

***MLA Review Committee
on Charitable Gaming
Licensing Eligibility
and Use of Proceeds:***

FINDINGS AND RECOMMENDATIONS

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April, 2003**



Executive Summary

INTRODUCTION

The Minister of Gaming established the MLA Review Committee on Charitable Gaming Licensing Eligibility and Use of Proceeds in January 2002. The Minister appointed Yvonne Fritz, MLA – Calgary Cross, as chair and sole member of the MLA Committee, whose terms of reference appear in Appendix 1.

The focus of the review is a draft consolidated set of policies that was circulated to a broad representation of stakeholder groups for their input (see Appendixes 2 and 3). This draft set of policies reflects the current licensing eligibility and use of proceeds policies of the Alberta Gaming and Liquor Commission (the Commission), and proposed revisions to clarify and update the current policies.

The review is the first comprehensive examination of the charitable gaming licensing and use of proceeds policies in more than 20 years.

The following organization chart shows the reporting relationships in the Ministry of Gaming, as these relate to gaming licensing. Under the *Gaming and Liquor Act* (Alberta), the Minister of Gaming and the Board of the Commission may establish gaming policies. The Commission carries out policies regarding charitable gaming licensing.



LICENSED CHARITABLE GAMING IN ALBERTA

Licensed charitable gaming refers to bingo, casino table games, raffles and pull-ticket sales conducted by eligible groups that have been licensed by the Commission. Proceeds are the gross revenues generated at a charitable gaming event or activity, less the prizes and expenses to conduct the gaming event or activity.

Charitable gaming has helped to fund projects or initiatives whose purpose is relief to the aged or disadvantaged; advancing learning and education; and help to the community.* About 9,000 charitable groups throughout Alberta are currently licensed to conduct charitable gaming events. These groups earned an estimated \$200 million in proceeds from charitable gaming events in 2001-02.

LEGISLATION AND REGULATION

Gaming activities in the province are governed by the *Criminal Code* (Canada), the *Gaming and Liquor Act* (Alberta) and *Gaming and Liquor Regulation* (Alberta). The Alberta Gaming and Liquor Commission, established under the *Gaming and Liquor Act*, administers and regulates the gaming industry in Alberta.

The *Criminal Code*, the country's paramount gaming legislation, prohibits all gaming in Canada except that which it specifically allows.

The legal definition of charitable purpose is drawn from the common law which identifies four categories of charitable purpose: (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other purposes beneficial to the community.

The common law has also long recognized four principles that must be applied when determining whether a particular purpose or activity is charitable. The four principles, cited in a 1999 Supreme Court decision,** are:

- There must be voluntarism or altruism.
- The activity must provide an objectively measurable public welfare or socially useful benefit to the community.
- The purpose of an organization must be exclusively charitable. No part of the income of the organization may personally benefit a proprietor, member, shareholder, trustee or settlor.†
- A purpose must be beneficial to the public “in a way the law regards as charitable.”

A broad range of non-profit groups have been deemed eligible by the Commission for gaming licensing because they are determined to serve charitable purposes.

* Source: Alberta Gaming and Liquor Commission, *Charitable Gaming in Alberta, 2000-2001 in Review*.

** Supreme Court of Canada, File No.:25359, preliminary version: *Vancouver Society of Immigrant and Visible Minority Women v. Canada (Minister of National Revenue -M.N.R.)*, [1999] S.C.J No. 5, on appeal from the Federal Court of Appeal., 1998: Feb. 23; 1999: January 28.

† A settlor is “one who creates a trust” (*Canadian Dictionary of the English Language*).

REVIEWING GAMING LICENCE APPLICATIONS

The following steps describe the process to review applications for gaming licences through to use of the gaming funds by licensed charitable groups.

Step One

An applicant who is approved by the Alberta Gaming and Liquor Commission for a gaming licence becomes a licensed charitable group. An applicant whose application is rejected may request a hearing before the Board of the Commission to challenge the original decision.

Step Two

The licensed charitable group conducts the gaming event or activity.

Step Three

The group puts the proceeds from the gaming event in a separate gaming account.

Step Four

Funds in the separate gaming account must be used to cover approved use of proceeds. These are restricted to the purposes approved in the gaming licence application. A group wishing to use gaming account funds for purposes other than those approved in the application must request that the Commission approve the other specified uses.

