to in paragraph (a) has consulted each municipality, regional district or first nation that is immediately adjacent or that the lottery corporation considers will be materially affected by the gaming facility or proposed gaming facility and its location, relocation or substantial change, as the case may be.<sup>167</sup>

The *BC Gaming Control Act*, as stated by Derek Sturko, the General Manager for the BC Gaming Policy and Enforcement Branch, “is described to us as the strongest legal framework in Canada – if not North America – in terms of regulatory regime. It is a very powerful piece of legislation.”<sup>168</sup> The legislation not only defines the role and responsibilities for municipal governments, but also delineates the roles for the Policy and Enforcement Branch and the BC Lottery Corporation. The following summary of responsibilities is found in the Branch’s web site:<sup>169</sup>

**The Gaming Policy and Enforcement Branch:** establishes and enforces commercial gaming policies, regulations and guidelines in British Columbia; registers individuals or companies wishing to work in, provide services to or provide equipment to the commercial gaming industry; regulates the conduct of horse racing and ensures that current government policies and legislation, and the rules of racing, are followed at all horse racing facilities in British Columbia.

**The BC Lottery Corporation** is responsible for the conduct and management of commercial gaming in the province of BC, except horse racing. The corporation: makes sure commercial gaming facilities operate according to government policy and corporation standards, policies and procedures; is responsible for the location or relocation of, and any substantial changes to, gaming facilities; sets operational rules of play in all gaming facilities; manages contracts with gaming service providers and ensures service providers fulfill their contracts; transfers net proceeds from commercial gaming to the province; ensures there are problem gambling programs in gaming facilities. The BC Lottery Corporation also works with the horse racing industry to improve the economic viability of horse racing

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<sup>166</sup> The prescribed form and manner are detailed in the gaming regulations that accompany the legislation. It usually means either a municipal Council resolution or an official letter.

<sup>167</sup> Materially affected is also defined in the gaming regulations, and usually refers to traffic or policing impacts in a neighbouring jurisdiction.

<sup>168</sup> Interview with Derek Sturko, September 13, 2004

<sup>169</sup> BC Policy and Enforcement Branch:

<http://www.pssg.gov.bc.ca/gaming/commercial/responsibilities.htm>, accessed on December 29, 2004

through the development of strategic business partnerships, marketing schemes and joint ventures.<sup>170</sup>

No other province in Canada has gaming legislation with this degree of comprehensiveness, perhaps in part, due to the fact that when British Columbia finally enacted gaming legislation in 2002, it did so after all other provinces had introduced some form of gaming legislation. Clearly throughout Canada there has been gaming policy convergence, and Bennett's five categories of policy convergence are all in evidence here: a convergence of *policy goals* is noted in the shared will to define and regulate gambling; the many court rulings, government Acts and memorandum of agreements indicate a shared *policy content*; the formal and informal revenue sharing agreements, and the various government boards and corporations which administer gaming activities suggest a commonality of *policy instruments*; a convergence of *policy outcomes* is most clearly evident by the shared desire to expand gaming and the similar approach to do so; convergence of *policy style* is also evident and has for the most part been incremental and reactive.<sup>171</sup>

#### **(4) Gaming Legislation in other provinces and role for local governments**

All provinces in Canada are under the statutory restrictions of the federal *Criminal Code of Canada*, and each province has its own provincial legislation setting the parameters for the conduction of gaming in each jurisdiction. Following is a brief summary of the initial and current legislation in each of the Canadian provinces, outside British Columbia.

a) Alberta: the *Gaming and Liquor Act*, which was enacted in 1996, regulates Gaming in Alberta. The role of local governments is limited to the appointment of

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<sup>170</sup> BC Policy and Enforcement Branch:

<http://www.pssg.gov.bc.ca/gaming/commercial/responsibilities.htm>, accessed on December 29, 2004

<sup>171</sup> Colin J. Bennett, p.218

members to community lottery boards (which adjudicate local grants) and to the initiation of local plebiscites (not binding) on placement of gaming devices in their community.<sup>172</sup>

b) Saskatchewan: the 1997 *Alcohol and Gaming Regulation Act*, together with the 2002 *Gaming Corporation Act*, regulates the conducting and management of gaming in Saskatchewan. The role of local governments is restricted to the licensing of minor lotteries such as raffles with prizes not exceeding \$1,000. The provincial government also has an agreement with Saskatchewan Indian Nations for the operation of casinos in their communities.<sup>173</sup>

c) Manitoba: Three pieces of legislation regulate gaming in that province: The *Gaming Control Act*, enacted in 1996, the *Gaming Control Local Option (VLT) Act* enacted in 1999, and the *Manitoba Lotteries Corporation Act*, enacted in 1987. Municipalities are permitted to issue raffle licenses with a prize value of \$3,000 or less.<sup>174</sup>

d) Ontario: There are four pieces of legislation that regulate gaming in Ontario: the *Gaming Control Act* of 1992, the *Ontario Lottery Corporation Act* of 1993, the *Ontario Casino Corporation Act* of 1993, and the *Alcohol and Gaming Regulation and Public Protection Act* of 1996. Municipalities may issue licenses to charities conducting bingo events where the prize does not exceed \$5,500, and raffles where the prize does not exceed \$50,000. The *Ontario Casino Corporation Act* provides that a municipality must pass a resolution to approve the operation of a casino within the municipality (the casino in Windsor was exempted).<sup>175</sup> The *Ontario Lottery and Gaming Corporation Act* of 1999, which merged the Ontario Lottery Corporation and the Ontario Casino Corporation in April 2000.<sup>176</sup>

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<sup>172</sup> "White Paper on Gaming," Local Government and Gaming in Canada, p.208

<sup>173</sup> White Paper on Gaming, p.208 and Saskatchewan Government's publications web site: <http://www.publications.gov.sk.ca>, accessed on December 29, 2004

<sup>174</sup> White Paper on Gaming, p.208

<sup>175</sup> Ibid, p.209

<sup>176</sup> Ontario Lottery and Gaming Corporation, [http://corporate.olg.ca/corp\\_about\\_history\\_1990-1999.jsp](http://corporate.olg.ca/corp_about_history_1990-1999.jsp), accessed on January 8, 2005.

e) Quebec: Charitable Gaming is regulated by the *Act respecting Lotteries, Publicity Contests and Amusement Machines*, enacted in 1990.<sup>177</sup> Government Gaming in Quebec is regulated under the *Act Respecting the Société des Loteries du Québec (Loto-Québec Act)*, first enacted in 1978 and latest modifications enacted in 2004.<sup>178</sup> Municipalities have no legislated role and are precluded from using land use powers to restrict Video Lottery Terminals (VLTs).<sup>179</sup> The Quebec model of gaming is one where the provincial government has complete control of lotteries and all of the aspects of the casino industry, including operation of gaming facilities.<sup>180</sup>

f) New Brunswick: The *Lotteries Act* of 1976 regulates gaming in New Brunswick. There is no role identified for municipalities.<sup>181</sup>

g) Nova Scotia: The 1995 *Gaming Control Act* establishes the Nova Scotia Alcohol and Gaming Authority and the Nova Scotia Gaming Corporation. There is no legislated role for municipalities.<sup>182</sup>

h) Prince Edward Island: The *Lotteries Commission Act* was enacted in 1976 and established the Prince Edward Island Lotteries Commission. There is no role assigned to municipalities.<sup>183</sup>

i) Newfoundland & Labrador: The *Lotteries Act*, enacted in 1991 regulates lottery schemes in Newfoundland & Labrador, which include lottery tickets and a VLT program. There is no local government involvement.<sup>184</sup>

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<sup>177</sup> White Paper on Gaming, p.A2-15

<sup>178</sup> *Act Respecting the Société des Loteries du Québec (Loto-Québec Act)*  
<http://www.canlii.org/qc/laws/sta/s-13.1/>, accessed on January 9, 2005.

<sup>179</sup> White Paper on gaming, p.209

<sup>180</sup> *Ibid.*, p.A2-15

<sup>181</sup> White Paper on Gaming, p.209

<sup>182</sup> *Ibid.*, p.210 and <http://www.gov.ns.ca/legi/legc/statutes/gamingc1.htm>, accessed on January 8, 2005.

<sup>183</sup> *Ibid.*, p.210 and <http://www.gov.pe.ca/law/statutes/pdf/l-17.pdf?PHPSESSID=a79d1e195c01293ac47ad9a3797d9cd4>, accessed on January 8, 2005.

<sup>184</sup> *Ibid.*, p.210 and <http://www.gov.nl.ca/hoa/chapters/1991/9153.chp.htm>, accessed on January 8, 2005.



Although each of the provinces has a legislative framework for gaming activities none has as comprehensive a framework as that of British Columbia. The fact that we have strong elements of policy convergence across Canada does not necessarily mean that each jurisdiction has to be a replica of the other. As Colin Bennett indicates: “findings of convergence on some aspects of policy and divergence on others may be far more common than we realize... policy convergence should also be conceptualized in dynamic terms.”<sup>185</sup> Indeed British Columbia’s “policy divergence” in the granting of such extensive authority and power to the municipalities makes it unique in Canada.

British Columbia, alone, grants municipalities decision-making authority over the location and re-location of casinos within their jurisdictions. While the Ontario Casino Corporation Act does allow municipalities to approve casino operations within the municipality, this right nonetheless was overridden for the Windsor Casino, as the Ontario provincial government at the time wanted to be certain that the casino would be developed, for economic development reasons.<sup>186</sup> The British Columbia framework also allows municipalities the right to determine the scope of gaming and the type of gaming permitted within the municipality. No community in British Columbia, as an example, can be forced to accept slots.<sup>187</sup> Communities in Alberta are allowed to conduct plebiscites on the placement of gaming devices in their communities – but these are not binding. The will of the people, while allowed a voice, has no guarantee of being implemented.<sup>188</sup> Lastly, the British Columbia framework enshrines a revenue sharing

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<sup>185</sup> Colin Bennett, p.230

<sup>186</sup> Section 21(5) of the *Ontario Casino Corporation Act*, 1993 reads: “Despite any official plan adopted under section 17 of the *Planning Act*, any zoning by-law passed under section 34 of that Act or any interim control by-law passed under section 38 of that Act, the operation of a casino is a permitted land use in the casino area (City of Windsor) if the requirements prescribed by the minister responsible for the administration of this Act are met. 1993, c. 25, s. 21.”, [http://www.e-laws.gov.on.ca/DBLaws/RepealedStatutes/English/93o25\\_e.htm](http://www.e-laws.gov.on.ca/DBLaws/RepealedStatutes/English/93o25_e.htm), accessed on December 30, 2004

<sup>187</sup> British Columbia *Gaming Control Act*, Section 19. Municipalities in B.C. also have a say on any significant change to a gaming facility in their jurisdiction (i.e. number of slots, size of facility).

<sup>188</sup> While not enshrined in legislation, the Alberta provincial government continues to respect the results of these plebiscites.

formula, which is directly negotiated with individual municipalities through the signing of Financial Hosts Agreements.<sup>189</sup>

That local governments have been given the right to influence the development of gaming within their jurisdiction is also supported by some casino operators. Gary Jackson, co-owner of Edgewater Casino at Plaza of Nations, when answering if he would prefer the model prevalent in other provinces where casino operators do not have to deal to such an extent with municipalities, responded:

I could say yes to that because that would be the simplistic route to being an operator. Working with fewer people involved on various levels would make life easier and would probably be better financially from a business point of view. However, having experienced what I have experienced in this province and as a resident of this province and a resident of the City of Vancouver, at the end of the day yes, it was hard to get to this point in time to achieve the opportunity to run a casino in the City of Vancouver, but I think the involvement of the municipality in the equation is a good thing in the sense that a lot of the financial returns from the facility not only go to employees but they also go back to the municipality that will do the good works that the municipality is focussing on at the time. Whether that be for infrastructure or whether that be for social issues, I think it's okay, that the financial returns to the municipality are justifiable. I think the involvement of the municipality in issues that we have to deal with is acceptable from a social point of view, from a policy point of view – or just as a business in the community.<sup>190</sup>

Since 1969, when the Criminal Code was first amended to allow the provinces legal and administrative authority over lotteries and casino types of gaming, gambling has increasingly been on the agenda of most Canadian provinces. Often this agenda has included gambling expansion – with the decade between 1992 and 2002 seeing an overall 430% increase in non-charitable gaming expansion. This expansion, while bringing increased revenues to government does, however, carry some potential social costs: namely in areas such as bankruptcy, family stresses, absenteeism and criminal involvement. In response to these social and human costs, governments throughout

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<sup>189</sup> <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 11, 2004. Municipalities hosting “community” casinos receive ten percent of net casino revenue, while municipalities hosting “destination” casinos receive 1/6 of the net casino revenue. “Community” casinos were formerly known as charity casinos (18 in the province), while “destination” casinos are new casinos that were approved as a result of the RFP process in 1997/98. All Financial Host Agreements are similar, as they derive from a fixed template.

<sup>190</sup> Interview with Gary Jackson, Casino Operator, October 20, 2004

Canada have allocated monies for the development of programs that seek both to prevent and treat problem gambling. The British Columbia response to gaming is not that dissimilar to that of other provinces. Although British Columbia has not seen the same level of growth in non-charitable gaming as other provinces – it has, since 1992, consistently placed gaming expansion on the agenda. During this time the provinces authorized no fewer than six reports or reviews regarding provincial gaming, signed memoranda of agreements with both the charities and UBCM and finally enacted the BC *Gaming Control Act*. Where the British Columbia approach has diverged from that of other provinces lies in the way its agenda has been set. Although one could argue that the overall tendency of the province was to try to impose, in ways resonant of the *mobilization model*, a gaming model on the charities and municipalities, it ultimately was forced to accommodate and placate those groups outside of government – the local charities and municipalities – who had articulated grievances and complaints with its proposed policy.

It is the assertion of this thesis that the British Columbia government's ultimate response to gaming arose from an *outside initiation model* of agenda-setting, and the BC model, which entrenches the authority and power of the municipality to determine both the scope of gaming permitted and the location of gaming facilities is clearly unique in Canada. It is the assertion of this thesis that the formation of this legislation, and the policies supporting it, were the result of three contributing factors: the political will of municipalities to be decision-makers in all areas of gaming expansion; the historical role of the charities in the "legitimization" of gaming within the community and their advocacy to maintain status and revenue rights; and lastly, the increasing reliance of government on gaming revenues. This thesis will analyse all three of these factors, placing a particular emphasis on municipalities, who along with their provincial political association, the UBCM, have asserted and secured municipal input into this important public policy area.

## CHAPTER THREE: CONSTITUTIONAL BACKGROUND, ROLE OF MUNICIPALITIES, AND ROLE OF THE UNION OF BRITISH COLUMBIA MUNICIPALITIES (UBCM)

### (1) Historical Perspective and Municipalities' Legal Background

From a pure Constitutional perspective, municipalities are creatures of the province and only get the powers and responsibilities granted to them by the provincial government. Section 92-8 of the *Constitution Act* of 1982 (formerly the *British North America Act* of 1867), clearly states that all responsibilities for authority over local governments, rest with the provinces. In the case of British Columbia this power and the limits of municipal self-governance are, for the most part, laid down in the *Local Government Act* of 1998 (formerly the *Municipal Act*) and the *Vancouver Charter* (1886)<sup>191</sup> for the City of Vancouver. There are also many other provincial statutes that have a direct impact on municipalities (i.e. *Assessment Act*, *BC Building Code*, *Emergency Program Act*, *Police Act*). A complete listing compiled by the UBCM and available through their web site, lists 48 provincial statutes that affect and impact local governments.<sup>192</sup>

Effective January 1, 2004, the legislative framework dealing with municipalities was enhanced, through the newly enacted provincial legislation - the *Community Charter*

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<sup>191</sup> Originally called the *Vancouver Incorporation Act*, and having received authorization under the *Vancouver Enabling Act* (1949), the legislation was renamed the *Vancouver Charter* in 1953. *Vancouver Charter* Preamble. [http://www.qp.gov.bc.ca/statreg/stat/V/vanch\\_00.htm](http://www.qp.gov.bc.ca/statreg/stat/V/vanch_00.htm) accessed on December 29, 2004

<sup>192</sup> UBCM Fact Sheet, "Statutory Basis of Local Government," 2003, <http://www.civicnet.bc.ca/ubcm/FactSheets/UBCMFactSheet1.pdf> accessed on December 11, 2004

(Bill 14-2003). An analysis of the potential impacts arising from the *Community Charter*,<sup>193</sup> a piece of legislation designed to provide municipalities with greater autonomy, while fascinating, is beyond the scope of this study. The *Community Charter* has no direct reference to gaming and the role of municipalities in this policy area, other than the general intent of providing municipalities with greater autonomy, as expressed in section 3 of the legislation:

**Purposes of Act**

**3** The purposes of this Act are to provide municipalities and their councils with

- (a) a legal framework for the powers, duties and functions that are necessary to fulfill their purposes,
- (b) the authority and discretion to address existing and future community needs, and
- (c) the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities.<sup>194</sup>

Municipalities in British Columbia have played a significant role in the life of the province and in the implementation of public policy from its earliest days, even from before confederation.<sup>195</sup> The need to provide local services drove the colonial government in 1860 to incorporate the first municipality, the capital City of New Westminster:

As the colony had a shortage of funds it incorporated the City of New Westminster in 1860, so that the clearing of streets and the creation of a city could be proceeded with. In 1865, the colony passed a general ordinance, which laid down guidelines for future municipal organization.<sup>196</sup>

According to authors Richard and Susan Tindal, “The physical characteristics of British Columbia played a significant role in the development of municipal institutions in the province,”<sup>197</sup> implying that the distances and physical barriers that characterize British Columbia and isolate many communities, granted a de-facto autonomy to many

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<sup>193</sup> [http://www.legis.gov.bc.ca/37th4th/3rd\\_read/gov14-3-pt01.htm#section001](http://www.legis.gov.bc.ca/37th4th/3rd_read/gov14-3-pt01.htm#section001) accessed on December 11, 2004

<sup>194</sup> Ibid.

