

Overview Report: Regulation of Horse Racing in British Columbia

A. Scope of Overview Report

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

B. Federal Regulation of Horse Racing

i. Historical Development of the Horse-Racing Provisions in the *Criminal Code*

2. While most forms of gambling were prohibited by Canadian criminal law prior to 1969, significant exemptions permitting wagering on horse-racing have been in place since the early 20th century. These exemptions were added gradually beginning in 1886, slowly expanding the scope of permissible betting on horse-racing until 1985 at which point the current *Criminal Code* provisions relating to horse-racing were substantially in place.

3. In 1886, *An Act respecting Lotteries, Betting and Pool-selling*¹ prohibited the use of premises to register bets or wagers or to sell a pool, but permitted persons to hold stakes for the winners of lawful races and sports, for the owners of horses engaged in a lawful race, and for bets between individuals.

4. Canada's first *Criminal Code* was enacted in 1892. It incorporated these 1886 offences and added a further exception permitting betting "made on the race course of an incorporated association during the actual progress of a race meeting".²

5. This exception was amended from time to time.³ The most significant of those amendments, for present purposes, are described here.

¹ *An Act respecting Lotteries, Betting and Pool-selling*, S.C. 1886, c. 159.

² *Criminal Code*, 1892, c. 29, s. 204(2). Subsection 204(2) was re-enacted unchanged as subsection 235(2) in *Criminal Code*, R.S.C. 1906, c. 146.

³ *Criminal Code*, R.S.C. 1906, c. 146; *An Act to amend the Criminal Code*, S.C. 1910, c. 10; *An Act to amend the Criminal Code*, S.C. 1912, c. 19; *An Act to amend the Criminal Code*, S.C. 1920, c. 43; *An Act to amend the Criminal Code*, 1922, c. 16; *An Act to amend the Criminal Code*, 1923, c. 41; *Criminal Code*, R.S.C. 1927, c. 36; *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1934, c. 11; *An Act to amend the Criminal Code*, 1938, c. 44; *An Act to amend the Criminal Code (Race meetings)*, S.C.

6. In 1910, the section on betting, pool-setting, and book-making was repealed and a new section substituted that limited on-track betting to incorporated racing association events of not more than two race-meetings a year consisting of not more than seven continuous race days per meeting.⁴

7. In 1920, Parliament approved a pari-mutuel⁵ system of betting for horse races. The association was entitled to deduct between 3 and 7% of the amounts wagered, depending on the total amount staked on each race. The federal Minister of Agriculture was responsible to approve and supervise the operation of the pari-mutuel machines.⁶

8. In 1935, the section was amended to empower the federal Minister of Agriculture to make regulations with respect to these provisions and by such regulations to impose penalties.⁷

1946, c. 5; *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1951, c. 25; *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1952, c. 22; *An Act to amend the Criminal Code (Race Meetings)*, 1953-54, c. 52; *Criminal Code*, 1953-54, c. 51; *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1955, c. 45; *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1960-61, c. 21; *Criminal Law Amendment Act*, S.C. 1968-69, c. 38; *Criminal Code*, R.S.C. 1970, c. C-34; *Criminal Law Amendment Act*, S.C. 1980-81-82, c. 99; *Criminal Code*, R.S.C. 1985, c. C-46; *An Act to amend the Criminal Code (pari-mutuel betting)*, R.S.C. 1985, c. 47 (1st Supp.); *An Act to Amend the Department of Agriculture Act and to amend or repeal certain other Acts*, S.C. 1994, c. 38; *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, S.C. 2008, c. 18.

⁴ *An Act to amend the Criminal Code*, S.C. 1910, c. 10, s. 3.

⁵ The Canadian Pari-Mutuel Agency defines pari-mutuel betting as “an exchange of monies between the bettors, less a percentage of the total monies bet for the racetracks and the federal and provincial governments.”: “Pari-Mutuel Betting” (last modified 4 April 2019), online: *Agriculture and Agri-Food Canada* <<http://www.agr.gc.ca/eng/about-us/partners-and-agencies-agriculture-and-agri-food-canada/canadian-pari-mutuel-agency/pari-mutuel-betting/?id=1362070544860>>.

