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4 January 2001

Miss Flora Tai
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Tai,

**Bills Committee on
Gambling (Amendment) Bill 2000**

Meeting on 9 January 2001

Thank you for your letter of 12 December 2000. The information requested by the Hon Members and our response to the concerns raised at the first Bills Committee meeting on 7 December 2000 are set out below.

Legislative intent of section 8

Section 8 of the Gambling Ordinance, which criminalizes betting with an unauthorized bookmaker, was first proposed in the Gambling Bill 1976 (the 1976 Bill). The Bill was subsequently enacted in 1977.

It is noted that the overall objective of Government's gambling policy has remained very much the same between 1976 and the present, which is to combat unlawful gambling and to provide limited authorized outlets to meet local demand. Prior to 1976, the gambling legislation was directed towards suppressing the use of premises for gambling (i.e. gambling in a gambling establishment), rather than providing a direct attack on the unauthorized commercial operation of

gambling, particularly bookmaking. The 1976 Bill sought to prohibit *bookmaking* as such, *however and wherever such a business was carried on* (unless it was authorized under the Betting Duty Ordinance (Cap. 108)) (section 7). The 1976 Bill also prohibited the punter from *betting with a bookmaker*, including telephone betting where the punter did not go to the bookmakers' premises at all (section 8). The speech by the then Attorney General to move the second reading of the 1976 Bill is at **Annex A** for Members' information.

Overseas legislation prohibiting transmission of betting information

Legal provisions are in place in the United States and Canada prohibiting the transmission of betting information on events on which betting is not authorized. At the federal level of the United States, section 1084 of Title 18 of the U.S. Code prohibits "the transmission in interstate or foreign commerce of ... *information assisting in the placing of bets or wagers on any sporting event or contest*", but allows transmission of such information from a State or foreign country where such betting is legal to a State or foreign country in which it is also legal. A copy of the relevant section is at **Annex B**.

At the State level, in States where legal outlets for betting and wagering on horse races or other sporting events are provided, the transmission of information on out-of-state horse races or similar activities may be entirely prohibited by law. For example, California's Penal Code makes it illegal for any person who "knowingly transmits information as *to the progress or results of a horserace, or information as to wagers, betting odds, changes in betting odds, post or off times, jockey or player changes* in any contest or trial, ... involving *humans, beasts, or mechanical apparatus by any means whatsoever*... when such information is transmitted to or by a person or persons engaged in illegal gambling operations". However, transmission of betting information in relation to "any gambling operation authorized by law" is legal. A copy of the relevant section is at **Annex C**.

In Canada, section 202 of the Criminal Code stipulates that anyone who "prints, provides or offers to print or provide *information intended for use in connection with bookmaking, pool-selling or betting on any horse races, fight, game or sport*, whether or not it takes place in or outside Canada or has or has not taken place" commits an offence (section

202(f)). Like the United States, exemption is provided for persons who transmit betting information for the purposes of legal pari-mutuel betting (section 204(1.1)). The relevant extract is at **Annex D**.

Compared with the provisions in the United States and Canada which prohibit the transmission (including printing and broadcasting) of a wide range of data/information relating to a host of racing and sporting events on which betting is forbidden, the proposed section 16D in the Gambling (Amendment) Bill 2000 has a much narrower focus, covering only TV and radio broadcast of forecast, hint, odds or tip relating to horse and dog races only. Moreover, the proposed prohibition is only effective in the 12-hour period preceding the commencement of the race. On the other hand, both section 16D and the overseas legislation exempt the transmission of information on authorized bookmaking activities and that for use in news reporting. The proposed section 16D thus seeks to strike a balance between the policy objectives of combating unauthorized gambling activities and preserving freedom of expression.

Scope of proposed section 8

Some Members have expressed concerns that the proposed section 8 may be too broad and may have adverse impact on individual freedom.

To recapitulate, the proposed amendments seek to extend the coverage of the existing section 8 by criminalizing betting with an unauthorized bookmaker wherever the bookmaking takes place, as long as the bettor is in Hong Kong. With the increasing use of modern telecommunications technology such as IDD and roaming services and the dramatic decrease in the cost of IDD telephone calls, an unauthorized offshore bookmaker can now take bets from punters in Hong Kong as easily as a local bookmaker. In other words, the unauthorized bookmaker does not have to be physically located and operating in Hong Kong in order to receive bets from punters in Hong Kong. To the punters, placing bets with an unauthorized offshore bookmaker is almost as convenient as with a local bookmaker, but betting with the former is currently not an offence under the Gambling Ordinance. This is an anomaly and is being increasingly exploited by the unauthorized/illegal bookmakers, both local and overseas. To rectify the problem, it is imperative that the scope of sections 7 and 8 be extended to cover

bookmaking with an extraterritorial element and those who bet with an unauthorized offshore bookmaker respectively.