<sup>195</sup> Robert Bish, *Local Government in British Columbia*, 1987, First Edition, UBCM, p.15

<sup>196</sup> Ibid.

<sup>197</sup> Ibid., p. 37

municipalities. Many municipalities were incorporated under a “charter” status, which gave local communities a sense of autonomy from the beginning.<sup>198</sup> Today, however, the City of Vancouver, which was incorporated in 1886, is the only municipality that still maintains its own charter. All other municipalities are incorporated under the *Local Government Act* (1998), which replaced the *Municipal Act*.<sup>199</sup> Earlier legislation that regulated municipal activities included the *Municipal Act* (1871), the *Municipal Incorporation Act* (1896) and the *Municipal Clauses Act* (1896).<sup>200</sup>

Nevertheless, municipalities in British Columbia, as in the rest of the country, do not enjoy constitutional recognition and therefore can only exercise the powers entrusted in them by the province. Authors Tindal and Tindal maintain that the courts have historically upheld this view:

The courts have traditionally interpreted very narrowly statutes, which grant powers to municipalities. Their position has been that a municipality may exercise only those powers expressly conferred by statute, those powers necessarily or fairly implied by the express power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation.<sup>201</sup>

This view was reinforced in 1997, when five of the six municipalities being merged in Toronto challenged the constitutionality of the Ontario Legislature. A ruling by Mr. Justice Borins from the Ontario Superior Court in July 1997<sup>202</sup> indicated four principles that underpin the status of municipalities in Canada:

- i) municipal institutions lack constitutional status;
- ii) municipal institutions are creatures of the legislature and exist only if provincial legislation so provides;
- iii) municipal institutions have no independent autonomy and their powers are subject to abolition or repeal by provincial legislation;

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<sup>198</sup> Ibid., p. 37

<sup>199</sup> <http://www.legis.gov.bc.ca>, accessed on December 28, 2004

<sup>200</sup> Robert Bish, p.15

<sup>201</sup> R. and S. Tindal, p. 192

<sup>202</sup> Borins, S. 1997. Decision of Ontario Court of Justice (Motions Court), July, 1997 re. Municipal amalgamation in Toronto.

iv) municipal institutions may exercise only those powers that are conferred upon them by statute.<sup>203</sup>

Authors K. Graham, S. Phillips, and A. Maslove also share this view. When analysing the contemporary challenges to urban governance in Canada, they indicate:

The unchanged constitutional context of Canadian city governments requires us to repeat the old chestnut that urban governments are still considered creatures of the province. This view of urban governments raises the prospect that provincial governments will continue their practice of treating even the largest of our cities as if father knows best.<sup>204</sup>

Municipalities seem to exercise their power in a balancing act, comprised of the legislative framework that limits them on the one hand, and the ability to act beyond that framework, on the other. This is happening due to, either a *de facto* delegation from the province, or pure determination on the part of local governments. Judy Rogers, City Manager for the City of Vancouver acknowledges this:

British Columbia is very progressive in the area of local [government] domain, and for example, this is reflective in the ability of local communities to decide when and where gaming facilities can be located.<sup>205</sup>

It is clear then, that the fact that municipalities in British Columbia play a significant role in determining public policy in the area of gaming is in good measure due to the fact that the province has allowed it, or has been forced to permit it, due to political reasons. This phenomenon is perhaps a good illustration of what Patrick Smith and Kennedy Stewart refer to as “The Mushy Middle”, a place where the provincial government, while maintaining authority, allows the local governments to exercise some power, or where, in the absence of provincial direction, such power is exercised in any

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<sup>203</sup> Andrew Sancton, “The Municipal Role in the Governance of Canadian Cities,” *Canadian Cities in Transition*, Second Edition, Trudi Bunting and Pierre Filion, eds., Oxford Press, 2000, p.426

<sup>204</sup> Graham, Phillips, Maslove, *Urban Governance in Canada*, p.8

<sup>205</sup> Interview with Judy Rogers, August 24, 2004.

event.<sup>206</sup> One of the vehicles for such “mushy middle” activities by local governments in British Columbia, is their provincial organization – the Union of British Columbia Municipalities.

## (2) Role of the Union of British Columbia Municipalities - UBCM

The Union of British Columbia Municipalities (UBCM) was first organized in 1905 and it now represents all 182 local governments in British Columbia, divided into different classes of municipalities and regional districts, as the following table indicates:

Table 3: UBCM Membership

	Number	Population
Villages	40	42,791
Towns	15	81,980
Districts	55	842,201
Cities	44	2,439,604
Subtotal	154	3,406,756
Regional Districts* <sup>207</sup>	28	500,982
TOTAL	182	3,907,738

Source: UBCM – Municipal Facts and Figures, No. 22 – 2003

\* includes Islands Trust.

The total number of elected officials associated with the UBCM is 1,188, and these officials command a workforce estimated at 25,000 persons.<sup>208</sup> The UBCM, although, not dissimilar to its counterpart in other provinces, is a particularly powerful example of such organizations. As authors Tindal and Tindal indicate in their analysis of local government in Canada: “Most provinces have a number of municipal associations representing both staff and councillors, although it is the political associations which are

<sup>206</sup> Patrick J. Smith and Kennedy Stewart, “Beavers and Cats Revisited vs The Mushy Middle Thesis,” a paper for the Victor Jones Seminar, December 1, 2004, p. 37. See also, *Korean Local Government Review*, Vol. 6, No.1, 2004. “Beavers and Cats Revisited: Has the Local-Intergovernmental Game shifted to the Mushy Middle?” pp.123-156.

<sup>207</sup> Regional District's Board members are not elected directly. Directors are appointed from the municipalities.

<sup>208</sup> UBCM Municipal Facts and Figures, No. 22, 2003



critical to the consultations with the senior governments.”<sup>209</sup> Besides British Columbia, only Quebec and Nova Scotia have a single organization representing the interests of all municipalities.<sup>210</sup>

The significant role the UBCM plays in the definition of public policy in British Columbia is not limited only to gaming issues, but includes also a number of other sectors of intergovernmental relations between the province and municipalities. Following a series of discussions which started in the early 90’s, when Mike Harcourt (former Mayor of Vancouver) became Premier and Darlene Marzari (former City Councillor in Vancouver) became Minister responsible for Municipalities, a Protocol of Recognition between UBCM and the Province of British Columbia was finally signed on September 18, 1996,<sup>211</sup> whereby it was stated:

WHEREAS All British Columbians, individually and collectively through their governments, share responsibility for building and sustaining the province on behalf of present and future generations; ... Effective cooperation between the provincial and local governments will lead to certainty and predictability of governmental performance, and promote public confidence and sound planning... THEREFORE The Province recognizes local government as an independent, responsible and accountable order of government.”<sup>212</sup>

The two parties also signed a Protocol on Principles for Sharing Environmental Responsibilities in 2001, and a Memorandum of Understanding on Local Government Participation in the Negotiation of Treaties and Agreements in 2002.<sup>213</sup> In addition, there are some mandated provisions in legislation that require the provincial government to consult with UBCM on various policy areas (Fish Protection Act, Assessment Act, Public Sector Pension Plan Act, etc.).<sup>214</sup>

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<sup>209</sup> Tindal and Tindal, p.231

<sup>210</sup> Graham, Phillips and Maslove, *Urban Governance in Canada*, p.194

<sup>211</sup> Interview with Richard Taylor, Executive Director of UBCM, November 9, 2004.

<sup>212</sup> Protocol of Recognition Amongst: Government of British Columbia; and UBCM, September 18, 1996

<sup>213</sup> UBCM, Report on Protocols of Recognition with Senior Governments and Other Agencies, March 5, 2003.

<sup>214</sup> Ibid.

Other examples of UBCM's successes representing the interests of municipalities include: a variable tax rate system; liability and regional district legislation; the implementation of three years elections; and the implementation of municipal ticketing and bylaw courts.<sup>215</sup> The advocacy work towards a community charter can also be added to the list.<sup>216</sup> The UBCM also provides a number of services to its members, including a group benefits program, tax notice service, voters list, information services and others.<sup>217</sup>

In her study of local government associations (1988), author Pamela Goldsmith-Jones interviewed all of the member municipalities belonging to UBCM and concluded that lobbying the provincial government is one of the core purposes of the organization.<sup>218</sup> The UBCM lobbying capacity has been explicit in terms of gaming policy for a number of years, particularly from 1994 on. At the 1994 Annual Convention for example, the UBCM unanimously endorsed the following resolution:

Be it resolved that the UBCM request the Provincial Government to ensure that there will be municipal participation in the evaluation of community impacts of any expansion to gaming activity, and that gaming legislation or regulations require municipal endorsement of specific gaming locations prior to approval.<sup>219</sup>

Similar resolutions were endorsed during the provincial consultations processes of 1997, 1999 (White Paper on Gaming), and 2000 (the Meekison Review)<sup>220</sup>. The UBCM's submission to the provincial government regarding Bill 6-2002 – the *Gaming Control Act* – appears to have caused an impact since the final version of the *Act* incorporated some of the municipalities' major concerns not addressed by earlier drafts, including the recognition of municipal veto powers on the placement of gaming facilities.

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<sup>215</sup> About UBCM, [http://www.civicnet.bc.ca/ubcm/about\\_UBCM.shtml](http://www.civicnet.bc.ca/ubcm/about_UBCM.shtml), accessed on December 29, 2004

<sup>216</sup> Interview with Richard Taylor, November 9, 2004

<sup>217</sup> About UBCM, [http://www.civicnet.bc.ca/ubcm/about\\_UBCM.shtml](http://www.civicnet.bc.ca/ubcm/about_UBCM.shtml), accessed on December 29, 2004

<sup>218</sup> P. Goldsmith-Jones, "A Revaluation of Local Government Associations: A Case Study of the UBCM," Master Thesis, Political Science, UBC, 1988, p.42

<sup>219</sup> UBCM Convention Newsletter, November 1994. This same resolution was again endorsed at the 1995 UBCM Convention (Resolution B5, 1995) with a small addition indicating that "and that any proposals or new gaming activities specifically address the potential effects on charitable gaming."

<http://www.civicnet.bc.ca/siteengine/ActivePage.asp?PageID=173>, accessed on December 30, 2004

<sup>220</sup> Professor J. Peter Meekison was appointed by the provincial government on July 19, 1999 to act as an independent gaming advisor and recommend a process for the relocation of gaming facilities. His report was released on February 1, 2000.

Former Vancouver Councillor, Lynne Kennedy believes that the united voice with which all partner municipalities – rural and urban – spoke contributed to the UBCM success:

We did bring these issues to the floor and it was debated at our general assembly meeting for a number of years – I think for two or three years. Vancouver quite often led the way on putting motions forward, and they were debated and voted on and that made a big difference I think to the provincial government because when we came to the provincial government demanding all these things they looked at UBCM's voting record and saw that it was both rural and urban who voted in these issues and that a large proportion of voting delegates supported them."<sup>221</sup>

Some UBCM suggestions, however, were ignored, such as the request to have the *Act* specifically stipulate the revenue sharing formulas with municipalities hosting casinos. This remains as direct agreements between the province and the host municipality where casinos are located. Racetracks with slot machines have since been added to this arrangement.<sup>222</sup> The impact of the UBCM and local municipalities' stand on gaming policy issues, particularly that of the City of Vancouver, was best demonstrated with the signing of the Memorandum of Agreement on gaming issues on June 17, 1999, which even though signed by the previous NDP government, continues to be recognized by the present Liberal government.<sup>223</sup>

The advocacy role played by UBCM on behalf of municipalities has been present ever since its conception in 1905, perhaps following an already established expectation of independence on the part of municipalities in British Columbia. At the time of the formation of UBCM, the province was still in its formative years and much unrest and political turmoil were part of the political scene. In 1903, Premier Prior resigned, and the province was left "without government" for the fifth time in five years.<sup>224</sup> Historical

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<sup>221</sup> Interview with Lynne Kennedy, October 15, 2004.

<sup>222</sup> Interview with Derek Sturko, General Manager, BC Gaming Policy and Enforcement Branch, September 13, 2004. Also see footnote 189.

<sup>223</sup> Ibid.

<sup>224</sup> *UBCM Historical Documents*, UBCM, Richmond, British Columbia, 2003. This is a forthcoming book (2005) on the history of UBCM. Mr. Richard Taylor, the Executive Director of UBCM, has made a manuscript of this publication, available to this study.

documents from UBCM archives indicate four reasons to explain the interest of municipalities in forming a common Union. These four reasons were:<sup>225</sup>

- a) The battle against utility and railway monopolies (BC telephone, CPR).
- b) Interest in political reform due to provincial political turmoil.
- c) Need to coordinate amendments to the Municipal Clauses Act.
- d) Interest in seeking more power for municipalities, perhaps not dissimilar than those enjoyed by many American cities operating under the “home rule” approach.<sup>226</sup>

Thirty-three municipalities attended the first UBCM Convention, which was held in the City of New Westminster. Mayor C.S. Stevens of Kamloops was elected President. The following year, when reporting to the 1906 Convention, Mayor Stevens presented five operating principles that may still be valid today:

- (1) that every effort be made to first cement every Municipality in the Province into one organic Union. Let the organization be complete
- (2) be united in what you ask for
- (3) make sure that what you ask for is right and based upon justice for all
- (4) see that the one whom you appoint to present your case understands it from more sides than one
- (5) get all you can, when you can, keeping in view your ultimate end to secure for the municipal Council what it originally had, and which as years have rolled by it has been gradually shorn of viz. Power of governing its own internal affairs, when they do not conflict with the affairs of the province in general.<sup>227</sup>

The last principle in Mayor Stevens’ list is a reflection of the already established conflict of power limitations for municipalities, as a result of the *Municipal Clauses Act*, enacted in 1896.<sup>228</sup> High on the list of municipal concerns was the limited municipal

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<sup>225</sup> Ibid, p.3

<sup>226</sup> *UBCM Historical Documents*, p.3. Many American cities were entitled to do what was not prohibited by Federal or State legislation (“home rule”), while in Canada; municipalities could only do what was specified in provincial legislation. This later approach is also present in the U.S.A., and known as the Dillon’s Rule (see Patrick Smith and Kennedy Stewart “Mushy Middle”, pp.4-6)

<sup>227</sup> *UBCM Historical Documents*, Chapter Two, p.2

<sup>228</sup> Donald Higgins, *Urban Canada: Its Government and Politics*, Macmillan of Canada, 1977, p.36. According to Higgins, the Municipal Clauses Act was just an adaptation of the 1849 Ontario’s Municipal Corporations Act, also known as the Baldwin Act.

control over utilities, particularly in relation to the provincial prohibition against municipalities having their own telephone systems.<sup>229</sup>

Many other early issues of concern to the UBCM are also not dissimilar to present day concerns for Mayors and Councillors across British Columbia. The UBCM endorsed a 1906 petition from the municipalities of Vancouver, New Westminster, Ladner, Langley and Richmond to ask the provincial government to address the needs of the destitute, aged and infirm.<sup>230</sup> Other social and moral issues addressed by the UBCM at the time ranged from prostitution to spitting on sidewalks. In 1910, Mayor Bell of Enderby, and President of UBCM spoke in favour of a resolution requesting the Federal Government that, "Any person convicted of entrapping and selling into bondage for immoral purposes any girl or woman shall be punished by life imprisonment... and after considering the heartless nature of this crime, I would favour adding the lash."<sup>231</sup>

Over the next formative years, the UBCM continued to confront the provincial government for added powers and resources, usually with frustrating results. A proposal to the Royal Commission on Municipal Government in 1912, to "divide cities into three classes with different borrowing capabilities was viewed as unnecessary and mischievous."<sup>232</sup> The first time that UBCM records indicate a concern or issue related to gambling was at the end of World War I. As indicated in the UBCM's unpublished book about the history of UBCM:

The Provincial Government was reluctant to help the growing municipalities. By 1914 only the right to license dogs and bicycles, a poll tax, and powers to finance libraries and fire departments has been added to the local capabilities. Not until after World War I was UBCM successful in obtaining a share of automobile license revenues and pari-mutuel betting for municipalities.<sup>233</sup>

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<sup>229</sup> *UBCM Historical Documents*, Chapter Two, p.3

<sup>230</sup> *ibid.* p.4

<sup>231</sup> *ibid.* p.4

<sup>232</sup> *Ibid.* Chapter 2, p.8

<sup>233</sup> *Ibid.* Chapter 2, p.5. "Pari-mutuel betting" means a system of betting in which the winners divide the total amount of the bet, after deducting management expenses, in proportion to the sums individually wagered. Regulations regarding pari-mutuel betting are found in Section 204 of the *Criminal Code of Canada*.