Step Five

Each group must submit to the Commission a report of the use of the proceeds from its gaming account. The Commission also conducts random audits of groups to ensure gaming proceeds are used for approved purposes.

BACKGROUND TO THE POLICY DEVELOPMENT

The province's policies for gaming licensing and use of proceeds were developed within the parameters of the *Criminal Code* (Canada) beginning in 1970, when the federal government transferred some of its power to regulate gaming activities to the provinces.

The first public review of charitable gaming policies in Alberta occurred in 1979-80, to consider what changes if any should be made to the charitable gaming policies. From 1980 to 1995, gaming authorities developed policies regarding licensing eligibility and use of proceeds. These were captured in various documents including memorandums, bulletins, guidelines, terms and conditions, administrative practices, and case-by-case determinations.

Licensing staff of the gaming authority interpreted the policies when policy documents were silent on matters brought to the authority's attention. Alternatively, the board of the gaming authority determined the matters case by case. With increasing demands and pressures for gaming licences, it became more and more apparent to the Alberta Gaming and Liquor Commission and stakeholders that the policies lacked the detail needed to make timely and sound decisions and needed to be updated.

The Commission began to develop a draft set of consolidated policies in 1998. This involved gathering all the past policies from the separate documents and placing them in one document.

The draft consolidated set of policies was completed in 2002. It includes proposed revisions to current policies to bring them up to date. The consolidated set of policies is the main focus of the MLA Review Committee on Gaming Licensing Eligibility and Use of Proceeds Policies.

STRUCTURE OF CURRENT AND PROPOSED POLICIES

The draft consolidated set of the current and proposed gaming licensing eligibility and use of proceeds policies is divided into two main parts. These are (1) eligibility for gaming licences and (2) use of gaming proceeds. The policies within each of the two parts contain specific conditions called policy standards.

REVIEW PROCESS

The key steps of the review process were to:

1. Consult with a broad representative group of stakeholders on the draft consolidated set of policies.
2. Research the similar policies of other provinces.
3. Deliberate on the views and issues identified by stakeholders.
4. Prepare a report with findings and recommendations.

STAKEHOLDER CONSULTATION

Stakeholders were invited to provide input to the consolidated set of draft policies (see Appendixes 2 and 3). The stakeholders that provided input to the review represent thousands of Albertans (Appendixes 5 and 6). They include, among other groups, amateur sports groups, community associations and arts groups throughout the province.

ANALYSIS OF FINDINGS

Stakeholder views were examined against specific criteria and requirements. These included legislative provisions, common law principles, the government's guiding principles for gaming, and directions from prior public or gaming industry reviews.

FINDINGS & RECOMMENDATIONS

The MLA Committee made 42 recommendations based on its findings. These recommendations are divided into three parts: (1) accessibility, (2) licensing eligibility policies, and (3) use of proceeds policies.

As it did its work, the MLA Committee found one general question particularly useful to ask. It is as follows: "What is it about a group's program that is charitable?" This question captures the essential task of this review. It is the view of this Committee that gaming funds must be principally used for those parts or aspects of charitable programs or services which *directly* benefit the community.

Highlights

Highlights of the recommendations include:

- charitable groups that have been eligible for gaming licences in the past will generally continue to be eligible in the future;
- a few types of groups previously ineligible for gaming licences will be eligible in the future based on the charitable benefit they provide to the community, including:
 - sports groups made up mainly of adults – these will be eligible under certain conditions, such as providing a youth program or component of the sport; and
 - non-profit daycare centres, which provide educational, developmental services to children and whose services are open to all members of the community.
- policies must clearly articulate the difference between the non-profit arts groups that are eligible for gaming licences from those commercial arts groups that are ineligible;
- groups will be required to use their proceeds from gaming within two years, unless the Commission approves an extended period;
- the governing bodies of licensed charitable groups will determine the following:
 - the number of support personnel required by the groups to accompany participants when traveling to tournaments or events – gaming proceeds may be used to cover travel costs of these support personnel; and
 - invitational or exhibition tournaments or events which further the development of the group’s participants – gaming proceeds may be used to cover travel costs of these tournaments or events.
- the use of proceeds for administrative costs will be limited to 10% of earned gaming proceeds – administrative services as defined under the policies primarily serve a group’s internal operations and, while these services are important, they are not in themselves regarded as charitable purposes.

