

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

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

ISSUE: Mandate and governance model for a new independent provincial gambling regulator

DECISION REQUIRED/ RECOMMENDATION:

Decisions are required on amendments to the *Gaming Control Act* (GCA) to establish a new office for gambling regulation. It is recommended that:

- The Independent Gambling Control Office of British Columbia be established and led by a general manager;
- The office have a mandate to uphold the integrity of gambling in the province and provide advice to the responsible minister on matters of policy related to gambling integrity;

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• **PII / solicitor client privilege**
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Further it is recommended that:

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• **PII / solicitor client privilege**

BACKGROUND:

- Dr. Peter German recommended government establish an independent service delivery crown corporation to regulate gambling in BC.
- The concerns identified in German's report that led to this recommendation were the need to create a strong regulator with decision-making authority independent of government and the need to separate regulatory decision-making functions from revenue decision-making functions as they may, at times, be in conflict.
- German's report suggested this conflict of interest and lack of independence impeded efforts to address money laundering in BC's casinos.
- Following analysis of the recommendation, the Anti-Money Laundering (AML) Deputy Ministers Committee (DMC) recommended government not pursue a Crown corporation because concerns raised in the German report could largely be addressed through legislative changes to strengthen the statutory authority and independence of the gambling regulator without the cost of establishing a Crown corporation.
- AML DMC supported the establishment of a more independent gambling regulator that would:

PII - cabinet privilege

DISCUSSION:

- Amendments to the GCA are required to implement government's direction and create an office for gambling regulation with as much statutory independence as possible while remaining structurally within a government ministry.

Establish a New Office

- Under section 22 of the GCA, GPEB is established "to carry out the responsibilities under the Act" and "is responsible for the overall integrity of gaming and horse racing". No concerns were raised in the German report with respect to the regulator's broad mandate.

Solicitor-client privilege

Clarify Regulator's Responsibilities

- Under section 27 of the GCA, the general manager:
 - is responsible for the enforcement of the Act;
 - must “advise the minister on broad policy, standards, and regulatory issues, and
 - “under the Minister’s direction, must develop, manage and maintain the government’s gaming policy.”

These responsibilities are similar to regulators in Manitoba, Ontario, Quebec, and New Brunswick.

- Because GPEB is a branch of the ministry and is responsible for advising the Minister on gambling policy broadly, GPEB is regularly involved in providing advice to government on decisions related to matters beyond the integrity of gambling, including BCLC business matters and revenue generation. This responsibility causes confusion over the roles and responsibilities of GPEB and BCLC and pulls regulator resources away from their assigned mandate.
- Further, section 27(4) states “the general manager must not
 - a) conduct, manage, operate or present gaming or horse races,
 - b) enter into an agreement with Canada or the government of another province with respect to the conduct, management, operation or presentation of lottery schemes or horse races, or
 - c) enter into an agreement with a gaming service provider.”
- This section has created challenges to GPEB’s regulatory authority when integrity overlaps with conduct and management. No other Canadian gambling regulator has a negative mandate such as this.

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Ministerial Responsibility for Regulator and BCLC

- German's report highlighted the need to separate government regulatory decision-making functions from decision-making about revenue generation as there may be a perceived or real conflict of interest between these two roles.
- Deloitte Canada's 2007 independent review of BC's retail lottery system also highlighted this conflict of interest as a core problem and suggested each entity report to a separate minister.¹
- The GCA does not clearly delineate the regulatory function from the revenue generating function. Having these functions in the same piece of legislation referencing 'the Minister' creates an expectation that a single Minister would have responsibility for both. While it is possible to assign specific sections of the Act to separate ministers, it would not be obvious to any new government that these functions ought to be separate or that the legislature envisioned these functions as separate.
- The regulator and the entity responsible for conduct and management (i.e. BCLC's equivalent) in nearly all other Canadian provinces report under separate ministries².

PII/solicitor-client privilege

General Manager Appointment

- The current GCA requires the minister to appoint the general manager and set their remuneration. In practice, this person is also appointed as an Assistant Deputy Minister.

PII/solicitor-client privilege

¹ <https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/reports/rpt-deloitte-lottery-2007.pdf>

² Alberta has a unique model whereby a single entity, the Alberta Gaming, Liquor and Cannabis Commission, has responsibility for both regulation and conduct and management of gambling.

solicitor-client privilege

PII/solicitor-client privilege

Public Reporting

- Section 29 of the GCA requires the general manager to submit a report of the branch's operations in the preceding fiscal year to the Minister, who must lay it before the Legislative Assembly.

- This report should continue to be a requirement of the general manager. However, current legislation requires the Legislature to be sitting to table the report, which creates delays in making reports public.

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- Statutory decision makers may be permitted through legislation to provide information to the public on specific matters related to their mandate and authorities. This authority is available, for example, to the chief civilian director of the Independent Investigation Office and allows for the office to clearly communicate their activities in an open and transparent manner⁵. The general manager may wish to communicate to the public on issues within the statutory authority of the regulator such as registrations, licences, advice to the public on legal gambling etc.

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⁴ Statutory decision-makers appointed by LGIC include: Public Guardian and Trustee (maximum two six-year terms), Chief Civilian Director of the Independent Investigations Office (maximum two five-year terms), Chief Coroner (maximum two five-year terms), Auditor General for Local Government (maximum two five-five year terms), Superintendent of Real Estate, and the Executive Director of the Environmental Assessment Office. Ministerial appointees include the Chief Inspector of Mines and the General Manager of the Liquor and Cannabis Regulation Branch.

⁵ See sec. 38.121 of the *Police Act*.

PII/solicitor-client privilege

Responsibility for Public Communications

- Currently most public communications for GPEB is handled in the same way as any other branches of government as established in government policy. For example, media requests, news releases, information bulletins, and public facing website content are managed or approved by Government Communications and Public Engagement (GCPE). GPEB's website is part of the BC government website under the heading 'Gaming and Fundraising', and the overall structure, design and content of the site would not distinguish the regulator as an independent entity.

PII/solicitor-client privilege

Minister Direction

- Section 26(1) of the current GCA states the Minister may issue written directives to the general manager on matters of general policy. These directives must be published in the Gazette and posted on the branch's website per section 15 of the Gaming Control Regulation: **Solicitor-client privilege**

Solicitor-client privilege

PII/solicitor-client privilege

⁶ One Minister directive has been issued since 2002. A Minister directive in 2004 limited the number of horse racing teletheatre licenses issued by the General Manager: <https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/directive-teletheatre-limit.pdf>

OTHER MINISTRIES IMPACTED/CONSULTED:

- Under the recommended approach, BCLC would be required to report to a separate Ministry from the gambling regulator. BCLC has been consulted on this proposed change and has not expressed any concerns.
- GCPE has also been consulted as the regulator would independently manage communications and no immediate concerns have been raised. Discussion will be ongoing.



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DATE:

October 25, 2019

RECOMMENDATIONS APPROVED



David Eby, QC
Attorney General

DATE:

October 28, 2019

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