⁶ *An Act to amend the Criminal Code*, S.C. 1920, c. 43, s. 6. The deductions permitted on the amounts wagered were amended by *An Act to amend the Criminal Code*, 1923, c. 41, however, the amounts permitted to be deducted remained between 3 and 7%. This section was re-enacted without substantive amendment in *Criminal Code*, R.S.C. 1927, c. 36, s. 235(2). The deductions permitted on the amounts wagered were increased to between 5 and 9% in *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1951, c. 25. In 1952, pursuant to *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1952, c. 22, the percentage deducted and retained in respect of each race regardless of the amount wagered, could not exceed 9%. Pursuant to *Criminal Law Amendment Act*, S.C. 1968-69, c. 38, the amounts permitted to be deducted were between 9.5 and 12% depending upon the amount wagered.

⁷ *An Act to Amend the Criminal Code*, S.C. 1935, c. 56, s. 2. This power has been amended from time to time, notably pursuant to *Criminal Law Amendment Act*, S.C. 1968-69, c. 38 and *Criminal Law Amendment Act*, S.C. 1980-81-82, c. 99.

9. In 1946, the section was amended to add a provision by which the federal Minister of Agriculture was authorized to determine, in a particular case, that the provision was not applicable.⁸

10. In 1955, the section on pari-mutuel betting was amended to require the horse racing association to pay ½% of the total amount bet to the Receiver General of Canada.⁹

11. The *Race Track Division*, within the Department of Agriculture, was created in 1971.¹⁰

12. The *Criminal Code* was amended in 1982 to permit Telephone Account Betting. The same year, the *Race Track Supervision Regulations* were amended to allow Inter Track Betting, permitting race-course associations to offer betting on pools held by other race-course associations.¹¹

13. In 1984, the *Racetrack Supervision Regulations* were amended to permit Separate Pool Betting, allowing race-course associations to host a separate betting pool for a race held at another race-course location.¹² In 1985, Parliament permitted racing associations to accept pari-mutuel bets on foreign horse races provided those races had been approved by the federal Minister of Agriculture.¹³

⁸ *An Act to amend the Criminal Code*, S.C. 1946, c. 5, s. 2.

⁹ *An Act to amend the Criminal Code (Race Meetings)*, S.C. 1955, c. 45, s. 1.

¹⁰ "Evaluation of the Canadian Pari-Mutuel Agency" (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-our-department/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500>>.

¹¹ Bill C-117.

¹² SOR/84-378.

¹³ *An Act to amend the Criminal Code (pari-mutuel betting)*, R.S.C. 1985, c. 47 (1st Supp.), s. 1.

14. The *Racetrack Supervision Regulations* were replaced with the *Pari-Mutuel Betting Supervision Regulations* in 1991.¹⁴ The following year, the *Race Track Division* was replaced by a Special Operation Agency named the Canadian Pari-Mutuel Agency.¹⁵

15. In 1995, the *Pari-Mutuel Betting Supervision Regulations* were amended to increase the commission paid to an association from 18% to 23%.¹⁶ In 1999, they were amended again to include on-track account betting.¹⁷

16. In 2011, the Regulations were amended to incorporate by reference a provision allowing (standard) Model Pool Rules made under the Association of Racing Commissioners International.¹⁸ The Regulations were also amended to discontinue photo finish and video race patrol surveillance.¹⁹

ii. Current Horse-Racing Provisions in the *Criminal Code*

17. The provisions addressing horse-racing in the current *Criminal Code* are found among the gambling provisions in Part VII of the *Code*: “Disorderly Houses, Gaming and Betting.” Within Part VII, s. 201 creates and prescribes punishments for offences relating to the operation of common gaming or betting houses while s. 202 addresses betting, pool-selling, book-making, and other unlawful forms of wagering.

18. Section 204 of the *Criminal Code* creates exemptions from criminal liability which would otherwise arise under ss. 201 or 202. These include significant exemptions for gambling associated with horse racing. In any trial for an offence under ss. 201 or 202, it is for the defence to raise a reasonable doubt that an exemption applies.

¹⁴ *Pari-Mutuel Betting Supervision Regulations*, SOR/91-365.

¹⁵ “Evaluation of the Canadian Pari-Mutuel Agency” (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-our-department/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500>>.

¹⁶ SOR/95-262.

¹⁷ SOR/99-55.

¹⁸ SOR/2011-169.

¹⁹ SOR/2011-169.

19. Section 204 provides in part:

(1) Sections 201 and 202 do not apply to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked, to be paid to

(i) the winner of a lawful race, sport, game or exercise,

(ii) the owner of a horse engaged in a lawful race, or

(iii) the winner of any bets between not more than ten individuals;

(b) a private bet between individuals not engaged in any way in the business of betting;

(c) bets made or records of bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races if

(i) the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race-course in or out of Canada, and, in the case of a race conducted on a race-course situated outside Canada, the governing body that regulates the race has been certified as acceptable by the Minister of Agriculture and Agri-Food or a person designated by that Minister pursuant to subsection (8.1) and that Minister or person has permitted pari-mutuel betting in Canada on the race pursuant to that subsection, and

(ii) the provisions of this section and the regulations are complied with.