Accessibility – Recommendations

The recommendations about improving stakeholder and public accessibility to the policies follow. The findings and MLA Committee’s comments for each of these recommendations appear in the main body of the report.

Recommendation 1

Implement the draft consolidated policies, including the proposed changes to the policies, subject to any condition or other revision recommended elsewhere in this report.

Recommendation 2

Include in the consolidated policies a definitions section that defines key technical terms used in the policies to help the public and stakeholders better understand their meaning.

Recommendation 3

The Alberta Gaming and Liquor Commission will review its licensing eligibility and use of proceeds policies from time to time, to ensure these policies:

- a) continue to support the main purpose of charitable gaming, which is to advance charitable purposes in the community; and
- b) are clear to the public and stakeholder groups.

Recommendation 4

A type of group, service or program that is not specifically identified as being eligible for a gaming licence is ineligible for a gaming licence. Similarly, a use of proceeds that is not specifically accommodated in the policy is considered an ineligible use of proceeds. These provisions should be clearly stated in the consolidated policy document.

Recommendation 5

The Alberta Gaming and Liquor Commission will develop and implement without delay its orientation program for the volunteer executive of charitable organizations interested in obtaining a gaming licence.

Recommendation 6

The Alberta Gaming and Liquor Commission will continue to work closely with the charitable sector to resolve charitable gaming issues and address matters of concern or common interest.

Recommendation 7

Put all the approved licensing eligibility and use of proceeds policies on the Alberta Gaming and Liquor Commission's Web site for easy access by the general public and stakeholders.

Recommendation 8

Clearly communicate in the policies that "charitable purpose," under the policies being reviewed, is defined for purposes of issuing gaming licences. As such, the province's gaming authority is not bound by the definition of charitable purpose or of charity that is adopted or used by other authorities for other purposes.

Recommendation 9

Specify in the consolidated licensing eligibility and use of proceeds policies that the interpretation of these policies rests with the Alberta Gaming and Liquor Commission.

Licensing Eligibility Policies – Recommendations

The recommendations about licensing eligibility follow. The findings and MLA Committee's comments for each of these recommendations appear in the main body of the report.

Recommendation 10

Applicants of raffle licences for raffles with a total ticket value of more than \$100,000 must demonstrate program delivery for at least one year.

Recommendation 11

Applicants of gaming licences will submit a declaration of community benefit with their gaming licence applications. This requirement must be clearly stated and explained in the gaming licensing eligibility policy.

Recommendation 12

Only one group among groups that are related to one another as specified in the policy may hold a bingo licence or a casino licence at a time.

(The policy states that for the purposes of bingo and casino licensing, branches, subsidiaries, auxiliaries or groups similarly affiliated with a charity are considered related to a charity. Only one of either the principal or affiliated groups may be licensed for a bingo or casino at a time.

Groups are considered related under the policy if one of the following factors apply: membership in the affiliate group(s) is limited to members of the principal group; the principal group appoints more than 25% of the directors to the affiliate group(s) or the affiliate group(s) appoints more than 25% of the directors to the principal group; decisions of the affiliate group(s) are subject to the approval of the principal group; the principal group and affiliate group(s) have identical or similar services, programs and objectives and the intent of forming the affiliated group(s) was to obtain more gaming licences than the principal group might otherwise be permitted to obtain; the majority of funds of either the principal or affiliate group(s) is given to the other group; or, the principal and affiliated group(s) donate to or use a majority of their funds in support of a common charity.

There are exceptions in the policy for groups that have provincial, regional, district and/or zone components and for groups that provide a common benefit to a large segment of the public.)

Recommendation 13

Specify in the licensing eligibility policy the meaning of “at a time” in reference to the provision that only one group among groups that are related may hold a casino or a bingo licence at a time.

Recommendation 14

Allow for sports groups comprised mainly of adults, those 22 years of age and older, to be eligible for gaming licences under the following conditions:

- a) such groups must demonstrate that their sports activity is a sport that is open, advertised and promoted to the general public;
- b) they must actively deliver a youth division or program in the same sport activity;
- c) at least 50% of the gaming proceeds earned by such groups will be dedicated to the youth component of the sports program;
- d) a youth sport division or program is defined as a division or program comprised of a minimum of 75% youth competing against or participating with other youth; and
- e) the basic eligibility requirements provided in the licensing eligibility policies must be met by such groups.