The access to revenue from pari-mutuel betting was eventually lost, and it would take another 80 years for municipalities to gain access to gambling revenues.<sup>234</sup> Over the next few decades, the UBCM would continue strengthening its organization and its capacity to confront or collaborate with the provincial government. It was not an easy road, particularly in the years following World War I and into the depression years. Concerns about local employment and relief work were high on the agenda of municipal leaders. Issues related to gambling came again into the UBCM's Convention floor in 1933 when the delegates "protested the reduction in Provincial grants, especially racing and liquor grants, until there was proper readjustment of the incidence of taxation and of the powers of taxation. The Government acceded to this request."<sup>235</sup>

The relationship between municipalities and the Provincial Government received a boost, when the Ministry of Municipal Affairs was established in 1934 and Arthur Wells Gray; a former UBCM President was appointed Minister. He would remain as Minister of Municipal Affairs until his death in 1944.<sup>236</sup> Perhaps as a result of the new Ministry being formed, relations between UBCM and the Provincial Government improved significantly over the next few years. At the 1937 Convention held in Nanaimo, the UBCM President indicated that; "it is very pleasing to me to see that members of the Cabinet are prepared to come and discuss things with us and I feel sure that, if this practice is continued, we will soon arrive at a satisfactory settlement to many issues of our troubles." (sic)<sup>237</sup>

The UBCM continued to press the Provincial Government for appropriate financing and resources for British Columbia communities. At both the 1951 and 1952 Conventions resolutions were passed opposing provincial plans to reduce its contribution of 80 percent of the cost of welfare. At the time, welfare costs were shared between municipalities and the province. It is in this context that a resolution requesting authorization for charitable organizations to hold lotteries as a mean of raising funds and

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<sup>234</sup> The municipalities right to access gambling revenue was formally recognized in the Memorandum of Agreement signed by the UBCM and provincial government, on June 17, 1999.

<sup>235</sup> *UBCM Historical Documents*, Chapter 5, p.6

<sup>236</sup> *Ibid.* Chapter 5, p.7

<sup>237</sup> *Ibid.* Chapter 5, p.11

paying for community-based programs was passed in the 1951 Convention.<sup>238</sup> It should be noted that until the 1969 amendments to the Canadian Criminal Code, charities were only allowed to carry out small lotteries and raffles.<sup>239</sup>

Municipal concerns over planning and zoning issues were also high on the UBCM agenda in 1963 when they proposed the establishment of Regional Planning Boards, which were implemented by the province the following year. Another example of a UBCM policy change proposal that confronted municipalities with the provincial government was the issue of Sunday sports and Sunday entertainment. It took UBCM ten years to convince the province to finally agree in 1969, to allow Sunday sports and other recreational activities.<sup>240</sup> As UBCM celebrates one hundred years since its first Convention in 1905, it can look into the past and conclude that it has contributed significantly to advancing the cause of better relations with the province and allowing for important public policy development at the municipal level.

There are, however, some members of UBCM who view the role of the organization as “a front for the provincial government to water down municipal initiatives or complain.”<sup>241</sup> Current Mayor Derek Corrigan of Burnaby, for example, indicated that unless UBCM members could reach consensus on a particular issue, it was difficult to get the provincial government to agree to meaningful responses. The magnified role for smaller communities was also, in his view, a concern, given the fact that many of the larger city problems were not of importance or a priority for smaller communities.<sup>242</sup> This kind of concern has been present before. At the 1966 Convention, many UBCM delegates from larger urban centres were frustrated by the “lack of sophistication” on the part of delegates from smaller communities.<sup>243</sup> The frustration

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<sup>238</sup> Ibid. Chapter 7, p.3

<sup>239</sup> Colin Campbell, in his doctoral Thesis, *Canadian Gambling Legislation: The Social Origins of Legalization*, June 1994, documented that changes to the *Criminal Code* were introduced in 1900, to permit small-scale raffles at bazaars (p.25), and in 1938, to allow for occasional gambling in the benefit of charitable or religious organizations (p.225).

<sup>240</sup> Ibid. Chapter 7, p...

<sup>241</sup> Interview with Mayor Derek Corrigan, October 15, 2004

<sup>242</sup> Interview with Mayor Derek Corrigan, October 15, 2004

<sup>243</sup> UBCM Historical documents, Chapter7, p.23

drove Mayor W.G. Rathie of Vancouver (1962-1966) to indicate, “UBCM is largely wasting its time.”<sup>244</sup>

The fact that provincial associations – from the perspective of large cities - may remain as secondary players for intergovernmental relations is also recognized in the Academic literature. As authors Graham, Phillips, and Maslove indicate in their text *Urban Governance in Canada*: “Large urban centres also have more avenues for pursuing their interests at the provincial level. There is the clout of big city mayors and the sophisticated expertise of senior city staff. In addition there is the prospect of using the collective influence of the local caucus in the provincial legislature.”<sup>245</sup>

Current Mayor Larry Campbell of Vancouver raised questions about the role of UBCM in relationship to representing the interests of big cities like the City of Vancouver. As he indicated during an interview: “For any problem that I may have, I can deal directly with the Premier of the province without the need of the UBCM to speak for me.”<sup>246</sup> Mayor Campbell sees more relevance in participating in forums like the Federation of Canadian Municipalities (FCM) Big City Mayors caucus, than his participation in the UBCM. The Big City Mayors caucus includes Mayors from 22 of the largest urban centres in Canada.<sup>247</sup> Mayor Campbell is also a member of the “ten hub cities” summit, which includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, Toronto, Ottawa, Montréal, Quebec City, and Halifax Region.<sup>248</sup> At the last meeting of the ten hub cities in Toronto on September 18, 2004, the Mayors agreed on a plan to

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<sup>244</sup> UBCM Historical documents, Chapter7, p.23

<sup>245</sup> Graham, Phillips and Maslove, p.195

<sup>246</sup> Interview with Mayor Larry Campbell, November 10, 2004

<sup>247</sup> The Big City Mayors caucus includes: Vancouver, Surrey, Calgary, Edmonton, Regina, Saskatoon, Winnipeg, Brampton, Hamilton, Kitchener, London, Mississauga, Ottawa, Windsor, Toronto, Gatineau, Montréal, Laval, Québec, Longueuil, Halifax, and St. John’s. The President of FCM is also a member of the caucus.

<sup>248</sup> <http://www.newswire.ca/en/releases/archive/September2004/18/c1188.html>, accessed on December 30, 2004



allocate the federal transfer of the fuel tax. The details of the agreement are provided in the Mayor's communiqué of the same date.<sup>249</sup>

On balance, even though UBCM is not necessarily the conduit that larger cities use for all issues that require the attention of the provincial government, it has played a significant role in advancing the cause of municipalities in some important policy areas, of which, gambling policy is an important example. In this instance, the UBCM provided those municipalities most directly affected by the province's plans for gaming expansion with a collective voice and vehicle for articulating grievances about, and outlining alternatives to, the proposed expansion plans. Municipalities, and in particular Vancouver, used the General Assemblies to put forward motions and pass resolutions which set forth their opposition to the provincial government's proposed gaming expansion. In this way, the UBCM was an important channel for municipalities looking to influence from the outside the provincial government's gambling agenda-setting strategy. In their desire to influence policy and to effect substantive changes to the province's agenda, the municipalities successfully created alliances with various citizen groups, enacted by-laws and statutes that asserted their constitutional authority and leveraged the political clout of their provincial association, the Union of British Columbia Municipalities, and by so doing, exemplified the outside initiation model of agenda-setting.

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<sup>249</sup> <http://www.newswire.ca/en/releases/archive/September2004/18/c1188.html>, accessed on December 31, 2004, "The mayors unanimously agreed that the federal allocation of the fuel tax revenue to each province must be based on the following formula: 75% of the funding will reflect fuel consumption, and 25% of the funding will reflect transit ridership. A minimum of 25% of each province's share must be dedicated to public transit infrastructure, where it is a municipal priority. The mayors also agreed that a schedule for sharing the fuel tax revenue must be set out in the Speech from the Throne, with at least 2.5 cents/litre in 2005, ramping up to the full 5 cents/litre by 2007. Each cent of the fuel tax is equal to about 500 million dollars."

## CHAPTER FOUR: THE ROLE OF CHARITIES

*“Over the 20<sup>th</sup> century, gambling expanded from a prohibited activity to a large-scale, provincially-operated industry, with provincial governments, non-profit organizations and the federal government all benefiting from gambling revenues. The relaxation of federal gambling policy, which allowed for the expansion of gambling activities, occurred as a result of lobbying efforts by agricultural fairs and exhibitions representatives, provincial governments and others, as well as growing public support for the use of gambling to fund charitable activities. Thus, in terms of changes to federal policy, charities and non-profits were important as a justification for gambling expansion.”*

Colin Campbell, December 2000<sup>250</sup>

Charities have played a significant role in the development of gambling in Canada, and in British Columbia in particular.<sup>251</sup> Until the amendments to the *Criminal Code* in 1969, the only gambling activities allowed in Canada besides pari-mutuel horseracing were small charity lotteries and raffles.<sup>252</sup> The 1969 amendment permitted the provincial government to both conduct and manage lottery schemes directly, or to license charitable organizations to do so.<sup>253</sup>

Section 207(1)(b) of the *Criminal Code*, specifically permits charities to conduct and manage lottery schemes under a license from the provincial Cabinet or a person designated by Cabinet for this effect. The licensee has to be a charitable or religious organization, and the proceeds from gambling have to be used for charitable or religious

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<sup>250</sup> Colin Campbell, *Non-profits and Gambling Expansion: The British Columbia Experience*, Canada West Foundation, December 2000, p.5

<sup>251</sup> *Ibid.*, p.2

<sup>252</sup> White Paper on Gaming, p.9

<sup>253</sup> *Criminal Code of Canada*, Section 207(1)(a) and 207(1)(b).

purposes. Charitable organizations are not permitted to conduct any gaming involving electronic devices.<sup>254</sup>

The *Criminal Code* does not define charitable organizations; therefore it has been up to the courts to establish it from common law practices. In the background information provided by Frank Rhodes<sup>255</sup> in the White Paper on Gaming, charitable organizations are defined as:

Charitable organizations are those, which have charitable purposes as their sole objects. Canadian courts have accepted the principle that a charitable purpose, in the legal sense, is one that fits within the classifications derived from the seventeenth century English *Charitable Uses Act* (43 Eliz. I, c. 4, 1601).

In 1891, the House of Lords offered a legal definition of “charitable trust” that has continued to influence judicial thinking and public policy throughout the common law world (*Income Tax Special Purposes Commissioners v. Pemsel*, 1891). The court stated that a charitable trust must provide for:

- the relief of poverty;
- the advancement of education;
- the advancement of religion, or
- other purposes beneficial to the community not falling under any of the preceding heads.

The courts have restricted the meaning of the phrase “other purposes beneficial to the community” to purposes within the spirit and intent of the *Charitable Uses Act*. In essence, a charitable or religious purpose must benefit the community or an appreciably important section of the community.<sup>256</sup>

Charities do play a significant role in the delivery of social and cultural programs and services in Canada, and are also a significant component of the country’s social milieu. As reported in a Topic paper produced by the Toronto Dominion Bank, a 1999 Privy Council Office statement about the role of the voluntary sector in Canadian society stated; “The voluntary sector... play(s) a vital role in our society, improving the well-being and the quality of life of Canadians. It delivers key services, represents the

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<sup>254</sup> White Paper on Gaming, p.13

<sup>255</sup> Frank Rhodes was a long time serving provincial public servant who was appointed President and Chief Executive Officer of the British Columbia Ferry Corporation in June of 1990 and served in that capacity until 1997

<sup>256</sup> White Paper on Gaming, pp. 13-14

interests of its clients and communities, and provides a vehicle for involving citizens in civic participation and public decision-making. It is helping to restore legitimacy to our democratic institutions. It builds social capital, sustains social cohesion, makes a substantive economic contribution and is truly the “third pillar” of our society.”<sup>257</sup>

According to data compiled by the Canada Revenue Agency, there were 80,714 registered charities in Canada in 2002,<sup>258</sup> a sizeable increase from the 62,000 identified in 1992.<sup>259</sup> Not all non-profit organizations, however, are registered charities. It is estimated that there are over 175,000 non-profit organizations in Canada.<sup>260</sup> There are higher accountability requirements for non-profit organizations to become a federally registered charity.<sup>261</sup> According to data collected by Statistics Canada, most registered charities are related to religious organizations (43%), while the remaining organizations (57%) relate to welfare, education, health, and other sectors.<sup>262</sup> Most funds collected by charities come from donations by individuals, followed by government grants and charitable gambling (in that order), but when religious organizations are taken out of the equation, government grants and gambling revenues become more relevant.<sup>263</sup>

Gaming dollars are an important revenue generator for Canadian charities in all of Canadian provinces. According to the Canadian Gambling Digest, in 2003, charities collected revenues in excess of \$1 billion.<sup>264</sup> Charities in Ontario (\$563 million) and Alberta (\$284 million) were the provinces with highest revenues for charitable gaming.<sup>265</sup> In British Columbia, according to figures from the BC Gaming and Enforcement Branch, for the year 2003/04 more than 6,000 charities in British Columbia accessed gaming

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<sup>257</sup> Craig Alexander, Toronto Dominion Topic Paper, “Canada’s Charities: Under Pressure,” September 15, 2004. p. 2

<sup>258</sup> Ibid., p.1

<sup>259</sup> Ibid.

<sup>260</sup> Colin Campbell, *Non-profits and Gambling Expansion: The British Columbia Experience*, Canada West Foundation, December 2000, p.3

<sup>261</sup> Government of Canada, “Registering a Charity for Income Tax Purposes,” Canada Revenue Agency, Form T4063.

<sup>262</sup> Ibid. p. 2 Note: Increased efforts to diminish the size and role of government in the delivery of social programs contributed to the growth of the charity sector. See footnote 290 ahead.

<sup>263</sup> Jason Azmier, *The Ethics of Charitable Gambling*, p. 11

<sup>264</sup> Canadian Gambling Digest, p.4

<sup>265</sup> Ibid.

revenue.<sup>266</sup> The total amount received by charities for the year 2003/04 was \$167 million.<sup>267</sup> The money distributed to charities is divided into six different categories, namely: Environment; Public Safety; Social Services; Capital Projects; School Parent Advisory Committees (PAC); and Arts, Culture and Sports.<sup>268</sup> The following table provides more specific information about the distribution of monies among charities in British Columbia:

Table 4: Distribution of Gaming Revenue to Charities in B.C. – 2003/04

No. of Organizations	Grants*	Bingo	Raffle	Other	Total
6,300	\$74,000,000	\$61,443,545	\$31,533,952	\$313,942	\$167,291,439

Source: BC Policy and Enforcement Branch, 2004

\* The grants given to individual charities are derived from casino revenue collected by the province, and are referred to as “direct access grants.”<sup>269</sup>

Municipal governments have been and continue to be aware of the importance of gaming revenue to charities. A study conducted by the United Way of the Lower Mainland (Greater Vancouver) in 1996, indicated that on average, organizations and agencies in the voluntary sector depended on gaming for 6.1 percent of their revenue. The study indicated that 32 percent of the agencies received between 15 percent and 50 percent of their total revenue from gaming activities.<sup>270</sup>

In 1994, a City of Vancouver discussion paper, written in response to a major casino proposal for the Vancouver waterfront, recognized this fact: “A reduction in charitable gaming revenue would likely lead to a decline in the services provided to the community by non-profit organizations. It could also put pressure on government – including the City of Vancouver – to find alternative ways of financing those services.”<sup>271</sup>

A 2000 national survey conducted by the Canada West Foundation among Canadian charities concluded that charities that once received 100 percent of the revenues

<sup>266</sup> BC Gaming Policy and Enforcement Branch: <http://www.pssg.gov.bc.ca/gaming>, accessed on December 27, 2004.

<sup>267</sup> Ibid., <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 28, 2004.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> United Way of the Lower Mainland, “The Volunteer Sector and Gaming Revenue,” 1996

<sup>271</sup> City of Vancouver Casino Review: A Discussion Paper, August 1994, p.26

arising from permitted gambling (other than pari-mutuel betting) prior to 1969 have seen their share of the gambling dollars decline.<sup>272</sup> According to the Foundation's survey, charities in Canada, received \$938 million in the year 1998, which constituted only 18 percent of the combined gambling profits in Canada. Provincial governments received the rest.<sup>273</sup>

According to the Canada West Foundation study, "gaming dollars have become an important revenue source for a traditionally cash-poor sector."<sup>274</sup> The study mentions four advantages of charities using gambling as a fundraising method, and acknowledges six disadvantages.

Advantages:

- Charitable gambling is an efficient revenue source for charities.
- Charitable gambling revenue is relatively free of the strings attached to other revenue sources.
- Because charitable gambling money can be used at the relative discretion of the charities that receive it, it has a positive effect on the autonomy of the charitable sector.
- There is a strong public support for the use of gambling for charitable purposes.