(1.1) For greater certainty, a person may, in accordance with the regulations, do anything described in section 201 or 202, if the person does it for the purposes of legal pari-mutuel betting.

20. Thus s. 204(1) creates three types of exemptions. Section 204(1)(a) exempts the custodian or the stakeholder of money when such person pays out the stakes or money to one of the class of persons described in subparas. (i) to (iii). Section 204(1)(b) exempts a private bet between individuals *not* engaged in any way in the business of betting. Section 204(1)(c) excludes bets made or records of bets made through the *pari-mutuel system* if the conditions in subparas. (i) and (ii) are satisfied.

21. Section 204(10) creates the offence of contravening the section or the regulations made under it. In addition, it provides that prosecution may be by way of summary conviction or indictable proceedings and prescribes a maximum sentence upon an indictable conviction of two years.

iii. Exemption for Pari-Mutuel Betting Systems

22. Section 204(1)(c) creates an exemption for “bets made or records of bets made through the agency of a pari-mutuel system” provided the conditions enumerated in that subsection are met. Subsection 1.1 clarifies the scope of this exemption by providing that “for greater certainty, a person may, in accordance with the regulations, do anything described in section 201 or 202, if the person does it for the purposes of legal pari-mutuel betting.” It is these exemptions which permit wagering on horse races at race courses such as British Columbia’s Hastings Racecourse and the Fraser Downs Racetrack.

23. “Pari-mutuel” is not defined in the *Criminal Code*.²⁰ The Canadian Pari-Mutuel Agency, discussed below, offers the following definition of the term:

Pari-mutuel betting is an exchange of monies between the bettors, less a percentage of the total monies bet for the racetracks and the federal and provincial governments.²¹

24. In pari-mutuel systems, the odds associated with a given race are not fixed in advance. Rather, they are determined by distributing the total amount wagered by all

²⁰ “Pari-mutuel system” is defined in the *Pari-Mutuel Betting Supervision Regulations*, SOR/91-365, but the definition provides little insight into the meaning of the term: “*pari-mutuel system* means the equipment and all software, including the totalizator, the telephone account betting system, the on-track account betting system and the inter-track betting equipment, that are used to record bets and to transmit betting data.” The term “bet” is defined in s. 197(1) of the *Criminal Code* to mean “a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada.”

²¹ “Pari-Mutuel Betting” (last modified 4 April 2019), online: *Agriculture and Agri-Food Canada* <<http://www.agr.gc.ca/eng/about-us/partners-and-agencies-agriculture-and-agri-food-canada/canadian-pari-mutuel-agency/pari-mutuel-betting/?id=1362070544860>>.

bettors, minus management fees, among the winners.²² Accordingly, the revenue generated by the operator of a pari-mutuel system is not determined by the rate at which bettors win or lose.

25. Subsections (2) to (9.1) and (11) provide further detail as to how pari-mutuel systems may operate while remaining within the s. 204(1)(c) exemption. These provisions outline the authority of the federal Minister of Agriculture and Agri-Food to regulate pari-mutuel systems, dictate where bets may be placed, and provide for the distribution of the proceeds of pari-mutuel betting among operators and government.

26. The extent of the Minister's authority over pari-mutuel systems in horse-racing is affirmed in subsections (3), (7), (8), (8.1) and (9). Subsection (3) provides that pari-mutuel systems may be used in respect of horse racing only if the system has been approved by the Minister and its operation is carried on under the supervision of an officer appointed by the Minister. Subsection (7) authorizes the officer to order that betting be stopped at any time and for any period of time, if the officer "is not satisfied that the provisions of [s. 204] and the regulations are being carried out in good faith by any person or association in relation to a race meeting." Subsections (8) and (9) grant the Minister extensive discretion to make regulations, while subsection (8.1) permits the Minister to allow pari-mutuel betting in Canada on races held outside of Canada.

