

**MINISTRY OF ATTORNEY GENERAL
GAMING POLICY AND ENFORCEMENT BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION for David Eby, QC,
Attorney General

ISSUE: Establish a more effective and flexible regulatory model for gambling¹ in BC

SUMMARY:

- The German report recommended:
 - clarifying the roles and responsibilities of the regulator and BCLC;
 - making the regulator the regulator of BCLC; and
 - implementing a standards-based regulatory model.
- On March 7, 2019, Cabinet's Priorities & Accountability (PA) Committee supported a standards-based approach modeled on Ontario's gambling regulatory framework.
- Gaming Policy and Enforcement Branch (GPEB) has worked with LSB to develop a proposal for a regulatory scheme that is modeled on Ontario's framework, but adapted for BC. Key differences include the inclusion of both general manager regulations and compliance standards as well as the compliance regime for the BC Lottery Corporation (BCLC).

BACKGROUND:

- The *Gaming Control Act* (GCA) establishes the regulatory framework for gambling in British Columbia, setting out the roles and responsibilities for GPEB and BCLC. GPEB is responsible for administering the GCA with respect to the "overall integrity" of gambling and horse racing while BCLC is responsible for the "conduct and management" of gambling.
- The GCA creates a complicated and fragmented regulatory system that does not meet the needs of the commercial gambling industry because it does not provide the regulator with authority to set comprehensive, overarching expectations on matters of integrity for the entire sector.
- The GCA establishes GPEB as the gambling regulator as well as the entity responsible for providing policy advice to government on matters related to gambling integrity and business matters (including revenue generation).
- BCLC contracts with private industry service providers through Operational Services Agreements (OSAs) for the day-to-day operation of gambling facilities. BCLC directly operates online gambling through its PlayNow.com platform.

¹ The current *Gaming Control Act* uses the term 'gaming'. It is proposed the term 'gaming' should be replaced with 'gambling' in the new legislation.

- GPEB does not have the statutory authority to effectively regulate BCLC as an agent of government and the largest entity in the industry. Instead, the GCA envisions GPEB and BCLC acting in concert under the responsibility of a single Minister.
- The current model also creates confusion and overlap between BCLC and GPEB's roles. While GPEB sets conditions of registration for gaming service providers and may sanction for non-compliance, BCLC sets prescriptive rules and has remedies for non-compliance through contractual remedies contained in its OSAs. GPEB also audits and holds service providers accountable for compliance with BCLC's rules. Therefore, as the entity responsible for setting operational policies in the absence of overarching regulatory expectations, BCLC is sometimes seen as acting in a quasi-regulatory fashion. (See Appendix A for more detail on current model)
- The German report identifies the unclear regulatory framework and GPEB's lack of tools to regulate BCLC as key contributing factors to money laundering in BC casinos.²

Standards-Based Model

- German recommended implementation of a standards-based regulatory approach similar to the model used in Ontario. The intent of this model is to focus on outcomes and provide the industry with flexibility to meet the outcomes in ways that better suit their business needs when compared to traditional, prescriptive regulatory models. As such, the standards are generally not objective or measurable as they are currently promulgated.
- The Ontario legislation provides the regulator with authority to set standards and requirements for the sector on eight broad categories unless a Lieutenant Governor in Council (LGIC) regulation already exists for a particular matter. Registrants and the Ontario Lottery and Gaming Corporation are required to comply with the standards and requirements as a stand-alone legal requirement contained in the statute, and non-compliance is subject to various regulatory consequences, including suspension, cancellation, non-renewal of registration, and imposition of monetary penalties. It is also an offence for a person to contravene or not comply with standards and requirements.
- In practice, Ontario undertakes extensive consultation with industry to establish the standards and engages in ongoing risk assessment to ensure the standards remain relevant and do not place undue burden on regulated entities. Ontario takes a compliance, rather than an enforcement, approach and dedicates resources to educating and working with regulated entities to bring them into compliance with standards. BC anticipates adopting these key features of the model's success in the operationalization of a similar model in BC.

² *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos conducted for the Attorney General of British Columbia*, Dr. Peter German, QC, pg. 12.

public interest immunity

- The BC Industry Gaming Association (BCGIA) supports the implementation of a standards-based model and GPEB and BCLC have been consulting with the BCGIA to determine how the model could be operationalized in BC.
- An exact replication of Ontario's model is not possible because many of the Ontario standards do not provide an objective or measurable standard that a person must meet to know whether they are or are not compliant. This means that in these cases, under the Ontario model, a person will not have certainty in knowing if they are acting contrary to law or not.
- BC can adopt a model similar to Ontario's by putting in place general manager's regulations for those matters that are objective and measurable and are intended to have legal effect as standalone provisions. Where it is intended that matters be more performance or outcomes based, the general manager can make policy reflective of those types of standards and could use performance or outcomes to make administrative decisions respecting licenses and registrations. It is expected that the majority of industry expectations will be outlined in such standards rather than regulations.