Disadvantages:

- Some charities have been asked by their board, staff or clients to stop using gambling-related funds.
- Non-profit sector and government expansion into gambling have increased the competition for limited gambling dollars.
- Dependency on gambling revenues renders non-profits vulnerable to external changes.
- Increased gambling revenues may lead to reductions in other sources of funding including individual donations.
- With the expansion of charitable gambling, the focus of non-profit fundraising has shifted from community-based support to fundraising from gamblers, particularly problem gamblers.
- Governments use the non-profit sector to justify the expansion of gambling.<sup>275</sup>

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<sup>272</sup> Jason Azmier, *The Ethics of Charitable Gambling: A Survey*, Canada West Foundation, December 2000

<sup>273</sup> Ibid., p.5, as indicated earlier, gambling revenue to charities is now over \$1 billion, according to the "Canadian Gambling Digest", p.4

<sup>274</sup> Jason Azmier, *The Ethics of Charitable Gambling: A Survey*, Canada West Foundation, December 2000,

p.5

<sup>275</sup> Ibid., pp6-8

As a result of their increased dependency on gaming dollars, charities have become better organized, and stronger advocates for the continuation of this source of funding. The main province-wide organization in British Columbia, the B.C. Association for Charitable Gaming (BCACG), together with the Charitable Bingo Council of B.C. signed a Memorandum of Agreement with the provincial government, coincidentally at the same time that a similar agreement was being signed with UBCM.<sup>276</sup> The MOA with the charities was also a response to some of the particular concerns raised by the charities at that time. The timing of the charities agreement, one day after the UBCM's agreement has been signed, not only suggests a coordinated approach, between charities and municipalities, but also, given the fact that the charities agreement mirrors many of the components found in the MOA with UBCM, demonstrates the extent to which together they were successful in ensuring a comprehensive approach to gaming policy development. Clearly, the municipalities, along with the charities, were instrumental in forcing an agenda, and indeed in even setting the agenda, for the development of this public policy. Highlights of the agreement with the charities include:

The Province:

- affirms the role of licensed charities as the sole beneficiaries of bingo gaming, including both paper and electronic bingo;
- will pursue changes to the gaming provisions of the federal *Criminal Code* to provide greater legal certainty for the continuing key role of licensed charities in charitable gaming;
- reaffirms its commitment to the existing charitable guarantee of a minimum \$125 million annually, indexed annually at the rate of Vancouver CPI, with a formula that ensures charity entitlement to an amount, after accounting for retained bingo revenues, equal to 1/3 of ongoing government net community casino gaming revenue.<sup>277</sup>

The province, while respecting the terms of the agreement signed with UBCM during the same period, has not responded with a similar commitment to all of the terms listed in the MOA signed with the charities, suggesting that although the charities hold

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<sup>276</sup> Memorandum of Agreement on Gaming Policy between the provincial government and the BCACG, June 18, 1999.

<sup>277</sup> Memorandum of Agreement on Gaming Policy between the provincial government and the BCACG, June 18, 1999.

influence, it is not held to the same extent as that of the municipalities. For example, the province has not pursued changes to the *Criminal Code* as requested by the charities,<sup>278</sup> and while maintaining its commitment to the minimum \$125 million annually (worth \$135 million in 2004)<sup>279</sup>, the province has not provided for a third of net casino gaming revenue as charities entitlement.<sup>280</sup> The fact that charities, as a collective group, have not “lost” any revenue, given the yearly indexed increases, has probably contributed to the charities inability to recoup a third of net community casino revenue, which in 2003/04 would have meant another \$30 million in revenues. The present provincial government may not be totally committed to all of the terms of the agreement, given that the MOA was a political agreement signed by the previous NDP government. Furthermore, the main terms of reference for the relationship between the provincial government and the charities are now defined in the *Gaming Control Act*, enacted in 2002. The charities revenue guarantee is not entrenched in the legislation.<sup>281</sup> The fact that the municipalities have had more success, than the charities, in having the province respect the terms of the MOA signed with UBCM, suggests a stronger political capability to engage the province and set an agenda that fits their needs.

Following the *Criminal Code* changes in 1969, charities began to rely more and more on gambling revenue, and began to put pressure on the provincial government by requesting licenses to conduct gaming events. In 1970, a small licensing office was created within the Ministry of the Attorney General of British Columbia.<sup>282</sup> This office began to issue licenses to charitable and religious organizations to conduct events such as bingos and raffles.<sup>283</sup> There were 3,754 licenses issued in 1983 and by 1985/86 the number of licenses had increased to 4,904.<sup>284</sup> Later, in 1987, the provincial government established the British Columbia Gaming Commission (BCGC). The purpose of BCGC

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<sup>278</sup> Charities have wanted to change the *Criminal Code* to allow charities the right to conduct and manage electronic gaming, which is in the exclusive domain of government.

<sup>279</sup> Not counting Raffles revenue, which account for an extra \$31.5 million. Revenues generated by raffles have always been considered as a separate licensing process set by the province, and they were never considered as part of the ‘revenue guarantee.’

<sup>280</sup> Interview with Wendy Thompson, September 21, 2004

<sup>281</sup> *Gaming Control Act*, 2002

<sup>282</sup> Margaret Lord and Dennis Streifel, Findings of the Gaming Review Committee, January 1993, p.3

<sup>283</sup> Ibid.

<sup>284</sup> Colin Campbell, Non-Profits and Gambling Expansion, p.6



was to set policy for licensed gaming in the province, and to set terms and conditions of bingo, casino, and raffle licenses.<sup>285</sup> The BCGC was officially disbanded in 2002 when the BC Gaming Policy and Enforcement Branch took responsibility for all gaming policy and licensing matters.<sup>286</sup>

For many years following the 1969 changes to the Criminal Code, the government revenues generated by gaming were mostly concentrated in the traditional lotteries sector, and government continued to have a monopoly of traditional lotteries. For a few years, however, charity groups sold lottery tickets on a consignment arrangement. This practice was discontinued in the late 1970's when the BC Lottery Corporation (BCLC) took over the sale of all lottery products, which created animosity on the part of the charities.<sup>287</sup> The BCLC had joined with the three other western provinces to create the Western Canada Lottery Foundation, and BCLC wanted to have responsibility for marketing all lottery products in the province.<sup>288</sup>

One of the reasons why in the early 1980's charities began to rely more and more on gaming revenue, is due to the fact that the Social Credit government at the time, was implementing a restructuring and restraint program that saw a significant decrease in funding to non-profits as well as a decrease in the delivery of needed social services. As Lynda Fletcher-Gordon explains in her article "Gaming Revenue and Non-Profit/Charitable Organizations" (1988):<sup>289</sup>

Government funds that had previously been distributed to the non-profit social service sector were also reduced or withdrawn. As a result, while many non-profit organizations experienced an increased demand for service, they were forced to seek out alternative sources of funding. Although fund-raising by non-profit organizations is not a new occurrence, some non-profit social service

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<sup>285</sup> Ibid.

<sup>286</sup> BC Gaming Policy and Enforcement Branch: Highlights of Gaming Control Act, 2002

<sup>287</sup> Colin Campbell, *Non-Profits and Gambling Expansion*, p.6

<sup>288</sup> Report on Gaming and Regulation in British Columbia, January 1999, p.10.

<sup>289</sup> At the time of presenting this article, Lynda Fletcher-Gordon was the Executive Director of the Lower Mainland Purpose Society for Youth and Families.

organizations appeared to be turning to gaming as a way of raising funds to offset cuts in government funding.<sup>290</sup>

For many years, bingo gaming and casino type of gaming were, for the most part, in the charities domain. This situation changed dramatically in 1998, when government took control of casinos. The following revenue table indicates the amounts of revenue received by charities from 1993 through 1998, from different available sources:

Table 5: Net Gaming Revenues for Charities (\$ Millions)

	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99
Bingo	65.8	64.0	67.5	62.7	60.0	60.0
Casino	37.0	42.0	44.4	47.7	80.0*	15.0**
Raffles + Other	13.9	17.9	19.7	20.3	19.8	19.1
Direct Access Grants	0.0	0.0	0.0	0.0	0.0	50.0
Total	116.7	123.9	131.6	130.7	158.7	144.1

\* Charities received additional revenues for 1997/98 as a result of a court ruling related to a *Nanaimo* Charity.<sup>291</sup>

\*\* Casino revenue for months of April and May 1998. As of June 1, 1998 charity casinos became under the conduction and management of the provincial government (through the BCLC).  
Source: White Paper on Gaming and BC Gaming Commission.

Starting in June of 1998, the provincial government (via the BCLC) took control of conducting and managing casinos, and in September of 2002, took control of conducting and managing bingo gaming. The casino and bingo revenue that supports charities is channelled through government grants, certificates of bingo affiliation, and service agreements with charities that act as bingo operators, also known as independent bingo operators.<sup>292</sup>

Charities in British Columbia were also instrumental in facilitating the introduction of electronic gambling. In 1988, the BC Lottery Corporation, in an

<sup>290</sup> Lynda Fletcher-Gordon, "Gaming Revenue and Non-Profit/Charitable Organizations," in *Gambling in Canada: Golden Goose or Trojan Horse?* Colin Campbell and John Lowman, Eds., Simon Fraser University, School of Criminology, 1988 p. 291

<sup>291</sup> On January 14, 1998, Mr. Justice Owen-Flood of the BC Supreme Court ruled that the portion of the charities revenues previously collected as licenses fees by the provincial government, were incorrectly obtained. The provincial government proceeded to redistribute those revenues to charities.

<sup>292</sup> *Ibid.*, <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 30, 2004

arrangement with the Mount Pleasant Starship Community Charitable Association (MPSCCA), succeeded in introducing electronic bingo to Starship Bingo (now Planet Bingo) on Main Street in Vancouver.<sup>293</sup> This arrangement that was originally anticipated as a pilot project, has now completed more that 16 years of successful operations, and Planet Bingo remains one of the most profitable bingo halls in the province.<sup>294</sup> It is interesting to note that the City of Vancouver did not object to electronic gambling at the time of its introduction in 1988. This development was in keeping with what was the City's position on gambling policy at the time, namely that the proceedings from gambling should benefit the charities. A more detailed analysis of the historical developments around gambling policy in Vancouver is provided in Chapter Six.

Each time that the provincial government has reviewed gaming in the province, the charities have provided significant input, thereby ensuring that their interests were protected. The province has seen a good number of gaming reviews, starting with the BC Gaming Commission Review of 1988, which concluded among other recommendations that casino gaming should remain "charity casino gaming ONLY," (sic). The report did acknowledge the potential for destination casinos in areas with large tourist populations, as long as they were located in places with minimal existing charity gaming.<sup>295</sup> The Gaming Commission report also indicated that, "equitable access will be provided to all charities for an opportunity to participate in bingo events," and "the creation of Charitable Community Associations is encouraged to strengthen the charities role in the industry."<sup>296</sup> Clearly, the intent of the BC Gaming Commission was to maintain and entrench charitable gaming in British Columbia.

Similarly, the Lord and Streifel<sup>297</sup> review of 1993 concluded that "Charitable organizations... expressed their concerns about maintaining their revenues from

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<sup>293</sup> Colin Campbell, *Non-Profits and Gambling Expansion*, p.7

<sup>294</sup> Interview with Wendy Thompson. The Planet Bingo is the only remaining commercial bingo hall in Vancouver, and has the latest electronic bingo equipment available in B.C.

<sup>295</sup> BC Gaming Commission, Report on the Status of Gaming in British Columbia, January 1, 1988.

<sup>296</sup> BC Gaming Commission, Report on the Status of Gaming in British Columbia, January 1, 1988.

<sup>297</sup> Margaret Lord and Dennis Streifel were two NDP MLAs (backbenchers) at the time.

charitable gaming strongly and in substantial numbers.”<sup>298</sup> This review was commissioned on October 2, 1992, by the then Attorney General, Colin Gabelmann, and by Lois Boone, the Minister of Government Services. The terms of reference for the review included items such as studying possible alternatives for the regulatory regime, and the appropriate sharing of revenues by the government and charitable organizations.<sup>299</sup> Lord and Streifel advised the Review Committee of the broad range of services they provide throughout the province, often through volunteer efforts. They advocated measures to protect charitable revenues by ensuring that new forms of gaming did not compete with existing charitable forms, and by providing to charities any revenues that may arise from any new forms of gaming.

Since the Lord and Streifel review was not an extensive review and did not have a mandate to bring forward policy alternatives and recommendations, government in 1994 mandated a more thorough review involving different stakeholders and this time, with terms of references and a mandate, that allowed for recommendations to come back to government. Provincial civil servants from the Ministry of Government Services implemented the review.<sup>300</sup> The Gaming Policy Review of 1994 also concluded that the province should protect and enhance charitable gambling revenues while exploring new opportunities for charitable gaming. The 1994 Review indicated as well, that the province should ban the development of large “Las Vegas Style” casinos due to their potential negative impact on charitable gaming. The irony in this recommendation is that just a few months prior, the provincial government, in partnership with a major casino developer from Las Vegas (Steven Wynn), had wanted to develop a large casino and convention centre on Vancouver’s waterfront. It was also during the 1994 review that the government explored the option of implementing a VLT program for the province, which was loudly rejected by municipalities and charities alike.<sup>301</sup> More provincial gaming reviews would follow.

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<sup>298</sup> Lord and Streifel, Findings of the Gaming Review Committee, p. 23

<sup>299</sup> Ibid., p.1

<sup>300</sup> The Ministry of Government Services had responsibility over gaming policy at the time.

<sup>301</sup> Jennifer Clarke and Mario Lee, “Political Conflict and Challenges Between Provincial and Local Governments: The Vancouver View, 2000.” 11<sup>th</sup> International Conference on Gambling & Risk Taking, Las Vegas, Nevada.

It was not until the 1997 gaming review, conducted by the government's appointed Lottery Advisory Committee (LAC),<sup>302</sup> that the provincial government most clearly articulated its intentions of expanding gaming, with an increase in government revenues as a main motivator. The review report, which was commissioned to the KPMG group, was released on January 28, 1997. The report "Assessing The Potential For Expanded Gaming Opportunities in British Columbia," articulated a number of options available to government, with a clear focus on economic spin-offs and revenue generation. One of the main conclusions of the report indicated: "Direct and indirect economic impacts from expansion of gaming in BC will be significant. In addition to a substantial increase in government cash flow, the job creation opportunities – both 'one-time' and ongoing – are significant. BC's acknowledged position as a leading tourist destination will result in a high proportion of gaming revenues by non-British Columbians"<sup>303</sup>

Much controversy and a few other studies would follow, but it was this review of 1997, that opened the door for significant gambling expansion, and left charities – for the most part – in the reduced position of having to hold on to the financial gains accumulated up to that particular point as they watched the major portions of the revenue pie being allotted to others. No longer would they be the primary beneficiaries of the gaming industry. As Colin Campbell clearly articulates in the conclusion of his article "Non-Profits and Gambling Expansion: The British Columbia Experience":

The non-profit sector has not been a strong source of opposition to provincial government initiatives. Instead, local governments have consistently been the principal opponents to gambling expansion. Rather than having been obstructionist toward government initiatives, non-profit organizations have (at worst) been obstacles, but only in the sense that policymakers have had to placate charitable concerns that their revenue sources would not be diminished."<sup>304</sup>

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<sup>302</sup> The Lottery Advisory Committee (LAC) was a policy advisory body appointed by the provincial government to implement the gaming policy initiatives announced in 1996. "Report on Gaming Legislation and Regulation," p.20.

<sup>303</sup> Gaming Review: Expansion Options and Implications, KPMG report, p.52 Note: The great majority of patrons at "destination" casinos are local or regional customers.

<sup>304</sup> Colin Campbell, Non-Profits and Gambling Expansion, p.14

The charities response to gaming expansion, as Campbell asserts, has been primarily reactive. They have, for the most part been more interested in maintaining or advancing their revenue share than in forming or influencing strategic gaming policy. The charities concerns with maintaining their gaming revenue flows, however, pale in comparison with the revenue aspirations of Canada's provincial governments, which in the last decade have orchestrated a four fold revenue share arising from government-based gambling.<sup>305</sup>

The charities' ability to, at least, maintain similar levels of funding as the industry expands, mostly to the benefit of the provincial government, has been possible in good measure, due to their strategic alliance with local governments and the UBCM. The signing of the two Memoranda of Agreements in 1999 is a clear indication of this strategic understanding. As gaming in Canada has expanded, charities, the original caretakers of Canadian gaming, have seen new stakeholders and interest groups enter the gaming debate. They have strategically aligned themselves with a variety of these groups – local governments, labour unions, church and community groups and even industry operators - to lobby for a gaming expansion policy that would benefit the local community. These relationships have often been symbiotic; while the charities have clearly benefited from the politic clout of the municipalities, the municipalities have also benefited from, and made use of, the charities' ability to provide a vehicle for involving citizens in civic participation and public-decision making, thereby strengthening the forces of those groups operating outside the provincial decision-making circle. The next chapter will examine the forces that made the provincial government receptive and vulnerable to this outside pressure: its need and desire for increased revenues.

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<sup>305</sup> Fact-sheet on gambling, Statistics Canada, 2004. Government-based gambling revenue in Canada is now over \$12 billion (2004).