27. Section 204(1)(c) permits pari-mutuel betting on horse races if "the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race course in or out of Canada..." Subsections (2), (9.1) and (11) provide further insight into what it means to be "on the race-course of an association." Subsections (2) and (9.1) expand the plain language meaning of "on the race-course." Subsection (2) provides that "bets made... in a betting theatre... or by any means of telecommunication to" a race course or betting theatre "are deemed to be made on the race-course." Subsection (9.1) authorizes the Minister to designate a zone within 900 m

²² See Romain Roult, Marc-André Lavigne and Denis Auger, "The Horse Racing Industry in Canada: Current Status and Prospects" (2017) 22:1 *Managing Sport and Leisure* 19 at 20.

of a race course as “part of the race-course” for the purpose of the exemption. Finally, subsection (11) clarifies the meaning of the term “association” as used in s. 204, defining the term to mean:

[A]n association incorporated by or pursuant to an Act of Parliament or of the legislature of a province that owns or leases a race-course and conducts horse-races in the ordinary course of its business and, to the extent that the applicable legislation requires that the purposes of the association be expressly stated in its constating instrument, having as one of its purposes the conduct of horse-races.

Accordingly, it is only at race-courses owned or leased by an “association”, as the term is used in s. 204(1)(c), that pari-mutuel betting on horse races may legally be conducted.

28. Finally, subsections (4)-(6) dictate how the proceeds of pari-mutuel betting systems are to be distributed amongst the associations operating pari-mutuel systems and government. Subsection (4) requires operators of pari-mutuel betting systems to pay to the Receiver General at least ½% of all amounts wagered and up to 1% if so fixed by the Governor in Council. Subsection (5) prohibits operators from retaining any portion of amounts wagered aside from that authorized by subsection (6) which permits operators to deduct and retain a percentage of the amount wagered prescribed by the regulations.

iv. The Canadian Pari-Mutuel Agency

29. Section 204(9) is also the enabling legislation for the Canadian Pari-Mutuel Agency (“**CPMA**”), created in 1991 as a special operating agency within Agriculture and Agri-Food Canada (“**AAFC**”).

30. The CPMA regulates and supervises pari-mutuel betting in Canada on horse races. It seeks to maintain and enforce national standards. The role of the CPMA includes, but is not limited to, issuing permits, licences and authorizations for racetrack and betting theatre operators to conduct pari-mutuel betting on horse races; auditing and monitoring of pari-mutuel betting activities; testing of horses for prohibited substances; research on drug testing; providing information on elimination of guidelines for veterinary

drugs; enforcing the *Pari-Mutuel Betting Supervision Regulations*;²³ and compiling statistical information on pari-mutuel betting activities.²⁴

31. In one form or another, the federal Agriculture Minister has been responsible for pari-mutuel betting on horse racing since the 1920s.²⁵ The Racetrack Division of the AAFC, was created a century ago when betting on horse racing was the only legal form of gambling.²⁶ It is funded through a 0.8% levy on each bet placed in Canada on horse racing.²⁷ The federal government replaced the Racetrack Division of the AAFC with the CPMA in 1992.²⁸ In recent years, the CPMA has adopted a risk-based model for monitoring race tracks and betting theatres. This model relies on remote monitoring and post-race audits, with periodic on-site inspections. As a result, the CPMA's staffing needs have decreased and the number of full-time equivalent staff members fell from 42 in 2012-13 to 32 in 2016-17.²⁹

²³ *Pari-Mutuel Betting Supervision Regulations*, SOR/91-365.

²⁴ "Canadian Pari-Mutuel Agency" (last modified 26 February 2016), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/partners-and-agencies/canadian-pari-mutuel-agency/?id=1204043533186>>.

²⁵ "Canadian Pari-Mutuel Agency" (last modified 26 February 2016), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/partners-and-agencies/canadian-pari-mutuel-agency/?id=1204043533186>>.

²⁶ "Evaluation of the Canadian Pari-Mutuel Agency" (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500#1-3>>.

²⁷ "Evaluation of the Canadian Pari-Mutuel Agency" (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500#1-3>>.

²⁸ "Evaluation of the Canadian Pari-Mutuel Agency" (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500#1-3>>.

²⁹ "Evaluation of the Canadian Pari-Mutuel Agency" (last modified 18 April 2019), online: *Agriculture and Agri-Food Canada* <<https://www5.agr.gc.ca/eng/about-us/transparency-agriculture-and-agri-food-canada/evaluation-of-the-canadian-pari-mutuel-agency/?id=1551903137500#1-3>>.

C. Provincial Regulation of Horse Racing in British Columbia

i. 1997-2001: The British Columbia Racing Commission

32. Prior to the enactment of the current *Gaming Control Act*³⁰ (“**GCA**”), horse racing in British Columbia was governed by two provincial statutes, the *Horse Racing Act*³¹ and the *Horse Racing Tax Act*,³² both enacted on April 21, 1997.