Adult sports programs affiliated with post-secondary institutions, if the athletes are registered students at these institutions, will continue to be eligible for gaming licensing.

Recommendation 15

Non-profit groups that provide structured and developmental outdoor sports programs, without the additional requirement of having to be competitive, may be eligible for gaming licences.

Recommendation 16

The “Sports Groups – Eligibility” policy will continue to define seniors as those who are 60 years of age or older.

Recommendation 17

Implement the proposed licensing eligibility policy respecting the definition of government or an arm of government.

(The proposed policy defines government and arm of government as: a group created by public statute; a group funded by tax revenue to provide programs and services that government has a statutory duty to provide; and, groups where government exerts internal control by appointing a majority of the group’s membership, executive or board of directors.)

Recommendation 18

Implement the proposed licensing eligibility policy permitting the appointment of a maximum 25% of a charitable group’s executive members by an external entity, subject to defining the term “external entity.”

Recommendation 19

Non-profit child care groups that hold government daycare licences in good standing may be eligible for gaming licences, under the following conditions:

- a) a child care application process that is open to parents or guardians in the community at large must be in place;
- b) there must be a waitlist process that is open to all parents or guardians in the community at large who wish to have their children attend the child care centre but for whom there is no space available at the time of application; and
- c) all the other basic licensing eligibility requirements for gaming licensing must be met.

Recommendation 20

Revise the proposed “Arts Group – Eligibility” policy to:

- a) reflect the charitable purpose being served by the arts;
- b) clearly state the criteria by which the arts meet this charitable purpose;
- c) distinguish more clearly between non-profit arts groups, which are eligible for gaming licences, and commercial art organizations, which are not eligible for gaming licences; and
- d) include the media arts as an eligible form of art under the policy.

Recommendation 21

Specify in the eligibility policy regarding community leagues and community associations that a federation of community leagues/associations may be eligible for gaming licences.

Recommendation 22

Implement the policy respecting “Education Groups – Eligibility” as provided in the proposed draft policy subject to a revision that would also allow groups which provide scholarships and bursaries to be eligible for licensing.

Recommendation 23

Where an institution or school is to benefit from the proceeds of a fundraising group that is licensed by the Alberta Gaming and Liquor Commission, the governing body of the institution or school must provide its consent to the fundraising group to raise funds for the institution or school. Furthermore, if the fundraising group wishes to use the name of the institution or school, the fundraising group must also obtain the governing body's approval to use the name.

Recommendation 24

Groups which develop public programs for the purpose of providing access to historical resources may be eligible for gaming licences.

Recommendation 25

Retain the current policy respecting "Lobby Groups – Eligibility."

(The current policy provides that groups whose primary purpose is to lobby government are not eligible for gaming licensing. Lobby means conducting activities aimed at influencing or attempting to influence government in favour of a specific cause or policy.)

Use of Proceeds Policies – Findings and Recommendations

The recommendations about use of gaming proceeds follow. The findings and MLA Committee's comments for each of these recommendations appear in the main body of the report.

Recommendation 26

Implement the proposed use of proceeds policy in which eligible groups are given up to two years to disburse their gaming proceeds unless an exemption is provided to the group by the Alberta Gaming and Liquor Commission. A group's request to the Commission for an exemption must include a supporting business plan.

Recommendation 27

Implement the proposed use of proceeds policies respecting allowable administrative expenses.

(Gaming proceeds may be used to cover administrative costs necessary to the delivery of an eligible group's programs or services. Examples of such allowable costs are telephone; stationary; postage; bulletins; newsletters; costs for Web sites used to communicate information to the public about the group's community service programs; and space rental for membership meetings and storage. Examples of ineligible costs are food and beverages; salaries, wages or honorariums for performing administrative duties; non-gaming accounting fees; and legal fees.)

Recommendation 28

Groups may use up to a maximum of 10% of total gaming proceeds to cover their administrative costs.

Recommendation 29

Implement the proposed use of proceeds policy respecting the granting of credits subject to a revision which provides for the transfer of credits between individuals. The transfer of credits must not be for cash or value in kind.