DISCUSSION:

Policy Intent of the New Regulatory Model

- BC is seeking to establish a more effective and flexible model that is relevant to a modern industry and able to evolve as advancing technology transforms the sector. To accomplish this, the regulator will have the independence, capacity and flexibility to adapt obsolete regulatory requirements quickly. It will also clearly define roles and responsibilities of the regulating and operating entities.
- The general manager compliance standards are intended to focus on outcomes and allow operators more autonomy and flexibility to determine the methods to meet regulatory requirements. However, where necessary for matters of higher risk, the model must also allow the regulator to set more prescriptive requirements.
- The regulator will also have strong administrative law powers for instances of non-compliance.
- Statutory tools are being developed to ensure the regulator's independence to set industry expectations are appropriately bound. This may take the form of LGIC

regulations or Act amendments on the same matters as general manager requirements and act as an override (similar to Ontario).

- To the extent the regulator's requirements are intended to have legal effect on their own and have the force of law, they must be objective and measurable and should be contained in a legislative document such as a statute or a regulation³. The standards could be developed as non-legislative compliance policies (or otherwise labelled) developed by the regulator that a statutory decision-maker (e.g., the general manager of the regulator) could consider when making decisions for regulated entities, including the imposition of regulatory sanctions (subject to the "standards" being worded to make sufficiently clear what a regulated entity must or must not do).

Model in Practice: Regulator Expectations for Industry

- The proposed regulatory model will clearly define roles and responsibilities between the regulator and industry, including BCLC. In doing so, the regulator will have clear authority to set expectations to uphold the integrity of gambling for categories specified in legislation. GPEB identified the following proposed categories through an internal risk assessment process and consultation with BCLC and industry:
 - Integrity of a Lottery Scheme
 - Technical Integrity
 - Security and Surveillance
 - Responsible Gambling and Player Protection
 - Control Environment and Internal Controls
 - Prohibitions
 - Record Keeping
 - Unlawful Activities
 - Training
 - Reporting Requirements
 - Consideration used in a lottery scheme and Anti-Money Laundering
- Appendix B outlines the purpose of each category and the risks standards would be intended to mitigate.
- Unlike Ontario, it will not be an offence to fail to comply with standards. The regulator will have the statutory authority to make decisions in respect of regulated entities, such as warnings, compliance plan requirements, additional conditions of licensing or registration, administrative monetary penalties, and suspension or

³ Both LGIC and general manager regulations would be required as LGIC regulations are needed as a key feature to ensure government has appropriate oversight of the regulator. As well, some matters would be more appropriate as LGIC regulations.

cancellation of a licence or registration which could take into consideration adherence to the standards.

- Further policy and legal work is required to determine the scope of potential compliance measures that may apply to BCLC (as they are not a registrant or licensee). These may take the form of statutory obligations on BCLC's board of directors.
- For matters of higher risk, the model will allow the regulator to set more prescriptive requirements through general manager regulations. Some of these regulations may overlap with the standards as required. General manager regulations will give the regulator an effective and flexible tool to set legally binding requirements.
- Additionally, the use of general manager regulations allows the regulator to set legally binding requirements. BCLC and registrants and licensees will fall under the same compliance regime for these regulations.

NEXT STEPS:**solicitor client privilege****Prepared by:**

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Attachments:

Appendix A: Current Framework for Gambling Regulation in British Columbia under the *Gaming Control Act, 2002*

Appendix B: Summary of Categories for Regulator Requirements

Appendix A: Current Framework for Gambling Regulation in British Columbia under the *Gaming Control Act, 2002*

- The *Gaming Control Act* (GCA) establishes the regulatory framework for gambling in British Columbia, setting out the overarching roles and responsibilities for GPEB and BCLC. GPEB is responsible for administering the GCA with respect to the “overall integrity” of gambling and horse racing while BCLC is responsible for the “conduct and management” of gambling.
- BCLC contracts with private industry service providers through Operational Services Agreements (OSAs) for the day-to-day operation of gambling facilities. BCLC directly operates online gambling through its PlayNow.com platform.
- The GCA establishes GPEB as the gambling regulator as well as the entity responsible for providing policy advice to government on matters related to gambling integrity and revenue generation.
- Although GPEB regulates the companies, workers and equipment in the commercial industry through registration and certification requirements, it does not have the statutory authority to effectively regulate BCLC, the largest entity in the industry. Instead, the GCA envisions GPEB and BCLC acting in concert under a single Minister.
- GPEB was never intended to regulate BCLC because BCLC is an agent of government. The LGIC appoints the BCLC Board of Directors and the Minister has broad authority to provide direction to BCLC.
- GPEB also licenses organizations to operate gambling events for charitable purposes and licenses individuals in BC’s horse racing industry.

