

**BCACG Request to Council and Brief of Material BC Gaming
Legislation, Notable Reports, Agreements**

Introduction:

The British Columbia Association for Charitable Gaming (BCACG) is an umbrella organization of BC charities licensed to conduct charitable gambling. Formally structured in December 1997 with financial support from the provincial government to represent approximately 6800 affected charities in negotiations, the BCACG endeavours to represent licensed charitable groups on a provincial basis on all matters dealing with non-profit gambling.

The organizations represented by the BCACG in this application include:

Vancouver Rape Relief, The Canadian Liver Foundation, West End Seniors Network, Westcoast Violence Prevention Society, The Heart and Stroke Foundation, Kamloops Elizabeth Fry Society, the CNIB, Westcoast Family Support Institute, Kuu-Us Aboriginal Crisis Line, Vancouver International Film Festival, Horsefly Volunteer Fire Department, Deaf Children's Society, The Kidney Foundation of Canada, Campbell River Minor Hockey Association, Surrey Hospice Society, Cerebral Palsy Sport Association, St. James Daycare, St. John Ambulance-BC Yukon, Vancouver International Writers Festival, Crisis Intervention and Suicide Prevention Centre, Royal Canadian Legion, Prince Rupert Amateur Swim Club, Pacific Post Partum Support Society, Pacific Riding for the Disabled, North Shore Rescue Team Society, MS Society of Canada...

And over 6,500 others.

The BCACG, on behalf of all charities in British Columbia, but particularly those operating in Vancouver, seeks the aid and protection of the City of Vancouver and asks for the extraordinary remedy of adjournment of the Edgewater gambling license expansion application until the province complies with its own Memorandum of Agreement with the BCACG, or enters into a new one to reflect the changing landscape of gaming practices, and resolves the issue of outstanding arrears.

We further seek your support for the establishment of an independent, arm's length, and transparent administration process to govern the distribution of gaming funds to the charitable sector.

Summary:

There are three major parties (apart from private enterprises) with substantial interests in the BC gambling industry: the provincial government, municipalities—which manage land use, regulate licensing and policing, and the charitable sector—for whose benefit gambling has been legalized and legitimated.

In 1998, due to considerable controversy, litigation, and other matters, the Province of British Columbia moved to comprehensively deal with issues surrounding gaming, including jurisdiction, municipal powers, revenue sharing, and other details.

On February 2, 1999, it released the White Paper on Gaming, a report which made recommendations respecting all outstanding issues, but in particular for the formalization of a permanent revenue sharing formula for both municipalities and charities.

The province then entered into discussions and negotiations with the Union of BC Municipalities and the BC Association for Charitable Gaming, with the intention of finalizing a permanent revenue sharing formula. All parties accepted the recommendations in the White Paper on Gaming. On June 17, 1999, the Province of British Columbia, the UBCM, and the BCACG signed two memoranda of agreement, formally crystallizing the permanent revenue sharing formula of the three parties.

1. Municipalities: per the 1999 White Paper on Gaming (not online) recommendation of 10 % net revenues from community casinos, and 16.7 % of the net of destination casinos;
2. Charities: 33.3% of net gaming revenues of community casinos.

These agreements are two parts of the same whole—the essential rights and conditions relating to key partners of the province in the charitable gaming enterprise. In addition to being signed together on the same day, it is apparent that they are intended to operate in concert. Many provisions mirror each other, and the charitable share of 33.3% and the 16.7% municipal share of a destination casino, for instance, create a combined 50% share of destination casino proceeds.

The Meekison Report of 2000 considered the impact of these specific MoAs on gaming, and treated them as foundational and binding on the province.

In 2002 the provincial government enacted the Gaming Control Act. Although the Memoranda of Agreement with the UBCM and the BCACG concerning revenue sharing were not statutorily codified, both the Act and Regulations are consistent with them. No superseding legislation, enactment, or agreement extinguishes the 1999 Memoranda of Agreement between the Province of British Columbia and the BCACG and UBCM, which underpins both the formula for the City of Vancouver's share in Edgewater (and other) proceeds as a local host city, and the claim by the BCACG to its share.