## CHAPTER FIVE: GOVERNMENT RELIANCE ON GAMING REVENUE

*“This vice brings in 100 million francs a year. I will certainly forbid it at once – as soon as you can name a virtue that brings in as much revenue.”*

Napoleon Bonaparte<sup>306</sup>

*“If the money raised by gambling for public interest projects is well spent, it is money which should have been raised by governments anyway.”*

Peter Collins<sup>307</sup>

As indicated earlier in the “Gaming Expansion in Canada” section of this thesis, provincial governments in Canada are relying on gaming dollars at an unprecedented level. Gaming revenue is currently generating as much money as tobacco and alcohol taxes combined, and it is anticipated that soon it will surpass the revenues from gasoline taxes.<sup>308</sup> As the following chart indicates, on average, provincial governments are relying on gambling dollars for more than 3 percent of their total provincial revenues, with the Province of Saskatchewan at the high end of the chart with 5.7 percent of their revenue being derived from gaming:<sup>309</sup>

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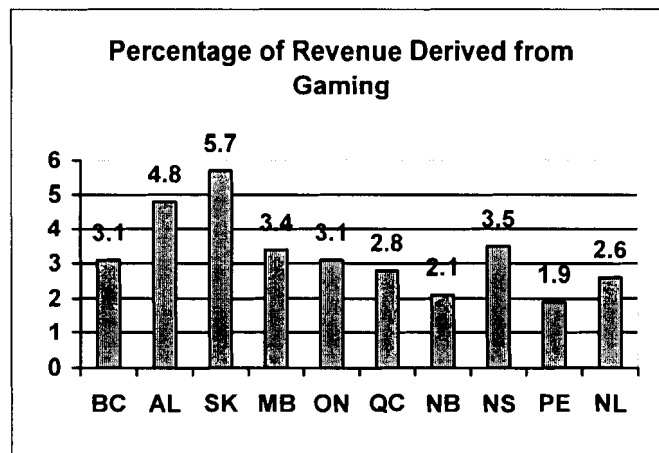
<sup>306</sup> M. Sharon Jeannotte, “Gambling on Culture in Canada,” p.3

<sup>307</sup> Peter Collins, *Gambling and the Public Interest*, p.46

<sup>308</sup> Thomas Klassen and Jim Cosgrave, “Look Who’s Addicted to Gambling Now,” *Policy Options*, July-August 2002.

<sup>309</sup> Nadine Kauffman and Phil Mun, “Canadian Gambling Digest,” Canadian Partnership for Responsible Gambling, 2004, p.5

Figure 3: Percentage of Revenue Derived from Gaming, 2003 <sup>310</sup>



Provincial governments have a massive and sophisticated network of gambling venues, which facilitate the collection of revenue from this activity in which more than three-quarters of Canadians participate.<sup>311</sup> There are at present more than 40,000 venues (excluding charitable venues) where gambling can take place. These include Casinos, VLTs at Bars and Lounges, Racetracks, Teletheatres, and Lottery tickets outlets.<sup>312</sup> The following table illustrates the number of venues by province as of January 2004:

Table 6: Number of Gambling Venues by Province <sup>313</sup>

	BC	AL	SK	MB	ON	QC	NB	NS	PE	NL
Total Venues	4,190	3,361	1,482	1,444	10,601	14,265	1,693	1,693	278	1,895

This level of gambling activity brings close to \$12 billion in annual revenues to the provincial governments, of which \$6.5 billion are ‘pure profit.’<sup>314</sup> Canadian provinces are not alone; government reliance on gambling revenues is a worldwide phenomena. In Britain, for example, the National Lottery produced £4.6 billion in sales

<sup>310</sup> Ibid.

<sup>311</sup> Fact-sheet on Gambling, p.1

<sup>312</sup> Nadine Kauffman and Phil Mun, “Canadian Gambling Digest,” Canadian Partnership for Responsible Gambling, 2004.

<sup>313</sup> Ibid.

<sup>314</sup> Fact-sheet on Gambling, p.1. Profit is arrived at after prizes and winnings, operating expenses, payments to the federal government and other overhead costs are deducted. (p.5).



for the year 2002-03.<sup>315</sup> In Australia, government revenue from gambling was \$4.4 billion in 1999-2000, and in the United States, lottery sales were \$45.3 billion in 2003, of which \$14.1 billion was revenue for state governments.<sup>316</sup>

Local governments in British Columbia increasingly are benefiting from gaming revenue. The provincial government began distributing casino revenues to hosting municipalities in July 1999, and by the end of the 2003/04 fiscal year these municipalities had received \$162.5 million.<sup>317</sup> Revenues have continued to increase every year since the revenue distribution began, and it is anticipated that it will continue growing in the foreseeable future, as the following table indicates:

Table 7: Local Government Share of Provincial Casino Revenue in B.C. <sup>318</sup>

July 1999 – Mar 31, 2002	April 1, 2002 – Mar 31, 2003	April 1, 2003 – Mar 31, 2004	April 1, 2004 – Mar 31, 2005 (Ant.)
\$79,466,855	\$38,222,656	\$44,851,944	\$54,000,000

There are 16 municipalities in British Columbia that are presently benefiting from this revenue distribution. The biggest recipients of casino revenue so far, are the municipalities of New Westminster and Burnaby, which as of March 31, 2004 have collected more than \$29 million each.<sup>319</sup> The City of Vancouver has received \$18 million to date, but given the fact that approval has been given for a new casino with slot machines at the Plaza of Nations, and slot machines have been authorized for the Hastings racetrack, it is anticipated that the City of Vancouver will be the biggest recipient of gaming revenue in the near future.<sup>320</sup> This prediction is based not only on the fact that Vancouver will have the highest number of slot machines of any municipality,

<sup>315</sup> Vincent Della Sala, "Les Jeux Sont Fait? The State and Legalized Gambling," University of Trento, School of International Studies, Working Paper 2, 2004.

<sup>316</sup> Ibid.

<sup>317</sup> BC Gaming Policy and Enforcement Branch, <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 31, 2004

<sup>318</sup> BC Gaming Policy and Enforcement Branch, <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 30, 2004.

<sup>319</sup> Ibid.

<sup>320</sup> BCLC, Revenue Projections for City of Vancouver, October 2004.

but also on the fact that Vancouver is where the highest concentration of people live and the greatest amount of tourism occurs.<sup>321</sup>

Both local governments and provincial governments are becoming more dependent on this source of revenue, despite evidence that gambling can be hurtful to a segment of the population. Upon the release of a study funded by the Ontario Gambling Research Centre on November 2, 2004, indicating that problem gamblers contributed more than one third of the province's gambling revenues, Premier Dalton McGuinty indicated: "Gambling in Ontario is here to stay. There is no doubt about it, we have come to rely on gambling revenue."<sup>322</sup>

A more liberal acceptance of the gambling industry is also present among City Councils in British Columbia. For example, following the introduction of slot machines in the province's casinos in 1997/98, many municipalities that initially opposed the idea of gaming expansion, particularly if it involved slot machines, began to shift their positions. Municipalities such as Coquitlam, Richmond, and Surrey changed their stand early on. Vancouver and Victoria, however, only changed their position in 2004.<sup>323</sup> Initially, many municipalities were opposed to gambling expansion in general, due to the fact that the province did not have comprehensive legislation in place, did not recognize the right of municipalities to accept or reject the placement of gaming facilities, and most importantly, did not have a revenue sharing formula with municipalities. Former Vancouver Councillor, Jennifer Clarke, also notes that without a comprehensive *Gaming Act* there was too much room for discretionary action in decision-making around gambling expansion, leaving open the potential for corruption or fear of corruption:

There was no proper comprehensive regulatory regime. It left the field open for individuals to do what they felt like. Whether or not it was improper or corrupt it

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<sup>321</sup> Ibid.

<sup>322</sup> Canadian Press, November 2, 2004,

<http://www.casinocitytimes.com/news/article.cfm?contentID=146358>, accessed on December 30, 2004.

<sup>323</sup> The City of Vancouver changed its position on January 22, 2004, while Victoria changed its position in July 2004.

left open for people to be concerned – and so those kinds of concerns I think, also helped to spur the development of a comprehensive *Gaming Act*.<sup>324</sup>

The 1999 Memorandum of Agreement with UBCM, and the 2002 *Gaming Control Act* responded positively to those issues.<sup>325</sup>

While municipalities in British Columbia have become more accepting of gambling dollars, there is still some level of unease about relying on this source of revenue. There are many municipalities, like the City of Burnaby, that use gambling revenues exclusively for one-time-only capital projects, particularly in the area of environmental protection.<sup>326</sup> There has been a conscious decision not to use gaming revenue for ongoing operational items. Part of the rationale is that this source of revenue is potentially unreliable.<sup>327</sup> This approach, however, has not stopped the City of Burnaby from approving a significant expansion of the Burnaby casino which, when rebuilt, will accommodate up to 700 slots (from the existing 300).<sup>328</sup>

Most other British Columbia municipalities use gaming revenue for capital projects, while a few allocate revenues to a variety of purposes, including community grants, as the following table illustrates:

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<sup>324</sup> Interview with Jennifer Clarke, September 2, 2004.

<sup>325</sup> Interview with Richard Taylor and Marie Crawford, November 8, 2004.

<sup>326</sup> Interview with Mayor Derek Corrigan

<sup>327</sup> Ibid.

<sup>328</sup> City of Burnaby, Council Minutes, June 21, 2004.

Table 8: Use of Municipal Casino Revenue in B.C. – 2003/2004

Municipality	Revenue	Use of Casino Revenue
Burnaby	\$7,523,012	Capital projects related to environmental or heritage initiatives.
Coquitlam	\$6,863,255	Capital projects and one-time only community grants.
Kamloops	\$1,846,803	Capital projects.
Kelowna	\$2,296,919	Policing costs.
Nanaimo	\$2,531,328	Policing costs, property tax reduction (2%), victim services, community grants.
New Westminster	\$6,684,748	Capital projects (new Police building), general revenue, community grants.
Penticton	\$2,047,244	Capital projects, Policing, community trust fund.
Prince George	\$1,663,019	Capital projects
Richmond	\$2,793,041	Capital projects, community grants.
Vancouver	\$3,933,634	General revenue.
Vernon	\$1,476,976	Capital projects.
View Royal	\$3,547,397	Sharing arrangement with municipalities of Langford and Colwood, Library, Parks.

Source: Municipality of Prince George Survey, February 2003, and data from BC Gaming Policy and Enforcement Branch, 2004. Other “hosting” municipalities not listed in the table are: Quesnel, Cranbrook, Wells, and Victoria (temporary closure).<sup>329</sup>

Convincing local populations of the merits of expanded gaming has not been easy. Governments in general have relied on a variety of strategies to promote public acceptance of gambling generated revenue. Authors Thomas Klassen and Jim Cosgrave have identified four distinct strategies to this effect.<sup>330</sup> The first strategy relates to the earmarking of gambling profits for popular causes like health care. This was definitely the case in British Columbia when the then NDP government, announced in 1997, coincidentally at the same time that a request for proposal on new casinos was being launched, that one third of gaming revenue would be dedicated to health programs. Today’s gaming regulations still stipulate that a significant amount of gaming revenue go to the Health Special Account.<sup>331</sup> A second strategy identified by Klassen and Cosgrave,

<sup>329</sup> The Great Canadian casino still has a valid license to operate a casino in Victoria. The casino, however, has remained closed ever since the same company opened a casino in View Royal in 2001.

<sup>330</sup> T. Klassen and J. Cosgrave, “Look Who’s Addicted to Gambling Now,” *Policy Options*, July-August 2002, pp.44-45

<sup>331</sup> It is anticipated that this account will receive \$147 Million in 2004/05, <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 31, 2004

has been the establishment of charitable casinos and bingo halls.<sup>332</sup> In fact, for many years in British Columbia, all casinos and bingo halls were charitable establishments and the public acceptance of those facilities was quite high. Gaming activities in both casinos and bingo halls are now conducted and managed by the BC Lottery Corporation. Revenues from bingo activities, however, are still dedicated to charities. A third strategy refers to the sharing of profits with municipalities.<sup>333</sup> This is already a tried approach in many Canadian provinces, including British Columbia, where as stated earlier, it will bring \$54 million to 16 municipalities in 2004.<sup>334</sup> The fourth and final strategy outlined by Klassen and Cosgrave relates to the establishment of agencies to manage the risk associated with gambling. At present, provincial governments spend more than \$61 million a year to fund problem gambling agencies and programs.<sup>335</sup> The fact that monies are being dedicated to assisting problem gamblers seems to provide a moral and political rationale for the continuation and expansion of this industry.

Even the federal government, who holds final legal authority over gambling, via the Canadian *Criminal Code*, has also been willing to accept and accommodate requests from the provinces to facilitate the enhancement of the industry as demands of the marketplace require. Just a few years ago, in 1999, the federal Parliament approved amendments to the *Criminal Code* to facilitate the playing of dice games, previously prohibited in Canada. This amendment allowed casinos in Quebec and Ontario in particular, to establish a similar playing field with casinos just across the border, where games such as craps are popular.<sup>336</sup> In discussing the major reasons why the British Columbia government embraced so aggressively gaming expansion in the early 90's, former Attorney General of British Columbia, Colin Gabelmann, also references cross-border competition and market pressures:

At that time, gaming conducted by aboriginal bands in the Western United States, and in particular, Washington was expanding; local industry was lobbying for

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<sup>332</sup> Klassen and Cosgrave, pp.44-45

<sup>333</sup> Ibid.

<sup>334</sup> <http://www.pssg.gov.bc.ca/gaming/in-bc/money.htm>, accessed on December 31, 2004

<sup>335</sup> Canadian Gambling Digest, p.6

<sup>336</sup> Justice Canada, Bill C-51, 1999 - <http://canada.justice.gc.ca/en/news/nr/1999/omnibck.html>, accessed on December 31, 2004.

more gaming opportunities and the government had a need for additional revenues. Also, many in government viewed gambling as a legitimate form of entertainment.<sup>337</sup>

This government reliance on gaming dollars is not without critics, and criticism is not just coming from those that hold moral and religious belief against gambling. There is plenty of literature warning about the perils of relying on gambling revenue for the delivery of government programs and services, or as a tool for economic development.

Robert Goodman for example, as early as 1994, in his *Legalized Gambling as a Strategy for Economic Development*, assessed the economic and social impacts arising from casinos, when they are used as a tool to improve the economy. Fourteen studies were analysed and he found that claims of positive economic impacts were exaggerated at the same time as costs were underestimated.<sup>338</sup>

Professor Bill Eadington from the University of Nevada, who is considered the doyen of Gambling Studies, has also written extensively about the impacts of casino developments, and has concluded that different models of casino gambling present different types of impacts for the local economies.<sup>339</sup> At the Conference “VLTs and Electronic Gambling” held in Edmonton, Alberta on February 18, 1998, Professor Eadington indicated that there are four types of casino gambling models, and all of them come with different economic and social impacts. These four models are: Destination casinos (Las Vegas, Atlantic City); Border Town casinos (Windsor, Niagara Falls, Macau, Monaco); Urban casinos (Montreal, Australian and New Zealand examples); and Non-casino placement of casino gaming devices (VLT programs). Eadington concludes that the ability of Border town casinos as well as Destination casinos to attract tourists and visitors from outside the local economy, makes them the most desirable from an economic impact perspective. On the other hand, the placement of casino-gaming devices outside casinos are the ones that cause the most negative impacts, due to reasons

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<sup>337</sup> Interview with Colin Gabelmann, January 10, 2005.

<sup>338</sup> Robert Goodman, *Legalized Gambling as a Strategy for Economic Development*, United States Gambling Study, Northampton, Massachusetts, 1994

<sup>339</sup> Bill Eadington, “Contribution of casino-style gambling to local economies,” *Annals of the American Academy of Political and Social Science*, 556, 1998

such as low capital investment, low job creation, and the cannibalization of other gaming venues (e.g. bingo halls).<sup>340</sup>

In a Policy Brief published by the Institute on Taxation and Economic Policy (ITEP) published in August 2004,<sup>341</sup> entitled “Uncertain Benefits, Hidden Costs: The Perils of State-Sponsored Gambling,” some of the arguments for government-sanctioned gambling are questioned as the following summary indicates:

*Competition from other neighbouring jurisdictions will eventually make government-sponsored gambling less profitable:* revenue collection will rely more on local citizens. This has already been identified as a problem for the Windsor casino in Ontario, where neighbouring Detroit opened new casinos thereby diminishing the number of visitors to Windsor. This phenomenon has already been felt locally when the 1,000 slots casino in Richmond opened at the end of July 2004, causing revenues from casinos in Vancouver to decline significantly.<sup>342</sup>

*Gambling may simply shift money from one tax to another:* the fact that consumers spend more money on gambling means that they are spending less money on other taxable activities such as recreation, travel, and basic needs, which are subject to sale taxes.

*Promises of additional spending for specific public services may be illusory:* it is quite possible that earmarked gambling revenue (e.g. health) may just replace government allocations that were going to happen anyway, therefore not creating a net gain for that particular earmarked sector.

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<sup>340</sup> Bill Eadington, Keynote Presentation, VLTs and Electronic Gambling Conference, University of Alberta, Edmonton, February 18, 1998.

<sup>341</sup> The Institute on Taxation and Economic Policy (ITEP) is a Washington-based non-profit, non-partisan research and education organization that works on government taxation and spending issues. Web site: [www.itepnet.org](http://www.itepnet.org)

<sup>342</sup> BCLC casino revenue data for Vancouver, October 2004.

