

Cliff: 565587

Date Prepared: October 22, 2019

Date Decision Required: November 1, 2019

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

PURPOSE: For DECISION of the Honourable David Eby, QC,
Attorney General

ISSUE:

Align an administrative penalty structure to the new regulatory model for gambling in British Columbia (BC).

RECOMMENDATION:

It is recommended that the *Gaming Control Act* (GCA) and where applicable, the *Gaming Control Regulation* (GCR), support compliance of the proposed new gambling regulatory model (see Decision Note 565586).

- Include compliance with applicable GM regulations and standards as a condition of a registration or licence.
- Maintain the GM's powers to address registrant or licensee non-compliance through warnings, imposing or varying conditions of a license or registration, and suspending or cancelling a license or registration.
- Include provisions that authorize the regulator to require compliance plans from regulated corporations and organizations and publish decisions to fine registrants or licensees when in the public interest.
- Increase the maximum limit of fines for corporate registrants to \$200,000.
- Make administrative monetary penalties debts to government and enforceable by court actions.
- Make warnings, compliance plans and administrative monetary penalties applicable to the BC Lottery Corporation (BCLC) for non-compliance with applicable General Manager (GM) regulations and standards. Monetary penalties would be in line with corporate registrants.

BACKGROUND:

- Compliance with the GCA, its regulation, BCLC Standards and GM public interest standards is a requirement of a registrant or licensee through the conditions of a registration or licence.
- The GCA provides the GM with powers to address non-compliance by issuing warnings, imposing administrative fines, imposing or varying registration/licence conditions, and suspending or cancelling a registration or licence (GCA sections 37(1) & (2), 51(2), and 69 (1) & (2)).
- BCLC is responsible for conducting and managing gambling on behalf of the province. Although BCLC must comply with the statute, regulations and Minister or GM Directives, it is not a regulated entity and is not a registrant or licensee

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- BCLC staff and Board members are registered gambling workers and are subject to conditions of registration.
- Decision note 565586 proposes a new regulatory model for gambling that allows the GM to set clear expectations for the entire gambling sector through a mixture of regulations and standards.

DISCUSSION:

- To effectively support the regulatory model and encourage compliance, the regulator requires access to a range of compliance tools and administrative penalties that are clearly outlined in legislation and regulation, and which apply to all industry participants, including BCLC.
- The following approach is proposed to strengthen the regulator's existing statutory authorities. All the proposed amendments would need to be reviewed by Treasury Board's Fee/Fines Committee.

Compliance Tools Applicable to Registrants and Licensees

- Successful implementation of the proposed new model relies on the regulator taking a compliance, rather than an enforcement, approach and working with regulated entities to bring them into compliance. However, it is also important for the regulator to have a range of escalating tools available to address situations of non-compliance.
- The current powers available to the GM to address non-compliance are generally effective, and in circumstances where non-compliance is found, registrants and licensees usually cooperate with GPEB to make changes to become compliant with the regulator's expectations.
- Two additional compliance tools that could support the regulator are compliance plans and the authority to publish fines imposed on registrants.
- Compliance plans allow the regulated corporation or organization to demonstrate how they intend to become compliant. The regulator could approve the plan, or changes to the plan. It would not be appropriate for compliance plans to be applicable to individuals.
- Publishing administrative penalties demonstrates to regulated individuals and corporations, and to the public, that non-compliance has consequences, including negative public exposure, potential investor reaction, and possible repercussions in other jurisdictions. In some cases, publication of fines may be a greater deterrent than the fine itself, particularly for companies that generate high revenue and operate in multiple jurisdictions.

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- Other Canadian regulators¹ publish the names of regulated entities issued fines. However, it is not recommended that the regulator publish fines where doing so could harm individuals.
- Publication should only occur when “in the public interest” and is appropriate under the *Freedom of Information and Protection of Privacy Act*.

Recommendations:

- Include compliance with applicable GM regulations and standards as a condition of registration or licence.
- Maintain the GM’s powers to address non-compliance through warnings, imposing or varying conditions of a license or registration, and suspending or cancelling a license or registration.
- Amend the GCA to include provisions that authorize the regulator to:
 - Require and approve compliance plans from regulated corporations and organizations when appropriate; and
 - Publish decisions to fine registrants or licensees when deemed in the public interest.