33. The *Horse Racing Act* regulated horse racing in British Columbia through the B.C. Racing Commission. Section 4 of the Act empowered the B.C. Racing Commission to:

- a) regulate the operation of all sites in British Columbia at which horse racing is carried on,
- b) regulate the operation of all designated race horse training centres,
- c) enforce observance of and compliance with this Act and all regulations and rules made under this Act, and
- d) do other things relating to horse racing as authorized or directed by the Lieutenant Governor in Council.

34. The *Horse Racing Act* assigned the B.C. Racing Commission the responsibility to licence race track operators, jockeys and others involved in the industry, assign racing days to an association, inspect facilities and documents, conduct tests and analyses of licensees and horses, and make rules dealing with all aspects of horse racing.

35. The *Horse Racing Tax Act* provided for taxation of the horse racing industry. Pursuant to the *Horse Racing Tax Act*, a tax equal to 7% of the amount wagered was imposed on every pari-mutuel bet made in B.C. on a race held in B.C. or elsewhere. Four percent of the amount wagered was remitted to the Racing Commission, an additional 2% of the amount wagered was remitted in the case of bets on races held outside B.C.,

³⁰ *Ibid.*

³¹ *Horse Racing Act*, R.S.B.C. 1996, c. 198.

³² *Horse Racing Tax Act*, R.S.B.C. 1996, c. 199.

and a further 1% was remitted in the case of bets made at a betting theatre on B.C. races.³³

36. The Racing Commission was required to use the 4% it received from all bets to improve horse racing in B.C. by means of supplementing purses, maintaining a breeders' incentive fund, making grants, and meeting the Commission's operating costs. The Racing Commission was required to use the additional 1% it received from bets made at betting theatres, and the additional 2% it received from bets made on races held outside of B.C., for grants to improve horse racing facilities.³⁴

ii. **The Gaming Control Act**

37. In September 2001, the Ministry of Public Safety and Solicitor General, announced a restructuring of gaming in British Columbia. The five agencies previously responsible for gaming, including the B.C. Racing Commission, were consolidated into two – the Gaming Policy and Enforcement Division (“**GPEB**”) under the Ministry of Public Safety and Solicitor General, and the British Columbia Lottery Corporation (“**BCLC**”).³⁵

38. At the same time, the B.C. Racing Commission was replaced with three senior government staff, chaired by the then Acting Deputy Solicitor General. Subsequently, in 2002, the Assistant Deputy Minister/GM of GPEB assumed the responsibilities of this three-member group.³⁶

39. In September 2001, it was further announced that GPEB responsibilities would include policy, standards, regulation, licensing, and enforcement for all gaming sectors.

³³ *Province of British Columbia Horse Racing Review*, 1999. Prepared by PricewaterhouseCooper for the Gaming Policy Secretariat at 31.

³⁴ *Horse Racing Tax Act*, R.S.B.C. 1996, c. 199, s. 2.

³⁵ George L. Morfitt, *Horse Racing in British Columbia: A Consideration of Organizational and Operational Issues*, (2005), [Morfitt], p. 5.

³⁶ Morfitt, p. 5.

BCLC's responsibilities would be to conduct and manage lotteries, casinos, bingo halls, and horse racing. This BCLC responsibility for horse racing was never implemented.³⁷

40. Effective March 31, 2003 and April 1, 2003, respectively, the *Horse Racing Tax Act* and the *Horse Racing Act* were repealed and replaced by the *GCA*.³⁸

41. BCLC currently has no statutory authority related to horse racing but conducts and manages gaming including table games and slots co-located with racetracks.³⁹ The authority previously granted to the Minister to direct BCLC to manage horse racing on behalf of government under s. 7(1)(b) of the *Gaming Control Act* was repealed in 2010.⁴⁰

iii. GPEB

42. GPEB is tasked to ensure the integrity of gambling industry companies, people and equipment, and to ensure compliance with policies and standards established under the *GCA* and the Gaming Control Regulation.⁴¹ This includes, among other things, B.C.'s horse racing industry.⁴²

43. The purpose and scope of GPEB is described in Part 4 of the *GCA*. Section 23 of Part 4 of the Act states that GPEB "is responsible for the overall integrity of gaming and horse racing".⁴³

³⁷ Morfitt, p. 5.

³⁸ ss. 111 and 110, respectively; Morfitt, p. 5.

³⁹ Subsidiaries of GCGC act as BCLC's service providers for gaming at facilities including Elements Casino, Surrey, co-located with Fraser Downs Race Track, and Hastings Racecourse and Casino, Vancouver, co-located with the Hastings Racecourse. The current operational services agreements for these facilities do not relate to horse racing.