*Gambling is not always a voluntary tax*: different than other “sin taxes” like tobacco and alcohol, which are often established to discourage consumption, gambling revenues rely disproportionately on the sector of the user population that is addicted to this activity. Research conducted by Dr. Robert Williams and Robert Wood, from the University of Lethbridge, Alberta, indicates that about one third of gambling revenues are collected from problem gamblers.<sup>343</sup>

In conclusion, the ITEP Policy Brief indicates that “government-sponsored gambling is inequitable and inadequate as a long-term revenue source.”<sup>344</sup> As indicated by the research conducted by Peter Collins, however, this particular view is contrary to the prevailing perspective from most government sponsoring gambling activities, where it is acknowledged that, “gambling is a good way for governments to raise money for public interest projects.”<sup>345</sup>

The literature also has a good number of studies and reports which highlight the effects and impacts arising from this industry in a more positive fashion, focusing on indicators such as the number of new jobs created and the increased government revenues. Perhaps one of the best-known reports in this vein, is the Evans Group Report: *A Study of the Economic Impact of the Gaming Industry Through 2005*, which was authored by Dr. Michael K. Evans in 1995. The study which analysed all of the jurisdictions in the United States with a significant gambling presence, concluded that:

Overall, this study shows that wherever casino gaming has been implemented, employment has risen and unemployment has fallen; additional tax dollars collected have been used for education and infrastructure; and any initial increase in crime is strictly temporary with an ultimate reduction in the crime rate. On balance, all of the state and local economies that have permitted casino gaming have improved their economic performance.”<sup>346</sup>

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<sup>343</sup> Williams, R. J., & Wood, R. T. (2004). “The proportion of gaming revenue derived from problem gamblers: Examining the issues in a Canadian context.” *Analyses of Social Issues & Public Policy*, 4(1), 1-13.

<sup>344</sup> Uncertain Benefits, Hidden Costs, ITEP Policy Brief, August 2004.

<sup>345</sup> Peter Collins, p.12

<sup>346</sup> Michael K. Evans, *A Study of the Economic Impact of the Gaming Industry Through 2005*, The Evans Group, Northwestern University, September 1996.



Some of the examples highlighted from the Evans Report include the fact that the economy of the State of Nevada has risen about 2 percent per year faster than the overall economy in the United States over the past 30 years, due in large part to the expansion of the casino industry.<sup>347</sup> Similarly, the economy of Atlantic City has improved dramatically since 1975, the year when casinos became legal, with more than 100,000 jobs having been created.<sup>348</sup> Also, in the eight counties in Illinois where riverboat casinos are permitted, the unemployment rate has dropped by an average of 2.1 percent, and local governments have received \$210 million in taxes from the casinos. The report also highlights similar positive performances in the State of Mississippi.<sup>349</sup>

An important challenge that is appearing to legislators both at the federal as well as the provincial level is the issue of Internet gambling. As Internet technology continues to advance, more and more people will be accessing this medium for their gambling needs. It is estimated that in the United States alone, gambling over the Internet is a \$4 billion industry.<sup>350</sup> Lawmakers and regulators in the U.S. are already enacting legislation and regulations in an attempt to curtail the domestic use of this hard-to-tax gambling venue. In 2000, the federal congress enacted the *Internet Gambling Funding Prohibition Act*, which among other measures prohibits the use of credit cards when wagering on international sites.<sup>351</sup> As the Chair of the US Congress Finance Committee stated during hearings to this matter on June 20, 2000: "In many instances, the economic benefits of Internet gambling will go solely to website operators halfway around the world."<sup>352</sup>

There are already more than 50 jurisdictions, which allow some form of Internet gambling throughout the world,<sup>353</sup> including the British Columbia Lottery Corporation.<sup>354</sup> The BCLC has developed an Internet site, which accepts purchases from British

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<sup>347</sup> Ibid. p.i (Conclusion)

<sup>348</sup> Ibid.

<sup>349</sup> Ibid., Conclusion statement, pp. i-ii.

<sup>350</sup> Vincent Della Sala, 'Les Jeux Sont Fait? The State and Legalized Gambling,' University of Trento, School of International Studies, Working Paper 02, 2004, p.17

<sup>351</sup> Internet Gambling Funding Prohibition Act,

[http://commdocs.house.gov/committees/bank/hba65225.000/hba65225\\_0.htm](http://commdocs.house.gov/committees/bank/hba65225.000/hba65225_0.htm), accessed on January 2, 2005

<sup>352</sup> Ibid.

<sup>353</sup> Vincent Della Sala, p.19

<sup>354</sup> <http://www.bclc.com>, accessed on January 2, 2005

Columbians for lottery products, and it is doing so on the legal basis of a Section of the *Criminal Code* that authorizes provincial governments to conduct and manage gambling on electronic devices.<sup>355</sup> The *Criminal Code* does not specifically mention the Internet, but it does mention gambling being carried out through the use of a computer.<sup>356</sup> Gambling over the Internet is a fascinating and interesting topic that at this point is just being identified for further research. It is perhaps interesting to study not only the legal ramifications arising from the development of this form of gambling, but also assess potential impacts on provincial and local gaming coffers.

Similarly, and as a final thought in this chapter, it is interesting to analyse whether or not the increasing role being played by government in the development of the gambling industry, is a reflection of a transformation of the role of the state in this era of liberalization and globalization. Professor Vincent Della Sala, from the University of Trento in Italy, has written an interesting Working Paper, addressing this very topic (“Les Jeux Sont Fait? The State and Legalized Gambling,” 2004). Della Sala argues that:

The debate about state decline or adaptability has not paid enough attention to the purpose of state action and to the object of governing... While state intervention may be increasing in the area of gambling, it is not a result of an enabling of state capacity but of its limitations. Gambling illustrates the ways in which the role of the state is increasingly one of providing a basis for governing based on individual initiative and risk.”<sup>357</sup>

Della Sala wonders about the apparent contradiction of having a state, which is typically – amongst industrialized nations – moving towards a model of scaling back the level of intervention in the social and economic life spheres, at the same time as it is expanding gambling in the name of allowing the state to provide further services and programs on the very same social and economic arena.<sup>358</sup> This is an interesting discussion to be had right here in British Columbia, particularly at a time when the Liberal provincial government has been both implementing huge cutbacks on social

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<sup>355</sup> *Criminal Code* of Canada, Section 207(1)(a)

<sup>356</sup> *Ibid.*

<sup>357</sup> Vincent Della Sala, ‘Les Jeux Sont Fait? The State and Legalized Gambling,’ University of Trento, School of International Studies, Working Paper 02, 2004.

<sup>358</sup> *Ibid.*, p.5

spending and minimizing the role of government (i.e. sale of government assets, semi-privatization of ferry services) while expanding gaming at an unprecedented rate in the history of the province.<sup>359</sup>

And indeed this contradiction, in part, contributed to the climate that made government receptive to the outside pressures exerted by the municipalities and the charities. As government continued to reduce government-funded services, the need for community intervention grew, thereby necessitating an increase in supporting gaming dollars to fund these. This increased need made the entrenching of the local powers in any gaming expansion policy all the more necessary and hence the lobbying for it all the more intensive. Faced with community opposition – found in the voice of the charities and the municipalities - and with a united and strategic local government movement, the provincial government realized that it would need the co-operation of these groups in order to meet its goal of increased revenues through expanded gaming.

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<sup>359</sup> An interesting development considering the fact that the BC Liberal Party presented an electoral platform in 2001, of no expansion of gambling (New Era book). "A BC Liberal Government Will: Stop the expansion of gambling that has increased gambling addiction and put new strains on families." BC Liberal Party Platform, A New Era for British Columbians, p.26,

## CHAPTER SIX: CITY OF VANCOUVER EXPERIENCE

The developments that have taken place in the City of Vancouver over the last ten years, illustrate how a local government became a significant player in the definition of gaming policy.

1994 was a pivotal year for gambling issues in Vancouver. On February 23, 1994 Lois Boone, the Minister of Government Services of British Columbia, and Minister responsible for gaming, announced “the establishment of a special project to develop a comprehensive policy covering the regulation and conduct of gaming in British Columbia.” The announcement indicated: “the policy will cover all aspects of gaming including charitable gaming, lotteries, First Nations and areas of potential expansions.”<sup>360</sup> It did not take the provincial government long to identify areas of potential expansion. The next day, on February 24, 1994, Vancouver Land Corporation (VLC) Properties<sup>361</sup> announced that its proposal to develop the Vancouver’s Central Waterfront Port Lands had been accepted by the Vancouver Port Corporation (VPC).<sup>362</sup> The proposal, “Seaport Centre Vancouver: An International Destination Resort,” called for an investment of \$750 million to develop the 74-acre Central Waterfront site. The proposal included a Cruise terminal, a Convention Centre, a 1,000 room hotel, and a 125,000 square foot casino. A Las Vegas company, Mirage Resorts, Inc. was to be the main investor and it would become the operator of the entire resort.<sup>363</sup> The timing of both the government

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<sup>360</sup> BC Government, Ministry of Government Services, Press Release, February 23, 1994.

<sup>361</sup> VLC Properties was for the most part funded by a conglomerate of BC-based Labour Unions.

<sup>362</sup> City of Vancouver Casino Review – A Discussion Paper, August 1994, p.1

<sup>363</sup> “Seaport Centre Vancouver: An International Resort,” February 1994. This document is a synopsis of the entire proposal for the waterfront site, including the casino.

announcement for the gaming policy review, and the announcement for the casino development (one day apart) clearly indicates (or at least hints) that the provincial government should have been aware that this proposal was coming forward.

The announcement took the City by surprise. When Council approved the Central Waterfront Port Lands Policy Statement, on February 17, 1994, outlining general guidelines for the development of the Port Lands, it did not include a casino use.<sup>364</sup> The province, which would have to change policy to allow this type of casino, never indicated to the City that such a proposal was being considered.

At the time of this announcement, there had been a moratorium on casino development in the province since 1987.<sup>365</sup> In Vancouver, there were five charity casinos of a total 18 casinos permitted in the province.<sup>366</sup> The five casinos in Vancouver were operating limited hours in the evening, and had only 15 tables with \$25 dollars maximum single bets. Private operators operated the casinos,<sup>367</sup> but the legal conduction and management of the gaming event, was the responsibility of individual charities, operating under provincial license. Besides these five charity casinos, Vancouver had a gambling inventory consisting of three commercial bingo halls, several bingo events being held at churches and community centres, a racetrack, and hundreds of lottery outlets. It is because of this already important inventory, that Vancouver City Council had passed some relevant policy in the previous years.

As early as January 27, 1987, City Council had advised the Province that it felt that casino gambling regulations should adhere to the following principles:

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<sup>364</sup> City of Vancouver Casino Review – Final Resolutions, December 1994, p.5.

<sup>365</sup> BC Gaming Commission, “Report on the Status of Gaming in British Columbia,” January 1, 1988, p.2. The provincial government decided to put a moratorium on casino development until such a time when the provincial government “could assess the effects of the recommended changes.” (p.2).

<sup>366</sup> The five Vancouver-based casinos were: Great Canadian casino at the Renaissance, Great Canadian casino at the Holiday Inn, Gateway casino at the Mandarin, Grand casino at the Blue Boy, and Royal Diamond casino at the Plaza of Nations.

<sup>367</sup> Private operators had the know-how and managerial capabilities to operate the casinos. The BC Gaming Commission Review of 1987 acknowledged this, “Report on the Status of Gaming in British Columbia” (1988) The Commission also indicated the need to develop a proper licensing program for casino management companies. (p.2).

- a) maximum financial benefit accrue directly to the social service agencies sponsoring the events, and
- b) that appropriate, strict control be in place to discourage or prevent possible negative social consequences, such as compulsive gambling or related criminal activity.<sup>368</sup>

Interestingly these City of Vancouver recommendations in 1987 came a few months before the Attorney General of British Columbia requested the British Columbia Gaming Commission to conduct a review of gaming in the province.<sup>369</sup> Ultimately the City's recommendations proved to be "in-sync" with the BC Gaming Commission recommendations that would be released several months later. Following the release of the BC Gaming Commission report on January 1, 1988, the relationship between the province and the City of Vancouver on gaming policy was amicable and cooperative. For example, as mentioned earlier in this thesis, when the BC Lottery Corporation introduced electronic gaming at Vancouver's Mount Pleasant Starship Bingo Hall in 1988, the City did not oppose it. During this period, the City also approved the relocation of charity casinos within the city.<sup>370</sup>

A further recommendation of the Standing Committee on Planning and Environment was approved by City Council on October 1, 1992:

THAT development applications for casinos be reviewed by the Director of Planning, based on the criteria presented in the Policy Report dated August 28, 1992, and the results of that review, along with recommendations, be reported to the Standing Committee on Planning and the Environment; AND FURTHER THAT notification in residential areas include a yes or no questionnaire to ensure residents have an opportunity to express their opinions.<sup>371</sup>

Some of the criteria referenced in the Policy Report mentioned above included: proximity of the proposed casino to schools and parks; size of the facility; hours of operation; anticipated traffic and parking impacts; and Police comments.<sup>372</sup> It is clear

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<sup>368</sup> City of Vancouver, Social Planning Report to Vancouver City Council, January 2, 1987

<sup>369</sup> The BC Attorney General requested the review on April 1, 1987. "Report on the Status of Gaming in British Columbia," p.1

<sup>370</sup> Interview with Gary Jackson, owner of former Royal Diamond Casino, October 19, 2004

<sup>371</sup> City of Vancouver, Planning and Social Planning Report to Vancouver City Council, August 28, 1992

<sup>372</sup> Ibid.

then, that the City of Vancouver, through the assertion of its statutory power governing land use, was able to shape a locally-based response to a provincial government policy area. The 1994 announcement marked the end to the previously amicable and cooperative relationship between the City and the province. From now on, the assertion of the City's role in defining gaming policy would have to be obtained through the courts, through alliances at municipal forums like the UBCM, through coordination with local charities, and through the harnessing of public opinion.

Following the announcement in February 1994, there was a tremendous amount of discussion among elected officials, staff and community members, and on July 26, 1994, City Council resolved:

That Council request the Provincial Government to ensure that there will be municipal participation in the evaluation of community impacts of any expansion to gaming activity, and that gaming legislation or regulations require municipal endorsement of specific gaming locations prior to approval.<sup>373</sup>

Acting on instructions from City Council, City staff produced and released a discussion paper "City of Vancouver Casino Review – A Discussion Paper" on August 1994. The Executive Summary of the Discussion Paper was translated into French, Chinese, Punjabi, Vietnamese, and Spanish.<sup>374</sup> This discussion paper was the basis of an extensive consultation process implemented by a staff team lead by the then Assistant City Manager Judy Rogers. The public consultation took place throughout the month of September 1994 and consisted of seven large public meetings and 13 meetings with interest groups (involving over 750 people). A call-in phone line was set up at City Hall, and hundreds of letters were received.<sup>375</sup> A public poll was commissioned and 52.3 percent of Vancouverites rejected the idea of a commercial casino on the City's waterfront, while 64 percent opposed the idea of commercial casinos located anywhere in the City.<sup>376</sup> A group of citizens formed a "No Casino Committee," which distributed

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<sup>373</sup> City of Vancouver Casino Review – Final Resolutions, December 1994, p.5

<sup>374</sup> Ibid., p.24

<sup>375</sup> Ibid. p.6

<sup>376</sup> City of Vancouver Council Report, Major Casinos in Vancouver, October 7, 1994 (discussed by Council on November 1, 1994).

literature at public meetings and some of their members addressed City Council during a Special Council meeting on October 18, 19, and 21, 1994.<sup>377</sup> Another group that opposed gambling expansion was the Citizens Against Gambling Expansion (CAGE), a group that according to research conducted by Colin Campbell, included psycho-medical arguments related to problem gambling in their response to expanded gaming rather than relying exclusively on moral arguments.<sup>378</sup> This group remains active today.

The 1994 casino proposal also generated a profound reaction from business and community organizations, particularly charities, which aligned themselves with City Council. Charities were concerned about the potential loss of charity revenue that would result from a massive commercial gaming expansion. The Board of Trade created a casino taskforce, and eventually opposed the proposal.<sup>379</sup> This consultation process culminated on November 1, 1994, with City Council declaring that “major casinos not be permitted in the City of Vancouver,” “that the VPC be advised that a major casino in the Seaport Centre proposal is not consistent with City policy,” and “that the policy of the City of Vancouver on major casinos be communicated to the Province of British Columbia.”<sup>380</sup> In one simple brush, the City of Vancouver had managed to send a strong message of assertion to both senior levels of government: to the federal government through its subsidiary the Vancouver Port Corporation, and to the province in its capacity as gaming legislator and regulator.

Also at this point, the City of Vancouver for the first time, introduced the notion of revenue sharing arising from gaming expansion. City Council approved a recommendation indicating that “the Province [through legislation] should provide that 50% of all revenues generated should be allocated to the municipalities affected for mitigation measures.”<sup>381</sup> It would take several more years for revenue sharing to

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<sup>377</sup> City of Vancouver Casino Review – Final Resolutions, December 1994, p.48

<sup>378</sup> Colin Campbell and Gary Smith, “Gambling in Canada – From Vice to Disease to responsibility: A Negotiated History,” *Canadian Bulletin of Medical History*, 2004. p.27

<sup>379</sup> Vancouver Board of Trade, “Report by the Gaming Task Force,” Mary Collins, Chair, 1994. The Board of Trade opposition echoed the City’s concerns in terms of social/economic impacts and issues about municipal control.