GM Directives to BCLC

- Section 28 provides the GM authority to issue directives to BCLC on matters specified in legislation. This section does not include comprehensive matters related to gambling integrity, but it does include some matters related to revenue generation. This authority is rarely used, and there have been three GM directives issued to BCLC since 2002.
- There are no statutory remedies available to the GM to address non-compliance with a directive; however, no specific incidents of non-compliance have arisen.

Public Interest Standards

- Section 27(2)(d) permits the GM to issue public interest standards for gaming operations. Compliance with these standards is a condition of registration for service providers under the *Gaming Control Regulation*. GPEB has issued three sets of standards since 2002: responsible gambling, advertising, and security and surveillance.
- In the case of service provider non-compliance, GPEB has a range of statutory remedies including warnings, fines, or suspension or cancelation of registration.

solicitor client privilege

BCLC Standards/Rules

- Under the OSAs, service providers have a contractual obligation to comply with BCLC's Standards. These standards set out comprehensive policies and procedures for all service providers to follow on a wide range of business matters, including issues related to gambling integrity. BCLC has contractual remedies to ensure service provider compliance.
- Sec. 34(1)(f) of the *Gaming Control Regulation* also requires service providers to comply with BCLC standard operating procedures and rules of play as a condition of registration, which in practice, GPEB has interpreted as BCLC Standards.
- This results in a scenario where GPEB audits service provider compliance with standards set by BCLC and may sanction service providers for non-compliance.

Appendix B: Summary of Categories for Regulator Requirements

Category	Purpose
Integrity of a Lottery Scheme	<p>This category would allow the regulator to set expectations on how the provincial gambling industry is expected to uphold the principles of soundness, fairness, incorruptibility and overall integrity of a lottery scheme.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Lottery schemes that do not have transparent and consistent rules for the chances to win (e.g. odds on slots, changes to the total tickets available per raffle). • Online gambling systems that are vulnerable to hacking. • Cheating and conspiracy/collusion by gaming services providers (e.g. table game dealers). • Players who are connected (e.g., relatives, friends, associates) to gaming services providers, workers or others involved in a lottery scheme, win more frequently than the public.
Technical Integrity	<p>This category ensures all gambling equipment and supplies used in the conduct and management of gambling operate in a fair, honest, secure and safe manner to ensure the overall integrity of gambling.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Equipment that lacks technical integrity or can be compromised (e.g. Random Number Generators (RNGs) with non-fair distribution and/or predictability, Percentage Return-to-Player (%RTP) values incorrect). • Use of untested and/or uncertified gaming equipment and supplies. • Gambling equipment's cash or operating components can be accessed by unauthorized people (e.g., slot machine door opens easily).

<p>Security and Surveillance</p>	<p>This category ensures provincial gambling and horse racing are sufficiently monitored and supervised to ensure an appropriate regulatory response to incidents is achievable.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Ability to detect criminal behaviour such as cheat at play, employee theft and collusion, and money laundering. • The independence and objectivity of the surveillance department at a facility is compromised because of interference from other departments, fraternization with non-surveillance staff, and surveillance staff also working in other departments. • Minors, banned/prohibited, or voluntary self excluded individuals gaining access to the facility. • Unauthorized access (“hacking”) of online platforms and/or IT systems. • Insufficient surveillance staff to monitor operations.
<p>Responsible Gambling and Player Protection</p>	<p>This category would allow the regulator to set requirements for the gambling sector in relation to responsible and problem gambling, centering around safe and responsible products, management, delivery, and consumption of gambling products and services.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Addictive/predatory games, or new games with unknown risks to responsible gambling. • Lack of information/support available to support healthy play. • Misleading advertising. • Advertising to minors. • Lack of information about game rules and odds of winning.