⁴⁰ *Miscellaneous Statutes Amendment Act (No. 3)*, S.B.C. 2010, c. 20, s. 90.

⁴¹ B.C. Reg. 208/2002.

⁴² Gaming Policy and Enforcement Branch, "Gaming Policy and Enforcement Branch Annual Report 2018-2019" (2019) at 3, online (pdf): *British Columbia* < <https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/annual-rpt-gpeb-2018-19.pdf>>. ("GPEB Annual Report").

⁴³ Morfitt, p. 6.

44. Seven Executive Directors report to the GM. The EDs lead the following divisions: Licensing, Registration and Certification; Compliance; Enforcement; Community Supports; Strategic Policy and Projects; Operations;⁴⁴ and the Compliance and Enforcement Collaborative.⁴⁵

45. Within the Compliance Division, the Racing Unit develops and enforces rules and policies for horse racing, regulates horse racing events, and registers all racing participants.⁴⁶ This includes regulating racing events and licensing.⁴⁷

46. Participants in British Columbia's horse racing industry must be registered with, and licensed by, GPEB including but not limited to: owners, jockeys, trainers, grooms, exercise persons, veterinarians, pari-mutuel staff, and teletheatre staff.⁴⁸ In 2018/2019, the commercial gambling industry in B.C. included 2 horse racetracks and 20 horse racing teletheatres.⁴⁹ In 2018/2019, B.C.'s horse racing industry employed approximately 2,064 licensed owners, jockeys, drivers, trainers, grooms and exercise riders, all of whom were required to be licensed and registered with GPEB.⁵⁰

47. The Racing Unit is also responsible for developing policies and rules. In particular, the Unit establishes the Rules of Thoroughbred and Standardbred Horse Racing. As required, the Unit reviews and revises the rules and meets regularly with industry stakeholders to address issues. GPEB is responsible for enforcing and adjudicating the

⁴⁴ The Operations Division provide financial, IT, workforce planning, and administrative support for the branch.

⁴⁵ The C&E Collaborative is a cross-government agency working group and community of practice with a mandate to enhance the effectiveness and efficiency of the compliance and enforcement sector in BC.

⁴⁶ GPEB Annual Report, p. 5.

⁴⁷ GPEB Annual Report, p. 17.

⁴⁸ "Apply for Horse Racing Registration & Licence", online: *British Columbia* <<https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/horse-racing/registration-licensing>>.

⁴⁹ GPEB Annual Report, p.18.

⁵⁰ GPEB Annual Report, p. 17.

rules and regulations related to racing and reviews activities on the track or in the backstretch that could have a negative impact on the integrity of horse racing.⁵¹

48. Parts 2.1 and 7 of the *GCA* focus on horse racing.

49. Part 2.1 sets out the fees imposed on persons betting at racecourses and certain operator's obligations.

50. The GM has various powers related to the regulation of horse racing, as enumerated in Part 7. Section 44 assigns the GM responsibility for regulating horse racing and authorizes the GM to:

- a. Regulate the operation of all sites at which horse racing is carried on;
- b. Regulate the operation of all designated race horse training centres;
- c. Enforce observance of and compliance with [Part 7] and all regulations and rules made under [Part 7]; and
- d. Do other things relating to horse racing the Lieutenant Governor may authorize or require.

51. Part 7 also prohibits holding an unlicensed horse race and prohibits the assignment or transfer of a horse racing licence. It prohibits horse racing except on race days assigned to that person by the GM. The GM is authorized to assign race days to an association and such assignment is final and conclusive and not open to review in court on any grounds. Part 7 authorizes certain persons employed by GPEB to require a licensee to submit to a search of his or her person, and to provide samples of his or her blood, saliva, urine, breath or other materials for testing or analysis. As well, certain persons employed by GPEB are authorized to make or cause tests and analysis of any horses on the premises of a race track, or designated race horse training centre or that participate in a race meeting. The GM is also authorized, by Part 7, to take certain enforcement actions against a licensee and to make rules. The Lieutenant Governor in Council is authorized to make regulations.

⁵¹ GPEB Annual Report, p. 17.