<sup>380</sup> “City of Vancouver Casino Review Final Resolutions,” December 1994, p.3

<sup>381</sup> Ibid.



materialize, but it was this early in the discussion, that a local government was already asserting its role in the agenda-setting process.

In the midst of the City's consultation process, on October 4, 1994, Minister Robin Blencoe, the Minister responsible for gaming, released the "Report of the Gaming Policy Review,"<sup>382</sup> (a review originally announced on February 23, 1994), in which the Province categorically abandoned the Seaport proposal stating that: "for profit, Las Vegas-style casinos ("major casinos") will not be permitted anywhere in British Columbia."<sup>383</sup> Although the report pre-dates the City's official response to the proposed Seaport casino, the City's influence on the government's decision should not be dismissed. Acknowledging the public reaction and vehement opposition to the proposal, the report states:

British Columbia's economy is the best in Canada. The benefits of major casinos are difficult to predict, and do not justify risking the social costs, particularly in a strong economy. British Columbians have shown a great deal of concern about potential undesirable effects of major casinos.<sup>384</sup>

In the absence of legislative authority to veto the Province's proposal the City had harnessed its moral authority: the will and voice of public opinion. The ability of local government, in alliance with its citizens, to significantly influence provincial government policy decisions is a demonstration of a variant of the *outside initiation model*. In this case the group "outside government" is the municipality and, while the municipality is in of itself a form of government, its inferior legal and constitutional status clearly placed it outside the provincial decision-making circle.<sup>385</sup> This kind of development, perhaps, validates Howlett and Ramesh's critique of Cobb, Ross, and Ross's analysis of the three different agenda-setting models, by indicating: "Every kind of political regime is

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<sup>382</sup> "Report of the Gaming Policy Review," October 1994, BC Ministry of Government Services, October 1994.

<sup>383</sup> Ibid. p.ii

<sup>384</sup> Ibid.

<sup>385</sup> Howlett and Ramesh, pp.113-114

characterized by a variety of agenda-setting styles and no firm generalization of agenda-setting by regime type is possible.”<sup>386</sup>

The Report of the Gaming Policy review, while rejecting “Las Vegas-style casinos” did, nonetheless, endorse the introduction of Video Lottery terminals (VLT’s):

In every Canadian province except British Columbia, those who enjoy video lottery gaming can participate in it legally. Seven provinces have video lottery gaming province-wide, while Ontario and Quebec have it only in large casinos... A moderate number (4,600-5,000) of computer-style video lottery terminals will be introduced into adult-only premises, such as bars, pubs and charitable casinos. The number of terminals *per capita* in British Columbia will be lower than any of the seven provinces, which offer this gaming outside of large casinos.<sup>387</sup>

By citing the existence of VLT’s in other provinces and by aligning the government’s proposed introduction of VLT’s with the existing practice in other provinces, the government is clearly relying on the principles of *economic and technological determinism*, outlined by Howlett and Ramesh, as both justification for and explanation of their decision. One could also argue that such justification reaches to the extreme end of economic and technological determinism and crosses over to policy convergence.<sup>388</sup>

This VLT announcement triggered another round of municipal reactions. Vancouver City Council opposed the idea and amended the Business License By-law to make it illegal to own and operate a VLT in the City of Vancouver.<sup>389</sup> This time the City of Vancouver solicited the support of other municipalities. The Greater Vancouver Regional District passed a resolution opposing VLTs. Similarly, 39 other municipalities passed by-laws or resolutions opposing the introduction of VLTs.<sup>390</sup> The UBCM also passed a resolution asking the Province to ensure municipal participation in any

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<sup>386</sup> Ibid., p.114

<sup>387</sup> Report of the Gaming Policy review, October 1994, p.iii

<sup>388</sup> Howlett and Ramesh, pp. 105-106

<sup>389</sup> Jennifer Clarke, Local Government’s Role in the Discussion of Gaming Expansion in B.C. 1994-97, 10<sup>th</sup> International Conference on gambling and Risk-Taking, Montréal, May 31 – June 4, 1997. p.10

<sup>390</sup> Ibid.

evaluation of impacts on local communities arising from gaming expansion, that municipal land use powers be recognized and that funds be made available for mitigation.<sup>391</sup> Vancouver-based charities, particularly bingo charities also reacted negatively to the provincial plan.<sup>392</sup> Eight months after the release of the report, on May 24, 1995, the Minister responsible for gaming, Ujjal Dosanjh, announced that the province had shelved its proposal to introduce Video Lottery Terminals.<sup>393</sup> The local government's ability to influence the development of gaming policy had been demonstrated one more time, and a pattern of alliances had begun to develop, namely, a pattern of alliances between municipalities (via UBCM), and a set of alliances between local government and local charities.

It did not take long for the City of Vancouver to have to react to another provincial initiative for gaming expansion. On September 17, 1996, the Attorney General of B.C. announced that the BC Lottery Corporation was going to introduce the electronic game of CLUB KENO to liquor licensed establishments. The City of Vancouver reacted against the idea on the grounds that it had not been consulted and had reservations about the social implications of mixing alcohol consumption with an electronic lottery game that was going to be played every five minutes.<sup>394</sup> The City's Business License By-law was then amended to prohibit the operation of electronic games like CLUB KENO. The BCLC challenged the validity of this City by-law and eventually, on December 18, 1996, the BC Supreme Court ruled in favour of the BCLC and ordered the by-law amendment to be removed.<sup>395</sup> The City's intention to assert its rights in the gaming policy area, however, was not shaken, and an appeal was launched.<sup>396</sup> The appeal was eventually withdrawn, in part due to the fact that a later

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<sup>391</sup> Ibid.

<sup>392</sup> Interview with Wendy Thompson, Planet Bingo.

<sup>393</sup> City of Vancouver, Vancouver City Council, Administrative Report A14, CLUB KENO in Liquor Licensed Premises, Council Meeting of October 22, 1996.

<sup>394</sup> Ibid.

<sup>395</sup> Court Case No. A963907, rendered by oral decision on December 18, 1996, and City of Vancouver Press Release, December 20, 1996. <http://www.city.vancouver.bc.ca/ctyclerk/newsreleases/NRgaming.htm>, accessed on December 11, 2004

<sup>396</sup> Jennifer Clarke, "Local Government's Role in the Discussion of Gaming Expansion in B.C. 1994-97," 10<sup>th</sup> International Conference on gambling and Risk-Taking, Montréal, May 31 – June 4, 1997. p.11. the appeal was eventually withdrawn.

ruling by the Supreme Court on the issue of the casino by-law, which the City won, indicated that the City's licensing by-law did not have the same power as the City's Zoning and development By-law. This was clearly articulated in Justice Williamson's ruling on the 1997 case when on paragraph 16 of his ruling he indicated that a "zoning by-law, unlike licensing by-laws may include prohibition."<sup>397</sup>

On March 13, 1997, Dan Miller, the Minister responsible for gaming at the time, set the stage for another confrontational show-down with the announcement of a new gaming policy – one which included higher bet limits at charity casinos, extended hours of operation, and the introduction of slot machines in casinos shared by charities and government.<sup>398</sup> A Request For Proposals (RFP) was also announced in July 1997, to develop new charity and destination casinos, with destination casinos being entirely under government control.<sup>399</sup>

In anticipation of these changes to provincial gaming policy, the City of Vancouver decided to further define its already existing guidelines for locating and relocating casinos in the City of Vancouver. New changes to the City's Zoning and Development By-law were introduced in July 1997, and eventually approved in October 1997 following a lengthy public hearing.<sup>400</sup> The public hearing, which is a quasi-judicial meeting of Council with members of the public, met for two days on September 11 and October 7, 1997, and 22 speakers spoke in favour of the new regulations, and 28 speakers spoke against the proposed regulations.<sup>401</sup> Two classes of casinos were defined: Casino Class 1 (without slots) and Casino Class 2 (with slots). Council then proceeded to prohibit casinos with slots.<sup>402</sup> Aside from prohibiting slots, Council also approved a maximum size for casinos in the City (16,150 sq. ft.)<sup>403</sup> Some of the reasons provided by Council in approving these limitations related to traditional land use concerns such as

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<sup>397</sup> Mr. Justice L.P. Williamson, Court Case Docket: A972911 of December 19, 1997

<sup>398</sup> Gaming Policy recommendations, Frank A. Rhodes, February 27, 1998, p.66

<sup>399</sup> Ibid. p.4

<sup>400</sup> City of Vancouver Policy Report, Regulation of Casinos, July 14, 1997.

<sup>401</sup> City of Vancouver, Public Hearing Minutes,

<http://www.city.vancouver.bc.ca/ctyclerk/cclerk/970911/phmin1.htm>, accessed on January 9, 2005.

<sup>402</sup> City of Vancouver Policy Report, Regulation of Casinos, July 14, 1997.

<sup>403</sup> Ibid.

traffic, parking, and land use compability. Others related to the social implications associated with gaming expansion and, in particular, with electronic type of gaming.<sup>404</sup> City staff, basing their judgement on the addiction literature available at the time, had indicated concerns with the introduction of electronic type of gaming such as VLTs and slot machines, on the basis that some of the machine's characteristics presented particular concerns regarding problem gambling. The main concerns were that these machines provided for: immediacy of results; ability to increase play; perception of skill; mesmerizing effect; and the fact that immediate losses seem painless.<sup>405</sup>

Believing that the City of Vancouver's by-law did not apply to a provincial crown corporation, the BC Lottery Corporation ignored the City's prohibition of slots, and on October 7, 1997, installed slot machines at the Gateway Casino at 611 Main, in the Downtown Eastside neighbourhood. The City of Vancouver immediately began enforcement actions against the Gateway Casino and while the slot machines remained in the casino, they were, however, not operational. A few weeks later the BC Lottery Corporation applied to the BC Supreme Court to have the Vancouver by-law amendment set aside or quashed.<sup>406</sup> The BCLC had wanted the Courts to recognize the paramountcy of the Crown Corporation, which represented the Province, and declare the City of Vancouver's actions to be in bad faith and unreasonable. On December 19, 1997, Mr. Justice L.P. Williamson rendered his decision, in favour of the City.<sup>407</sup> Some of the highlights of Mr. Justice Williamson's ruling are:

[20] In any case, in the circumstances obtaining here, I reject the paramountcy argument. For paramountcy to operate, there must be a direct conflict between two enactments passed by authorities at different legislative levels such as Parliament and a legislature, or a legislature and an administrative board. I find no such conflict here, both the City and the Lottery Corporation being creatures of provincial statute. The Lottery Corporation is permitted to make regulations concerning the conduct and management of gambling throughout the Province. The City of Vancouver is permitted to pass by-laws regulating the use or occupancy of lands or buildings within the City boundaries. No conflict between a superior and subordinate body arises. In theory, there is no

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<sup>404</sup> Ibid.

<sup>405</sup> Ibid., Appendix D.

<sup>406</sup> BC Supreme Court, Docket: A972911, Court Ruling on December 19, 1997.

<sup>407</sup> Ibid.

reason why the by-law and the regulations cannot co-exist. A company planning to operate a gambling facility must comply with both regimes. It is hardly unusual for a business to be required to satisfy more than one regulatory agency.

[42] The law mandates that it is not for the Court to determine whether the conclusions reached by city council in reviewing that material are reasonable. Section 148 of the Vancouver Charter states:

A by-law or resolution duly passed by the Council in the exercise of its powers and in good faith, shall not be open to question in any Court, or be quashed, set aside, or declared invalid, either wholly or partly, on account of the unreasonableness or supposed unreasonableness of its provisions or any of them.<sup>408</sup>

This historic ruling went a long way towards validating the views of those seeking further recognition of municipal powers and authority. The province would now have to enact specific gaming legislation, which outlined the role of municipalities. While in theory the provincial legislation – finally enacted in 2002 – could have set aside municipal participation, doing so would have been a costly political decision. Around the same time in 1998, the Great Canadian Casino Company was also challenging a City of Surrey by-law regulating casino activity in Surrey and prohibiting slots in court. Eventually, however, the City of Surrey would not be as successful as the City of Vancouver, and even though Surrey won the case at the Supreme Court level,<sup>409</sup> it lost on appeal.<sup>410</sup> One of the reasons indicated by the Presiding Judge, the Honourable Mr. Justice J.A. Lambert, relates to the way that the City of Surrey had defined (or not defined) slot machines in their by-law prohibiting Video Lottery terminals, and in the manner in which Surrey notified the public. The Appeal Court ruling stated: “In my opinion, if this bylaw was going to prohibit something more than computer electronic machines with a video component and seek to prohibit machines with no video component, the notice did not adequately set out the purpose of the bylaw”.<sup>411</sup> The quasi-

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<sup>408</sup> Ibid.

<sup>409</sup> Supreme Court of British Columbia, Docket: A980167, Vancouver, April 17, 1998

<sup>410</sup> Court of Appeal of British Columbia, Docket: CA024617/CA024621, Vancouver, October 19, 1999. Also commented by Brian E. Taylor, Gaming Policy 2000 – “The Meekison Report and Municipalities,” Pacific Business & Law Institute, May 30th, 2000.

<sup>411</sup> Court of Appeal of British Columbia, Docket: CA024617/CA024621, Vancouver, October 19, 1999.

Note: There is a technical difference between gambling machines with a video component (traditional VLTs) and a gambling machine without that video component (traditional slot machines). Nowadays, however, both machines have become one type of amalgamated machine.

judicial nature of a public hearing requires that notices to the public announcing the public hearing have to be correct in their meaning.

In addition to the legal challenges from municipalities, the Nanaimo Community Bingo Association - an organization representing a Nanaimo group of charities - also took the provincial government to court, in December 1997. The petition to the Court sought to declare invalid a gaming proceeds distribution scheme in which the provincial government was collecting a percentage of bingo revenues and paying to “for-profit bingo operators.” On January 14, 1998, Mr Justice Owen-Flood decided to strike down the Gaming Proceeds Regulation.<sup>412</sup> This decision proved again that the provincial government needed to enact appropriate comprehensive gaming legislation, which would include defined roles for government agencies, gaming operators, charities and municipalities.

On January 19, 1998, the province appointed Mr. Frank Rhodes<sup>413</sup> to head a Working Group and develop a White Paper and a Draft *Gaming Control Act*. The report was released on February 2, 1999, and municipalities were invited to present comments by March 15, 1999. In response, the City of Vancouver produced a discussion paper entitled: “Key Implications of the Province’s White Paper on Gaming,” and organized a series of public meetings to discuss the implications arising from the draft legislation and proposed regulations. Many Vancouver charities indicated concerns with the creation of a “special account” to distribute charitable gaming proceeds, and they shared their concerns with the City.<sup>414</sup> Upon receiving a report from staff, City Council decided on March 9, 1999 to alert the province to its significant concerns regarding the proposed legislation, and in particular those aspects of the legislation concerned with the location and relocation of existing casinos. In part the City’s assessment read as follows:

**Takes away municipal jurisdiction**

Proposed legislation gives the Minister power to over-ride local government. In

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<sup>412</sup> Supreme Court of British Columbia, Docket: 97/4779, Victoria, January 14, 1998.

<sup>413</sup> See footnote 255.

<sup>414</sup> Interview with Wendy Thompson.

Vancouver, this would mean Council's ability to regulate casinos would be undermined (e.g., the Minister could over-ride City by-laws for Zoning and Development, Building, Licensing, Noise, Signs, Parking, Street and Traffic). It would give the Minister ultimate authority over relocation of existing casinos (where they go, size, and the type of activities permitted). The White Paper suggests that, in the future, the Minister may be able to permit existing casinos in one municipality to be relocated into another municipality.<sup>415</sup>

The UBCM also produced its own response in April 1999, mirroring the City of Vancouver's response.<sup>416</sup> Business organizations like the Vancouver Board of Trade also continued to support Council's decision to assert municipal power and control. In a letter sent to Council at the time, it is stated:

We particularly want to emphasize the importance of ensuring that there is local support from the relevant municipalities, before any changes or additions are approved to gaming facilities within a community. This should include both new facilities and existing facilities and would include changes in venue, hours of operations, parking requirements and ensuring that casinos meet all municipal bylaws... We also recommend that local support through the appropriate municipal, regional or First Nations government should be required before new forms of gaming (e.g. slot machines) can be introduced into either new or existing casinos.<sup>417</sup>

It was during this period that Glen Clark, the premier of the Province, was involved in a criminal investigation related to the awarding of a casino license. Although Clark was ultimately declared innocent of any criminal wrongdoing by the courts,<sup>418</sup> the timing of the accusation was not propitious for a public discussion on gaming between the province and municipal representatives. Eventually on June 17, 1999, the provincial government signed a Memorandum of Agreement with the UBCM, which responded positively to most of the municipal concerns, particularly those related to the land use

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<sup>415</sup> City of Vancouver Response to the Provincial Report on Gaming Legislation and Regulation in British Columbia, March 9, 1999.