Recommendation 30

Gaming funds may be used to pay the travel expenses of a maximum of one support personnel per five participants, or portion thereof. For example, the expenses of two support personnel could be covered by gaming proceeds if there are six to 10 participants, or three support personnel for 11 to 15 participants, and so on. A higher number of support personnel per participants may be approved by the Alberta Gaming and Liquor Commission if the higher number is clearly supported or endorsed in writing by the governing body of the group, or if other clear and valid explanation is provided.

Recommendation 31

The “Travel: Amateur Athletic Groups – Use of Proceeds” policy will provide that eligible travel includes invitational or exhibition games if the governing body of the charitable group deems in writing that such games are essential to the development of the athlete or team(s). The governing body must provide its list of such invitational or exhibition games to the Alberta Gaming and Liquor Commission well in advance of such events taking place.

Recommendation 32

Implement the proposed policy revision under “Bursaries and Scholarships – Use of Proceeds” which would permit a licensed charitable group to administer a legally established trust fund.

Recommendation 33

Gaming funds may be used to cover expenses related to a licensed group’s directors liability insurance if approved by the Alberta Gaming and Liquor Commission.

Recommendation 34

Donations of gaming proceeds in return for working gaming events will continue to be prohibited.

Recommendation 35

The Alberta Gaming and Liquor Commission will develop specific eligibility and use of proceeds policies that require gaming proceeds to be used only for disaster/emergency relief within Canada and to support charitable and religious programs that are delivered in Alberta or that provide a benefit to Alberta communities. The policy will specifically:

- a) state that gaming proceeds raised in Alberta will only be used for disaster/emergency relief within Canada, to support nationally recognized charitable programs that benefit Albertans, medical and educational research programs within Canada that may benefit Albertans and to support charitable programs that are delivered in Alberta; and
- b) prohibit all other use or donation of gaming proceeds to support charitable programs outside of Alberta.

Recommendation 36

Implement the “Education – Use of Proceeds” policy.

(The education use of proceeds policy allows gaming funds to be used to provide a specific educational experience for students which would otherwise not be available. The policy prohibits the use of gaming proceeds to supplement in any way the operational or capital budgets of the educational institution or school.)

Recommendation 37

Implement the “Facility – Use of Proceeds” policy.

(The facility use of proceeds policy allows groups that provide a public facility to use gaming proceeds for the capital, rental and operating costs of the facility. Gaming funds cannot be used for the purchase, maintenance or repair of equipment, furniture or a facility for income-producing operations or other activity of a commercial nature.)

Recommendation 38

Use the definition of facility as being “a physical structure and/or land” as provided in Standard 3. c) iv) under the basic eligibility requirements of the consolidated policies.

Recommendation 39

Maintain the current policy respecting the use of proceeds for facilities such as municipal libraries, but include a specific statement in the policy that “friends of” groups which support libraries may be eligible for licensing.

(The current policy provides that gaming proceeds cannot be used to support the capital or operating budgets of municipal libraries established under the Libraries Act. Gaming proceeds raised by “friends of” library groups may be used to support the provision of enhanced library programs and services that would otherwise not be available.)

Recommendation 40

Maintain the current policy respecting “Volunteer Expenses – Use of Proceeds.”

(Current policy provides that gaming proceeds may be used to reimburse volunteers for approved expenses while they are working at a charitable gaming event. The current policy states that the eligible volunteer expenses include transportation costs, babysitting costs, and respite care costs for persons medically dependent on the volunteer. All claims for volunteer expenses must be supported by voucher or receipt.)

Recommendation 41

Explicitly state that a licensed sports group may use gaming proceeds to cover: reasonable costs of certifying officials and judges in their sport; and the reasonable fees and expenses of these officials and judges when they are officiating or judging the sport.

Recommendation 42

Maintain the use of proceeds policy respecting social and recreational activities.

(Under the current policy gaming proceeds cannot be used to pay for social events. The policy defines social events as activities designed primarily to serve the hobby, recreation or personal interests of those attending the events. Exceptions to the policy may be made for social and recreational activities that clearly advance a charitable purpose. For example, the support of social and recreational programs and services to assist senior citizens to remain active in the community, may be an eligible use of gaming proceeds.)

Concluding Comments

The licensing eligibility and use of proceeds policies must be current, specific, clear and accessible. They should give more detail and clarity, and less room for interpretation, in determining the eligibility of groups for gaming licences and the use of proceeds. The MLA Committee feels that the recommendations will help to further this objective.