52. All registrants and licensees must notify the GM immediately about any conduct, activity or incident occurring in connection with a lottery scheme or horse racing if the conduct, activity or incident involves or involved the potential commission of an offence under a provision of the *Criminal Code* of Canada that is relevant to a lottery scheme or horse racing, or the commission of an offence under the *Gaming Control Act*. In addition, under the *Gaming Control Regulation* registrants must immediately report any conduct or activity at or near a gambling facility that is or may be contrary to the *Criminal Code* of Canada, the *Gaming Control Act* or any regulation under the *Gaming Control Act*.⁵²

53. Horse race betting fees are levies on bets made at horse racing events that are collected by GPEB through Hastings Racecourse, Fraser Downs Racetrack and Horse Racing Teletheatre B.C. (4.5% on triactor bets and 2.5% on other bets). Any balance in excess of annual regulatory fees (equal to the cost of regulating the horse racing sector) is remitted back to the horse racing industry. At fiscal year end, the cumulative total of monthly fees is transferred into the Consolidated Revenue Fund. In 2017/18, the province collected \$4.2 million in betting fees, retained \$1.9 million to offset the cost of regulating the industry, and returned \$2.3 million to the industry.⁵³

D. Horse Racing in British Columbia

54. Horse racing has been in decline across North America for the past several decades.⁵⁴

55. Currently, Fraser Downs Racetrack in Surrey and Hastings Racecourse in Vancouver are the only two horse racetracks conducting regular live racing in British

⁵² GPEB Annual Report, p.12.

⁵³ GPEB Annual Report, p. 14.

⁵⁴ B.C. Horse Racing Industry Management Committee, *Revitalizing Horse Racing in British Columbia, B.C. Horse Racing Industry Management Committee Report, April 2013 Draft for Industry Consultation* (April 2013) <<https://www.racingfuture.com/sites/default/files/rpt-horse-racing-industry-management-committee.pdf>> at 3; Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 1.

Columbia.⁵⁵ Fraser Downs offers exclusively Standardbred racing while Hastings offers exclusively Thoroughbred racing. The land on which each track is located is owned by the municipality and leased to subsidiaries of GCGC. Both racetracks have co-located casino gambling and/or slot machines.⁵⁶

56. Simulcast wagering on horse racing in B.C., where races from other jurisdictions are ‘imported’ at teletheatres throughout the province, accounts for 95 per cent of total money wagered on horse racing in B.C.⁵⁷

57. In B.C., the minimum number of race days is 10 per year as established by s. 90(1)(a) of the federal *Pari-Mutuel Betting Supervision Regulations*.⁵⁸

58. In November 2009, in response to a request for government assistance with organizational challenges and leadership in revitalizing the industry, the Minister responsible for gaming announced the creation of the B.C. Horse Racing Industry Management Committee (the “**HRIMC**”).⁵⁹

59. The HRIMC was formed to further the revitalization and sustainability of the horse racing industry. It deals with the overall financial⁶⁰ and operational aspects of the horse racing industry in B.C., and also provides strategic direction. This role is founded in a

⁵⁵ GPEB Annual Report, p. 11.

⁵⁶ Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 3-4; GPEB Annual Report, p.42.

⁵⁷ Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 4.

⁵⁸ SOR/91-365; Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 4.

⁵⁹ B.C. Horse Racing Industry Management Committee, *Revitalizing Horse Racing in British Columbia, B.C. Horse Racing Industry Management Committee Report, April 2013 Draft for Industry Consultation* (April 2013) <<https://www.racingfuture.com/sites/default/files/rpt-horse-racing-industry-management-committee.pdf>> at 3.

⁶⁰ The HRIMC is responsible for distributing all revenues earned from horse racing. The distribution of funds is determined through an agreement between the breed associations and GCGC. The current funding agreement is for five-years and expires in 2024. The income-sharing arrangement distributes funding as follows: 43.2% to GCGC, 33.635% to the Thoroughbred sector, and 23.165% to the Standardbred sector.

Memorandum of Agreement (MOA) between member organizations, consisting of representatives of both the Standardbred and Thoroughbred horse racing sectors, the track operator (GCGC), and an independent member (currently the CEO of BCLC). GPEB's Director of Racing sits as an observer on the committee. The HRIMC is not a government body.⁶¹

60. In 2012, the Province agreed to the HRIMC's request to increase the industry's share of net slot machine revenues at the two racetracks from 15.5% to 25%, keeping the level of funding at approximately \$10 million per year going forward. There is no formal agreement between government and industry to provide these funds.⁶²

E. Constitutional Authority Over Gaming

61. Courts in multiple jurisdictions have held that there is valid constitutional authority for both federal and provincial regulation of horse racing.

62. In *R. v. Hair*,⁶³ the Ontario Superior Court of Justice dismissed a challenge to the constitutional validity of s. 202 of the *Code*. In so doing, the Court noted that several cases have upheld the constitutional validity of gaming provisions at both the federal and provincial level:⁶⁴

- a. In *R. v. Furtney*, [1991] 3 S.C.R. 89 (S.C.C.), the Court considered whether Parliament had improperly delegated its criminal law power in permitting exemptions from criminality for charitable or religious organizations operating a lottery pursuant to a lottery license. The Supreme Court in dismissing the appeal stated, at p. 101, "All parties agree that the prohibition of gaming is an exercise of the criminal law power."