Implications:

- Maintains authorities under the legislation that are currently working well
- Provides the regulator with a greater range of tools to seek compliance from regulated entities
- Compliance plans ensure alignment with the overall intent of the proposed model that focuses on seeking compliance rather than enforcement
- Potential publication of fines provides a strong deterrent
- Potential complications with privacy legislation
- Increased likelihood that penalized individuals or corporations face consequences in other jurisdictions

Increase the Maximum Fine Limit

- Another compliance tool to support the proposed new regulatory model is higher maximum fines for service providers (corporate registrants).
- Suspending or cancelling certain service provider registrations could cause serious disruption to BCLC’s business and harm other industry participants. The regulator relies on other administrative penalties to address all but the most egregious violations.

¹ For example, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) requires the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to make public all administrative penalties it imposes, which includes publishing the name of the non-compliant entity and the amount of the penalty

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- The GM can impose administrative fines ranging up to \$5k against a charitable or horse racing licensee, or gambling worker, while an administrative fine against a services provider can be up to \$20k. These amounts are provided in the GCR.
- GPEB has one of the lowest fine ranges (up to \$20k) for corporate registrants relative to other gambling regulators².
- The current maximum fines do not provide credible deterrents for corporations that could profit from non-compliance. For example, for the three largest land based service providers, a \$20k fine would represent only 0.007% to 0.030% of their total annual commissions from BCLC.
- Fines for charitable or horse racing licensees, and for individual registrants (i.e. gambling workers), would not be increased, remaining at a maximum of \$5k.
- The current GCA or GCR does not provide for a remedy for non-payment of a fine. Under several other BC Statutes, non-payment of the penalty constitutes a debt to government, and could result in a court order.

Recommendations:

- Amend the Gaming Control Regulation to increase the maximum limit on administrative monetary penalties for services providers to \$200,000.
- Make administrative monetary penalties debts to government and enforceable by court order.

Implications:

- Brings fines for violations more in line with other significant gambling jurisdictions
- Provides a more credible compliance tool for the GM in cases of egregious or ongoing violations
- Allows for a remedy for non-payment of a fine similar to other BC statutes
- Service providers may have concerns about higher fines

Compliance Tools Applicable to BCLC

- The Lieutenant Governor in Council (LGIC) appoints the BCLC Board of Directors, and the Minister has broad authority under the GCA to issue directives to BCLC. Like all Crown corporations, BCLC is an agent of government. Compliance with statutory and policy requirements is typically encouraged through regulator meetings, an annual mandate letter, and directives, and in extraordinary circumstances, government could remove of Board members.
- Under the current legislation, the GM may issue directives to BCLC for matters specified under the Act. BCLC is required to comply with these directives; however, there is no remedy available to the GM for non-compliance.

² Similar fines in Ontario are up to \$200k, in Manitoba up to \$100k, in Alberta up to \$200k, in Nevada up to \$330k USD, and in the United Kingdom there is no specified limit but can range in the millions.

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- The new regulatory model proposes amending the GCA to require BCLC to follow all GM regulations and standards. For the regulatory model to include all industry participants, BCLC would need to also be subject to penalties for violation of GM regulations or standards.
- As BCLC is not a registrant, it cannot be subject to suspension, cancellation or varying conditions of registration.

Solicitor client privilege

- The Ontario Lottery Corporation is subject to monetary penalties for violating standards made by the Registrar of the Alcohol and Gaming Commission of Ontario (AGCO).

Recommendation: Amend the GCA to make warnings, compliance plans and administrative monetary penalties applicable to BCLC for non-compliance with applicable GM regulations and standards. Monetary penalties would be in line with corporate registrants.

Implications:

- Ensures the regulator has tools available to seek BCLC compliance with appropriate standards and regulations
- Ensures regulation of the entire industry
- Implements German recommendation 31
- May result in public perception that the government does not have appropriate oversight, knowledge or control of BCLC
- May be viewed as government sanctioning itself
- Any fine would largely be symbolic
- May impact the relationship between BCLC and government if penalties are imposed

OTHER MINISTRIES IMPACTED:

- The BC Lottery Corporation

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RECOMMENDATIONS APPROVED

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