



**Ministry of Energy, Mines and Natural Gas
Gaming Policy and Enforcement Branch**

ISSUE NOTE

Issue:

- First Nations and Gaming in British Columbia

Background:

- There are three key issues with First Nations gaming:
 1. Authority for gaming on First Nations lands;
 2. Province's duty to consult with First Nations where gaming facilities are re-located on land that may infringe upon Aboriginal title and rights; and
 3. First Nations desire for the Province to share gaming revenue directly with them.

Gaming on First Nations Lands

- Some First Nations have made inquiries about establishing casinos on First Nations lands. Citing "existing aboriginal and treaty rights," affirmed by section 35(1) of the Constitution Act, 1982, many First Nations assert that B.C. does not have exclusive jurisdiction over gaming activities in the Province. Advocates of this position maintain that First Nations have a right to conduct and manage gaming, and that the Aboriginal right to self-government gives them the ability to regulate gaming activities on First Nations land.
- Under the Criminal Code of Canada, the conduct and management of all gaming, both on and off First Nations reserve lands, is delegated to the Province. The *Gaming Control Act* provides the legislative framework for gaming in the province. B.C.'s position holds that the provincial government has sole jurisdiction for gaming and the regulation of gaming in B.C.
- Under B.C.'s *Gaming Control Act*, the Province has delegated to the British Columbia Lottery Corporation (BCLC) the conduct, management and operation of commercial gaming, other than horse racing.

Province's Duty to Consult

- The *Gaming Control Act* requires that BCLC must be satisfied that the host local government has consulted with each potentially affected local government, including First Nations. As per the *Gaming Control Act*, consultation with First Nations is limited to advising First Nations of the gaming proposal and seeking their comments solely in relation to infrastructure or policing costs and traffic and highway use.
- In a 2005 case involving the relocation of the River Rock Casino in Richmond, B.C., the Supreme Court of British Columbia found that: "Because the Lottery Corporation is an agent of the Crown, the provincial crown had a duty to consult which was triggered when it contemplated moving and expanding its casino to lands which it knew were subject to the Musqueam claims." The courts ruled in favour of the Musqueam Indian Band for failure to consult on the River Rock Casino relocation. The Province provided financial compensation to the Musqueam Indian Band.

First Nations Revenue

- Local host governments (HLG) receive 10 percent of the net revenues from the casino or gaming community centre they host. Currently there are three First Nations that host gaming facilities on their land but do not operate the facilities:
 - 1) Ktunaxa Nation - Casino of the Rockies (Cranbrook). In fiscal 2011/12, the Ktunaxa Nation received \$1.3 million in HLG payments.
 - 2) Cowichan Tribes - Chances Cowichan community gaming centre (Duncan). In fiscal 2011/12, the Cowichan Tribes received \$780K in HLG payments.
 - 3) Squamish Nation - Chances Squamish community gaming centre (Squamish). In fiscal 2011/12, the Squamish Nation received \$230K in HLG payments.
- The Adams Lake Indian Band has recently received approval from the City of Salmon Arm for a community gaming centre to be located on their land. An independent service provider (non-First Nations) will deliver the community gaming centre's operational services.
- Unlike provinces such as Alberta, Saskatchewan, Manitoba, Ontario and New Brunswick, B.C. does not directly share gaming revenues with First Nations.
- Like taxes, gaming revenues flowing to the provincial government are used to fund social infrastructure such as schools and hospitals and the services that go along with them – this benefits First Nations and all British Columbians.
- The provincial government does share revenue directly with First Nations, from resource developments on Crown land such as mining, forestry and oil and gas.

Potential Issue with First Nations:

30/60 day issue

- The British Columbia First Nations Gaming Initiative may publicly point out their position that gaming revenue is not shared with First Nations and the Province has not historically fulfilled their duty to consult where gaming facilities have been re-located.