The province has abided by its agreement with the UBCM concerning revenue sharing, but has wholly abandoned its contractual obligations to the BCACG. The Province of British Columbia clearly does not intend to honour the contractual rights of the BCACG respecting any new revenues attributable to the Edgewater license expansion.

The Province of British Columbia owes BC charities \$1,279,566,670 in accrued arrears, not including interest.

Factual Background:

Gaming Revenues & Disbursements

1995

(Per Vancouver staff report on White Paper on Gaming)

Net gaming proceeds	\$369 M	
Charitable share	\$131 M	35% of net

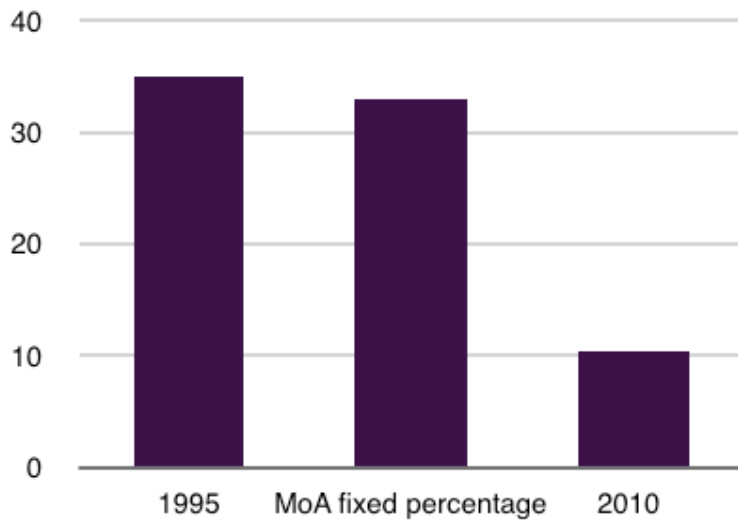
2010 (per BC Lottery Corporation Annual Report)

Net gaming proceeds	\$1079 M	
Charitable share	\$ 112.5M	10.42% of net

Gaming annual net revenue has increased \$710 M since 1995:

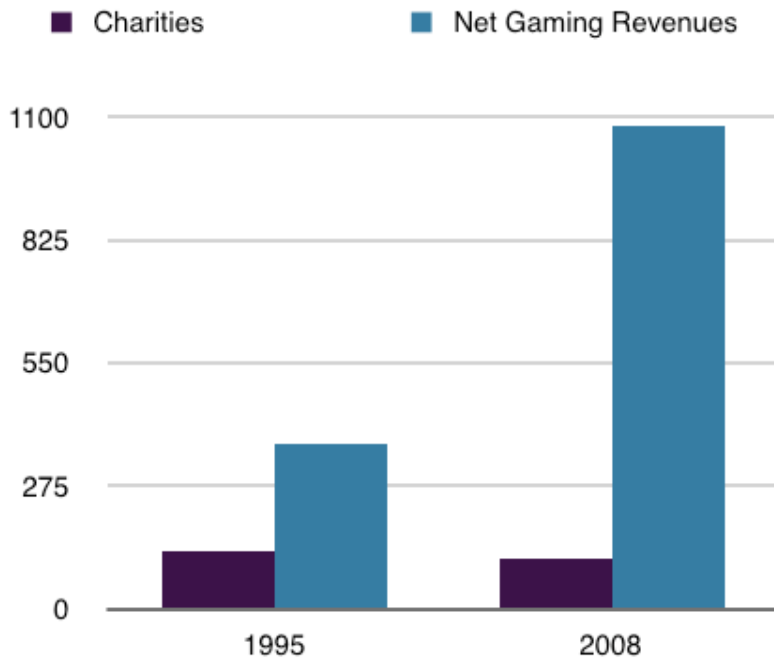
Despite generating a 292% increase in annual gaming revenue over 1995, in 2010 the Province of British Columbia shocked the entire charitable sector by unilaterally cutting the share allocated to charities by tens of millions of dollars to \$112.5—or **\$18.5 million below 1995 levels—not adjusted for inflation.**

■ Charitable Sector Percentage of Net Gaming Revenues



In 1995 Charities received 35% of gaming proceeds before signing the 1999 MoA guaranteeing 33% as a permanent share. Today they receive 10.43% of proceeds.