<p>Control Environment and Internal Controls</p>	<p>This category is for the regulator to set expectations for industry participants on control environments and internal controls within their operations. If control environments and internal controls are inadequate, operations are at a higher risk of fraud and corruption, unaccountable decision-making, non-compliance with the regulatory framework, and other risks, all of which could compromise the integrity of gambling.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • The regulator cannot effectively audit for regulatory assurance purposes because operators do not adequately document their control environment and internal controls. • Operators may cut or reduce the effectiveness of their control environments or internal controls over time (e.g. to reduce costs). • Operators may not keep their control environment or internal controls up-to-date, current, relevant, or effective.
<p>Prohibitions</p>	<p>This category would allow the regulator to set out how BCLC, licensees, and registrants must restrict access to gambling activities and spaces (including online gambling) for certain people, including:</p> <ol style="list-style-type: none"> a) minors and other classes of person (e.g. certain industry participants who may have conflicts of interest, such as certain gambling workers or regulator employees); b) individuals participating in BCLC's voluntary self-exclusion program (VSEs); and c) individuals specifically banned from gambling by a statutory decision maker. <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • BCLC, registrants, or licensees failing to forbid individuals or request them to leave for misbehaviours, crimes, or offences.

	<ul style="list-style-type: none"> • Prohibited individuals accessing gambling spaces and participating in gambling activities. • Some individuals chronically violating their prohibitions, engaging in illegal behaviours, and failing to face consequences.
Record Keeping	<p>This category would allow the regulator to provide direction to industry participants on record keeping. Record requirements contribute to the integrity of gambling because records need to be made available to the regulator for the purposes of monitoring and for regulated entities to substantiate compliance under the regulatory framework.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Regulator cannot determine compliance with Act, regulations, standards, conditions, etc. because specific records are not kept. • Records are not supplied to the regulator in an acceptable format or the requested/preferred format (e.g., supplied in PDF when data should be in excel). • Service providers not retaining records for appropriate length of time. • Poor records – lack of organization, documentation or relevant information.
Unlawful Activities	<p>This category is to provide the regulator with the ability to set expectations for regulated persons to prevent or minimize unlawful activities during the operation of a lottery scheme, at a gambling facility or an electronic platform, or at a business connected to gambling.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • The commission of Criminal Code offences clearly linked to gambling (e.g. Part VII offenses such as cheat-at-play, illegal lottery schemes etc.). • The commission of broader Criminal Code offenses indirectly linked to gambling (e.g. theft, fraud, loan sharking (s.347 Criminal Code), assault, sexual assault).

	<ul style="list-style-type: none"> • A commission of an offence under the GCA.
<p>Consideration Used in a Lottery Scheme and Anti-Money Laundering</p>	<p>This category is to allow the regulator to set expectations governing the use and types of financial instruments and other consideration permitted in the provincial gambling industry. It involves preventing patrons from using the proceeds of crime as consideration in gambling facilities and lottery schemes and allows the regulator to set expectations for different forms of financial instruments and consideration (e.g. gift cards, banks drafts, cryptocurrency).</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • The public may perceive a conflict of interest if the operator sets policies for its own AML efforts. • Insufficient procedures to verify the source of a patron's funds and measures to identify falsified source of funds materials. • The use of risky currencies, non-monetary consideration (e.g. valuable goods), foreign currencies, and/or alternative monetary instruments (e.g. cryptocurrency) that threaten the integrity of gambling. • Insufficient measures to ensure a patron's source of wealth is not derived from criminal activities.
<p>Reporting Requirements</p>	<p>This category allows the regulator to set expectations for industry participants on how to report to the regulator. This includes providing industry participants with direction and clarity on how to comply with reporting obligations set out in statute and regulations. Open and transparent communication and reporting ensures the regulator is aware of incidents or risks that may affect the integrity or public confidence in gambling.</p> <p>Examples of the types of risks these standards would seek to address include:</p>

	<ul style="list-style-type: none"> • Failure of industry participants to report incidences that concern the integrity of gaming. • Lack of transparent communication between the Regulator and industry participants. • Industry participants not providing accurate and complete information. • Lack of clarity/specificity on what information is required to be reported to the regulator.
Training	<p>This category allows the regulator to set expectations on the provision of training for regulated persons. Without appropriate training, staff and volunteers in the gambling industry may not be equipped to comply with the regulatory framework, which could compromise the integrity of gambling.</p> <p>Examples of the types of risks these standards would seek to address include:</p> <ul style="list-style-type: none"> • Staff of regulated persons lack adequate knowledge on how to comply with the regulatory framework. Staff and volunteers may not know or have the most up-to-date knowledge on topics such as: <ul style="list-style-type: none"> ○ how to correctly detect and respond to symptoms of problem gambling or unlawful activities such as fraud, cheat-at-play, and money laundering; ○ how to respond to security and surveillance issues; ○ how to report incidents of inappropriate conduct; and ○ how to comply with other laws, regulations, and standards.