<sup>416</sup> UBCM web site: <http://www.civicnet.bc.ca/siteengine/ActivePage.asp?PageID=30#BRIEFS>, accessed on December 11, 2004

<sup>417</sup> City of Vancouver, Report to Council, City of Vancouver response to the Provincial Report on Gaming Legislation and Regulation, March 9, 1999. <http://www.vancouver.ca/ctyclerk/ccclerk/990309/ub1.htm>, accessed on January 6, 2005.

<sup>418</sup> Supreme Court of British Columbia, Docket CC001402, June 7, 2002. H.A.D. Oliver, the Conflict of Interest Commissioner who reviewed the case, found Glen Clark in conflict. <http://www.ag.gov.bc.ca/public/clark/report.pdf>, accessed on January 5, 2005.



powers of municipalities, as they relate to location and relocation of casinos. The agreement also acknowledged the need for a revenue sharing scheme with municipalities hosting casinos.

On July 19, 1999, Minister Mike Farnworth, the Minister responsible for gaming, appointed Professor Peter Meekison<sup>419</sup> to recommend a process for the relocation of existing gaming facilities. Professor Meekison submitted his report on January 31, 2000, to Joan Smallwood,<sup>420</sup> the Minister then responsible for gaming, who released it to the public on February 1, 2000.<sup>421</sup> The report contained 29 recommendations, which followed the spirit of the Memorandum of Agreement signed with UBCM, and called for a prompt introduction of gaming legislation. Recommendation No. 11, specifically indicated:

That the gaming legislation reflect the provisions of the Memorandum of Agreement between the province and the UBCM concerning:

- 1) Jurisdiction of local government, with respect to land use and by-law making powers;
- 2) The ability of local governments to make decisions as to whether or not new or relocated facilities will be permitted within their boundaries;
- 3) The ability of local governments to direct and define the extent, scope and type of casino and bingo gaming permitted within their boundaries; and
- 4) The ability of local governments to decide if slot machines or other similar devices could be placed within their boundaries.<sup>422</sup>

On February 22, 2000 Vancouver City Council received a copy of the Meekison Report together with a request to sign financial agreements with the province, in order to receive the City's revenue share from the Vancouver-based casinos.<sup>423</sup> Council authorized City staff to sign Financial Host Agreements with the Province for all five

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<sup>419</sup> Peter Meekison was a Professor of Political Sciences at the University of Alberta, former Deputy Minister for Intergovernmental Affairs for the Government of Alberta, and former Commissioner of the Royal Commission on Aboriginal Peoples.

<sup>420</sup> There were 11 different Cabinet Ministers responsible for gaming during the NDP period from 1992 to 2001.

<sup>421</sup> Province of British Columbia, Ministry of Skills Development and Labour, "Relocation of and Changes to Existing Gaming Facilities in British Columbia: Review and Recommendations," ("The Meekison Report"), January 31, 2000.

<sup>422</sup> Ibid.

<sup>423</sup> City Of Vancouver Council Report, Meekison Report and Financial Host Agreement, February 22, 2000.

casinos in the city.<sup>424</sup> The City was then in a position to receive its portion of casino revenue retroactive to July 1, 1999.

What had begun in 1994 as a confrontational relationship between the City and the provincial government on matters of gaming policy, became ultimately a partnership in which the City and other municipalities contribute to the definition of gaming policy, and, in turn, benefit from significant revenue allocations. This new role would be later entrenched in the *Gaming Control Act* when it was enacted in 2002. The partnership was totally consummated on January 22, 2004, when the City of Vancouver finally agreed to allow gaming expansion within its jurisdiction. Approval was given to a new casino with 600 slot machines at the Plaza of Nations on January 22, 2004, and approval for 600 slots at Hastings Racetrack was given on July 22, 2004. City staff, satisfied with both the levels of control provided in the legislation and the potential financial benefits to the City presented reports to Council in support of both applications; and while the vote was divided, Council ultimately approved both applications.

Many factors contributed to the City's decision to reverse its earlier opposition to slots: there was now a comprehensive legal framework governing gaming and as a consequence the gaming industry is seen to be well regulated; the City had been granted authority over the location and relocation of casinos within its borders and the scope and type of gaming permitted there; the province had allocated \$4 million dollars towards problem gambling programs, thereby addressing an earlier concern that expansion was occurring in the absence of any treatment programs for problem gamblers; the local charities received some kind of revenue guarantee; and a revenue-sharing formula had been established thereby returning monies directly to the municipality.

While agreeing with the above, Derek Sturko also suggests that as neighbouring municipalities introduced slots without incident some of the original fears evaporated:

The negative experiences that many municipalities anticipated have not been realized – so for example – if you speak with the municipality of New

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<sup>424</sup> Ibid.

Westminster, they originally had some trepidation in terms of entering into and allowing casino gambling. They have now allowed two casinos into their municipality partly on the basis that the anticipated social ills, the massive requirements for new police, prostitution, all those kind of things that people expected, have not come to light. The crime rates have not really changed.<sup>425</sup>

This is not to say that these approvals were without controversy. More than 60 people spoke at the public hearing for the casino, and close to 200 people spoke at the public hearing for the racetrack. Of the people that spoke at the Casino public hearing, 21 spoke against the recommendation to allow slot machines, and 46 spoke in favour of the recommendation.<sup>426</sup> At the Hastings racetrack public hearing, 97 people spoke against the introduction of slots at the racetrack, and 81 spoke in favour. A few other speakers did not assert their opinion, one way or the other.<sup>427</sup> The majority of speakers were employees from the gaming facilities, residents of the neighbourhood adjacent to the Hastings racetrack, and bingo charity representatives in support of the expansion – this last group speaking in support of the expansion on the understanding that a new bingo hall would be secured.

Roger Cobb refers to those interested parties who participate in public policy discussions as the *attentive public*, usually comprised of a small minority of the population, who are better informed and interested in public issues.<sup>428</sup> It is not surprising, therefore, that the majority of speakers at both public hearings were for the most part, those who stood to be directly impacted by the decision and their comments at the hearing, reflect these concerns: neighbourhood representatives cautioned that the “local community around Hastings Park has been improving in recent years with an influx of new families and many heritage homes being restored - allowing a casino to operate in the heart of this community will seriously jeopardize it;”<sup>429</sup> those in support of bingo charities suggested that, “many charity services and programs funded in part by Planet

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<sup>425</sup> Interview with Derek Sturko, General Manager of BC Gaming Policy and Enforcement Branch, September 13, 2004.

<sup>426</sup> City of Vancouver, Public Hearing Minutes for Plaza of Nations Casino, January 20, 21 and 22, 2004.

<sup>427</sup> City of Vancouver, Public Hearing Minutes for Hastings Racecourse, July 15, 19, 20 and 21, 2004.

<sup>428</sup> R. Cobb, J.K. Ross, and M.H. Ross, “Agenda Building as a Comparative Political Process,” p.129

<sup>429</sup> Ibid.

Bingo will be lost if this proposal is not approved;”<sup>430</sup> and union representatives and workers worried that as, “many of the people employed at the track live in East Vancouver, a massive loss of employment will result if this application is not approved.”<sup>431</sup>

For most Vancouverites, however, gambling is no longer high on the agenda. A public opinion poll commissioned by the City in December 2003<sup>432</sup> indicated little concern on the part of Vancouverites towards gambling and gambling issues: “currently only four percent say that gambling/casinos is an issue that should receive the greatest attention from local leaders.”<sup>433</sup> When pressed to express their opinion about gaming facilities, however, the same opinion poll indicates that: “overall, residents are divided on the matter but more residents say that Vancouver’s gaming facilities are a liability (56%) than say they are an asset (40%) for the City.”<sup>434</sup>

What had started, in 1994, as a controversy that roused business groups, churches, citizen groups, charitable organizations and regional city councils, has devolved into a debate involving only those most immediately affected. It is interesting to note that as the City’s authority and control over local application of gaming policy have increased, the widespread opposition and suspicion surrounding gaming activities appear to have decreased. The cooperation from one of the City’s partners in opposing gaming expansion in the 1990’s, the Vancouver Board of Trade, may not, therefore, come as a surprise. In a letter to Mayor and Council, the Board of Trade indicated on January 16, 2004:

Substantial casinos are being established in neighbouring municipalities. The multi-dimensional entertainment aspects of new casinos will establish these as

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<sup>430</sup> Ibid.

<sup>431</sup> City of Vancouver, Public Hearing Minutes for Plaza of Nations Casino, January 20, 21 and 22, 2004 and Public Hearing Minutes for Hastings Racecourse, July 15, 19, 20 and 21, 2004.

<sup>432</sup> “Attitudes Towards Gaming in the City of Vancouver,” Ipsos-Reid, January 2004, <http://www.city.vancouver.bc.ca/commsvcs/socialplanning/initiatives/gambling/pdf/FinalGamingReport-Jan15.pdf>, accessed on January 7, 2005.

<sup>433</sup> Ibid. Issues like crime, safety, transportation, transit, poverty and homeless were listed as a lot more significant.

<sup>434</sup> “Attitudes Towards Gaming in the City of Vancouver,” Ipsos-Reid, January 2004.

competitors to the hospitality and entertainment sector in the City of Vancouver. To remain competitive, the City should permit a similar facility here.<sup>435</sup>

On April 8, 2004, the Board of Trade wrote a similar letter to Mayor and Council indicating support for the request for slot machines at Hastings racetrack:

There are a number of new facilities established or emerging in the region that provide access to slot machines. Given that development, there is good rationale for the City of Vancouver not to oppose a worthy applicant seeking to establish a similar capacity within the city. One of the reasons for this is that it will result in a substantial income flow to the city instead of to other municipalities where patrons otherwise would go.<sup>436</sup>

Similarly, the bingo charities, which were also early opponents of provincially imposed gaming schemes embraced the same position as the City and championed the controlled introduction of slots. The majority of Vancouver's neighbouring municipalities, who together with Vancouver and other British Columbia local governments had opposed the early-imposed model of gaming expansion, have permitted some form of expansion within their jurisdictions. Perhaps the only groups to have maintained consistent positions were the anti-gambling advocates who opposed the expansion of gaming for social and moral reasons and the labour unions who consistently supported it for economic and employment reasons. It is interesting to note that even some of the neighbourhood opponents of the racetrack expansion claimed that they were not against slots in general, just against slots in their neighbourhood.<sup>437</sup>

Throughout the 1994-2004 period, the City of Vancouver aggressively and determinedly inserted itself into the provincial domain of public policy. Not content to be passive caretakers of an imposed gaming policy, the City challenged the province at every turn. It created alliances with community groups, church and charity organizations, it leveraged its powers and authority and created and enforced zoning by-laws which limited gaming expansion and it successfully responded to provincial government court

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<sup>435</sup> Vancouver Board of Trade, letter to Mayor and Council, January 16, 2004.  
[http://www.boardoftrade.com/vbot\\_page.asp?pageID=1144](http://www.boardoftrade.com/vbot_page.asp?pageID=1144), accessed on January 6, 2005.

<sup>436</sup> Vancouver Board of Trade, letter to Mayor and Council, April 8, 2004.  
[http://www.boardoftrade.com/vbot\\_page.asp?pageid=1257](http://www.boardoftrade.com/vbot_page.asp?pageid=1257), accessed on January 6, 2005.

<sup>437</sup> Six Hastings-area neighbourhood organizations proposed that the 600 slots slated for the racetrack be added instead to the expanded Plaza of Nations casino. Vancouver Courier, November 12, 2003.

challenges. In such a way, Vancouver contributed to a collective force, which, acting as agents outside of the provincial government, managed to exert such an influence and pressure that, the provincial government's ability to independently and unilaterally establish a gaming policy agenda was hampered and ultimately denied. Thus the mushy middle thesis may have gained, another example of how a local government, despite its constitutional and statutory inferiority, can, through perseverance, community alliances, good lawyers, and a little bit of "being at the right place at the right time," influence and determine public policy issues not traditionally in their domain.

## CONCLUSION

*The City and its citizens have come of age. People understand that they won the battles that they fought for.*

Judy Rogers, Vancouver City Manager<sup>438</sup>

Smith and Stewart contend that “despite constitutional and statutory inferiority” to the province, municipalities can shape and influence those provincial policies, which most directly affect them – given that there is no substantive opposition from senior levels of government.<sup>439</sup> This thesis asserts that, in the area of gaming policy, British Columbia municipalities did just that: faced with a provincial government committed to increasing revenue through gaming proceeds they insisted upon and received control over the placement of casinos within their jurisdictions, they secured the right to define the scope and type of gaming allowed in their communities, and they were instrumental in convincing the provincial government to define a process for establishing revenue sharing agreements. By so doing, the municipalities, acting as outside agents, were able to insert themselves into an agenda-setting process and influence and shape gaming policy to an extent not seen in other provinces. These battles – fought and won – do indeed represent a coming of age for British Columbia municipalities and herald a new working relationship between them and the province.

Municipalities have long been defined as “creatures of the province” whose very existence is due only to the benevolence of their senior legislators and whose rights and

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<sup>438</sup> Interview with Judy Rogers, August 24, 2004.

<sup>439</sup> Smith and Stewart, *Mushy Middle*, p.25

powers are enjoyed as a result of government largesse. Given the nature of the relationship between the province and its municipalities, this thesis has set out to examine why the provincial government ultimately retracted its opposition to the granting of authority to local governments in gaming matters. In examining the various reasons and factors that may have contributed to the provincial government's willingness to accommodate the municipalities and to incorporate their input and needs into its larger gaming policy, this thesis posits the theory, that government's increasing reliance on gaming revenue made municipal cooperation essential, thereby necessitating a conciliatory approach, on the part of the province, towards municipalities. The determination of municipalities to resist provincial imposition of expanded gaming in their communities demonstrated to the provincial government that their cooperation would come at a cost. That municipalities were successful in blocking major provincial initiatives deemed detrimental to local governments and in encouraging those perceived to be beneficial, was due to their political organization, their political will and their political imagination.

Municipalities demonstrated powerful political organization when they harnessed the political clout of their political association, the UBCM. Through resolutions, declarations and motions they presented a unified challenge to the provincial government's attempt to impose a gaming agenda. When necessary, municipalities also harnessed the collective strength of smaller but still influential organizations. An example of this mobilization was when the Greater Vancouver Regional District – a partnership of twenty-one municipalities and one electoral district - passed a resolution opposing VLTs within its borders, paving the way to an eventual provincial ban on them. But it is ultimately the signing of the 1999 Memorandum of Agreement – a document that would become the foundation for the British Columbia *Gaming Control Act* – that best demonstrates the success of the advocacy capabilities of municipalities when politically organized.

The political will that municipalities brought to the debate is evident in their invocation of land use statutes and powers to place parameters on gaming activity within



their communities and in their many resolutions and declarations regarding provincial gaming expansion plans. Vancouver's pro-active enactment of zoning by-laws to define land-use and exclude not only certain classes of casinos but also certain types of gaming is a good example of such political will. A provincial court challenge ultimately ruled that given the lack of a comprehensive legislation, the provincial government did not have paramountcy and the municipality's right to assert control, through land-use by-laws, over the scope and type of gaming permitted in its jurisdiction was upheld. It is ironic that the very absence of a legal framework should be the catalyst for a bold assertion of land-use powers – an assertion that would ultimately find legitimacy in the courts.

Lastly, and perhaps most significant, is the political imagination which municipalities, and Vancouver in particular, brought to the discussion. Municipalities created alliances most noticeable with charitable organizations - which for a long time have legitimized gambling activities - commissioned polls, held public hearings, and generally provided an outlet for public opinion. The provincial government could not separate the municipal citizen from the provincial citizen, and was forced to accommodate its concerns. Defined as “creatures of the province” and aware of their outsider status, municipalities, nonetheless, insisted upon a role in the gaming agenda-setting process and successfully asserted their place within it.

The successful application of political organization, will and imagination by municipalities demonstrate that there is indeed, “considerable room in the mushy (policy) middle for proactive local governmental engagement in the intergovernmental/policy game.”<sup>440</sup> The Smith Corollary to the Swainson thesis cautions that local governments “play the game of *substantial* local-senior government conflict at their peril.”<sup>441</sup> That local governments were successful in their ten-year game of conflict is a testament to the viability and effectiveness of an “outside initiation model” operating against a senior

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<sup>440</sup> Patrick Smith and Kennedy Stewart, *The Mushy Middle*, p.37

<sup>441</sup> *Ibid.*, p.36

government whose objectives and initiatives can only be realized with full co-operation and agreement of all stakeholders.

## **APPENDIX: LIST OF INTERVIEWEES**

1. Larry Campbell, Mayor, City of Vancouver
2. Jennifer Clarke, former Councillor, City of Vancouver
3. Derek Corrigan, Mayor, City of Burnaby
4. Marie Crawford, UBCM Official
5. Colin Gabelmann, former Attorney General of B.C.
6. Gary Jackson, Co-owner, Edgewater Casino
7. Lynne Kennedy, former City Councillor, City of Vancouver
8. Judy Rogers, City Manager, City of Vancouver
9. Derek Sturko, General Manager, Gaming Policy and Enforcement Branch of B.C.
10. Richard Taylor, UBCM Official
11. Wendy Thompson, Manager, Planet Bingo
12. Vic Poleschuk, President, B.C. Lottery Corporation

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