Relative Gains/Losses Charitable Sector & Net Gaming Revenue 1995-2010



Charity Share of BCLC Net Income: 2000-2010

	BC Lottery Net Income (\$ millions)	Charitable Community Portion	Percentage of Total Net
2000/01	\$554	\$96*	17.32%
2001/02	\$606	\$103*	17.00%
2002/03	\$670	\$126	18.80%
2003/04	\$728	\$132	18.13%
2004/05	\$818.9	\$134.6	16.43%
2005/06	\$922.7	\$137.7	14.90%
2006/07	\$1018.8	\$142.4	13.90%
2007/08	\$1088	\$146.1	13.41%
2008/09	\$1082	\$156.3	14.00%
2009/10	\$1079.1	\$112.5	10.42%

* Totals for net payout to charities for 2000/01 and 2001/02 are incomplete and do not include independent bingo.

In the result, over the period from 2000/01 to the present, the provincial government has underpaid its legal obligation to BC charities by an average of \$127.95 million annually.

How Charities Helped Build the Gaming Income Stream to BC Taxpayers:

The charitable sector has not been a passive observer in the building of this revenue stream. Because the municipal jurisdiction over the granting of gaming licenses, the massive expansion of gaming in British Columbia has taken place incrementally, through a multitude of municipal applications. The controversial nature of the industry set many planning departments and citizens groups in opposition to the many applications heard.

Time and again, in centres large and small across the province, when applications for slot machines or casinos, or more slot machines and bigger casinos went before councils, petitioners would invariably turn to the charitable sector and seek their aid.

And the strategy worked. Municipalities could not bring themselves to turn down pleas from the charities. In casting the deciding vote in a hotly disputed application for 150 slot machines in Surrey, Mayor Dianne Watts cited the pleas from charities:

"I wish there was another way that we could fund these charities without using gaming revenue. However ... there is no other choice, and I could just not turn my back on all those charities," said Watts

<http://www.cbc.ca/canada/british-columbia/story/2009/10/20/bc-surrey-newton-bingo-hall.html>

This, sadly, pretty much tells the tale of how municipalities were persuaded to open their doors to massive expansion of gambling in the heart of their communities.

The problem was, none of the charities ever got so much as a dime of the nearly \$2 billion new they were so instrumental in raising for the provincial government. Once the licenses were granted, that was the last the charities ever heard of the benefits of increased gambling in their communities.

This massive expansion of gaming and the corollary benefits to the provincial treasury could never have been achieved without the active cooperation and advocacy of the charitable sector, which are now cut to well below the levels of 15 years ago.

The BCACG says this is manifestly wrong, exploitive of our weakest and most vulnerable, and a flagrant breach by the province of both the spirit and the letter of its obligations under the 1999 MoA.

It is clear from past conduct that the Province of British Columbia has no intention of passing any revenues at all from the Edgewater Casino expansion to charities.

Unique Character of Charities:

Charities seek special protection and care from all levels of government due to their financial vulnerability—which is especially acute in British Columbia today, due to the misconduct of the provincial government.

The BCACG, on behalf of all charities in British Columbia, but particularly those operating in Vancouver, seeks the aid and protection of the City of Vancouver and asks for the extraordinary remedy of adjournment of the Edgewater gambling license expansion, pending the provincial government

agreeing to adhere to or renegotiate its revenue sharing agreement with BC charities, and to come to terms respecting the outstanding arrears in excess of \$1.2 billion.

The BCACG says that it is a significant silent partner with contractual interests in the expansion of Edgewater Casino, and that the provincial government has evidenced by its conduct that it has no intention of honouring its legal obligations respecting this partnership.