⁶¹ Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 5; B.C. Horse Racing Industry Management Committee, *Revitalizing Horse Racing in British Columbia*, B.C. Horse Racing Industry Management Committee Report, April 2013 Draft for Industry Consultation (April 2013) <<https://www.racingfuture.com/sites/default/files/rpt-horse-racing-industry-management-committee.pdf>> at 3.

⁶² Ministry of Attorney General, Gaming Policy and Enforcement Branch Briefing Note, December 21, 2017 at 5.

⁶³ *R. v. Hair*, 2016 ONSC 900

⁶⁴ *R. v. Hair*, 2016 ONSC 900 at paras. 40-49

- b. In *R. v. Andriopoulos*, 1994 CanLII 147 (ONCA), the appellant argued that “changes in social attitudes indicate that gambling is no longer considered harmful to the public”, such that the prohibition of gambling activities could no longer be upheld as a valid exercise of the criminal law power. The Court of Appeal for Ontario concluded, at para. 4, “[T]here is no evidence that public perceptions of commercial gaming have changed or that it is any less criminal in nature than it ever has been.” The Court added, at para. 5, “The clear intent is not to condone gaming but to decriminalize it in circumstances where regulations will minimize the potential for public harm.”
 - c. In *R. v. Jourdain* (2001), 150 O.A.C. 314 (Ont. C.A.), the respondent had been acquitted of keeping a common gaming house by a trial judge who held that the Respondent had merely breached the provincial regulatory scheme for gambling, not the criminal prohibition found in s. 201(1) of the *Criminal Code*. In overturning the acquittal, the Court of Appeal for Ontario, at para. 14, referring to *Furtney* and *Andriopoulos* concluded that it was within Parliament’s jurisdiction to criminalize the activity in question.
 - d. At issue in *Siemens v. Manitoba (Attorney General)* (2002), 2003 SCC 3, [2003] 1 S.C.R. 6 (S.C.C.), was whether provincial legislation encroached on the federal criminal law jurisdiction in relation to gaming. In upholding the provincial legislation, the Supreme Court confirmed, at para. 35: “Parliament has intentionally designed a structure for gaming offences that affirms the double aspect of gaming and promotes federal-provincial cooperation in this area.”
 - e. A similar argument to that advanced in *Andriopoulos* was considered by the Newfoundland Court of Appeal in *R. v. J.B.L. Amusements Ltd.* (1998), 123 C.C.C. (3d) 419 (Nfld. C.A.). The Court concluded, at para. 9, that Parliament “continues to properly regulate the matter of gambling which is still regarded as a potentially socially destructive activity.” The Court noted that the existence of the regulatory scheme does not remove the gaming provisions from the federal criminal law sphere.
63. In *Horsemen’s Benevolent and Protective Association of Alberta v. Alberta (Racing Commission)*, the Court considered the provincial jurisdiction to regulate horse racing.⁶⁵ The Alberta Racing Commission, for the stated purpose of maintaining the integrity of

⁶⁵ *Horsemen’s Benevolent and Protective Association of Alberta v. Alberta (Racing Commission)*, (1989) 71 Alta. L.R. (2d) 210 (Alta. C.A.), 1989 ABCA 308, leave to appeal dismissed (1990) 72 Alta. L.R. (2d) lvi (SCC).

horse racing, had issued a directive prohibiting the administration of corticosteroids to race horses. The Association challenged the constitutional validity of the directive, arguing that it was an invasion of the federal criminal law jurisdiction over wagering. The Alberta Court of Appeal rejected that argument and held:

The province has a legitimate interest in the integrity of racing. It has an interest in the business or industry of horse racing, from the fair distribution of the purse to the health of the stock, through the safety of participants to the maintenance of the claiming system to the preservation of its taxation revenue. The provincial aspect has long been recognized: *e.g. Morley v. Oak Bay* [1923] 1 D.L.R. 869 (C.A.), *Chabot v. Manitoba Horse Racing Commission* (1987) 33 D.L.R. (4th) 714 (Man. C.A.)... I cannot conclude that horse racing is so bound up in wagering that its very regulation is to be classed as criminal law.⁶⁶

⁶⁶ *Horsemen's Benevolent and Protective Association of Alberta v. Alberta (Racing Commission)*, pp. 217-218.