We further say that misconduct by the Province of British Columbia in executing its legal and moral duty to protect the interests of charities should disqualify any gaming-related application by its partners until the breach is corrected.

We ask that the province be prevented from profiting further from its own misconduct. An application to expand gambling in Vancouver is not like other applications. There is a special obligation on the part of the City to ensure that all partners in a gambling operation are of moral character and above reproach, as no doubt Paragon is. But not all its partners can say the same.

And we say that this is a singular and unique case due to both the special character of the applicant and the extraordinary nature of the province's abuse of power.

We cite the decision of Owen-Flood J, in the 1998 Nanaimo Community Bingo Association Case, where he found that the provincial government ***had no authority to appropriate a share of gambling revenues intended for charitable or religious organizations***. We cite this case for Mr. Justice Owen-Flood's clear recognition of the provincial government's true purpose in the gambling arena—to act as a predator on charities:

“The gaming industry in British Columbia makes significant contributions to charitable and religious objects. A stated purpose of the Regulation is to protect charities and religious organizations... by ensuring that these groups do not experience any reduction in revenue. It purports to achieve this end by initially guaranteeing a minimum pay out to the charities, and after a certain amount of revenue is surpassed, by paying out to charities one-third of the money which reaches the Trust Fund. The remaining two-thirds of the money enters the Consolidated Revenue Fund and can be used by the Government for any purpose it determines. The real ambit of the new Regulation thus becomes apparent: **it encourages and facilitates a massive and unparalleled expansion of charitable gaming in British Columbia and then enables to Government to take the largest piece of this greatly enlarged pie.** The Regulation is something of a two-faced Janus, as it expands the breadth of charitable gaming in the Province, but then appropriates the bulk of the proceeds for the Government.”¹

In this case the provincial government's misconduct is so egregious and so willfully harmful to our weakest and most vulnerable that it taints the entire Edgewater venture, and the BCACG has no choice but to come to the City of Vancouver.

We ask you not to place the timetable of a casino ahead of the interests of the people of Vancouver and British Columbia.

¹ Para 60, Reasons for Judgment, Nanaimo Community Bingo vs A-G of BC

Request to Vancouver City Council:

The BCACG asks Vancouver City Council to adjourn the Edgewater license expansion application pending the province agreeing to honour its commitment to distribute 33% of net gaming revenues from the expanded casino. We ask for our MoA to stand, or be renegotiated in keeping with changed circumstances.

Susan Marsden
President
British Columbia Association of Charitable Gaming

Material references:

- 1) Governing legislation: Gaming Control Act: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02014_01
- 2) Gaming Control Act Regulations: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/22_208_2002 - part6
- 3) June 17, 1999 Memoranda of Agreement
 - a) BCACG http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/336215/game_append4.htm
 - b) UBCM http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/336215/game_append3.htm
- 4) Meekison Report
<http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/336215/mainreport.pdf>
- 5) City of Vancouver Discussion Paper on Province's White Paper on Gaming, February 1999 <http://vancouver.ca/ctyclerk/cclerk/990216/rr3-a.htm>
- 6) City of Vancouver Report on Meekison Report
March 9, 2000 <http://vancouver.ca/CTYCLERK/cclerk/000309/pe2.htm>
- 7) City of Vancouver Administrative Report on proposed 2002 Gaming Control Act March 11, 2002 <http://vancouver.ca/ctyclerk/cclerk/020312/a3.htm>
- 8) Non-Profits and Gambling Expansion: The British Columbia Experience, Colin Campbell, PhD, for the Canada West Foundation: http://dspace.ucalgary.ca/bitstream/1880/315/2/Non_Profits_and_Gambling_Expansion.pdf
- 9) Reasons for Judgment: Nanaimo Community Bingo Association v. Attorney General of BC, Owen-Flood, J., Supreme Court of British Columbia: <http://www.courts.gov.bc.ca/jdb-txt/sc/98/00/s98-0066.txt>