The proposed amendments to sections 7 and 8 seek to rectify the anomaly and plug the loopholes of the Gambling Ordinance; failing which, the following problems would entail:

- (1) ***unlimited gambling opportunities***: the purpose of the gambling policy is to provide ***limited and controlled*** gambling opportunities to satisfy local demand. Unauthorized gambling operators however provide a much wider range of gambling products and more frequent gambling opportunities (e.g. around-the-clock gambling opportunities are available on the Internet). If these bookmakers are allowed to take bets from Hong Kong people without any control and if Hong Kong people can bet with them at will, there will be de facto ***unlimited*** gambling opportunities available to Hong Kong people. This is definitely not in the overall interest of our community;
- (2) ***underage gambling***: people under 18 are forbidden to participate in authorized gambling activities in Hong Kong. The authorized operator is obliged to strictly and effectively enforce this requirement. If it is decided that sections 7 and 8 should not be amended as proposed, underage persons will be able to bet with unauthorized offshore bookmakers lawfully, though they are not allowed to bet with local authorized bookmakers. This is not only a legal anomaly but more importantly would send a very wrong message to the youths. Indeed, unauthorized offshore bookmakers are not obliged to conduct “age checks” before accepting bets. The proposed amendments to section 8 would at least send a clear signal to the bettor (including the underage) that they will commit an offence if they bet with unauthorized bookmakers, wherever they are located;

- (3) ***integrity of the games***: offshore gambling activities are not regulated or controlled by any Hong Kong authorities. To leave betting with unauthorized offshore bookmakers outside the ambit of the Gambling Ordinance would send a wrong message that betting with such bookmakers are lawful or would be tolerated by the Government and the legislature. The Government may be blamed for allowing this to happen in cases where punters are cheated by offshore operators during betting or when they fail to collect their winnings. The fact that some offshore bookmakers are licensed by offshore jurisdictions does not help as some jurisdictions are known for adopting rather lax licensing regimes. We are also concerned that some Hong Kong connected illegal bookmakers are involved in criminal activities and will use some of the betting money received to finance their illegal activities in Hong Kong; and
- (4) ***loss of revenue and funding for charity***: authorized operators in Hong Kong have to pay betting duty and designate part of their revenue for charity purposes. Unauthorized offshore bookmakers taking bets from Hong Kong people however do not have such obligations. Assuming that the total amount of betting dollars is largely fixed in a given period of time, the increase in betting with offshore bookmakers would result in a reduction of bets with the authorized ones, thus draining our tax revenue and donations to charity. As mentioned above, it is possible that some of the betting money that goes to the Hong Kong connected illegal bookmakers will be used to finance their criminal activities in Hong Kong.

Some Members have suggested that the proposed section 8 be amended so as to exempt, among others, betting by a tourist with a bookmaker in his or her home country via the telephone or the Internet. We have examined the feasibility of making certain exemptions under the proposed section 8, including the following possibilities:

- (1) ***exemption for tourists or persons staying in Hong Kong for a short duration***: the first and foremost question is whether there is a strong justification for exempting tourists and for that matter, any class of persons, from the ambit of the

proposed section 8. Article 25 of the Basic Law (BL 25) states that all Hong Kong residents shall be equal before the law (the term “Hong Kong residents” includes non-permanent residents under BL 24). BL 41 extends inter alia the right under BL 25 to all persons in the HKSAR other than Hong Kong residents. As a matter of principle, we think that it would be wrong to create an exemption for one class of persons without justification. In our view, any person, whether he is residing in or visiting a particular country/territory, should abide by the law of that country/territory. We therefore do not consider it justifiable to exempt tourists from the proposed amendments.

In drafting terms, as we understand it, there is no readily available definition for the term “tourist”. It is thus necessary to work out a definition for the purpose of the proposed exemption. It is envisaged that a host of practical problems will arise once we go down the route of defining “tourist”. In doing so, we should be mindful of not giving preferential treatment on the basis of nationality, race or other arbitrary criteria lest the law will be challenged as discriminatory.

“Tourist” is not easily defined. It should be noted that what a layman calls a tourist is someone visiting a place other than his place of residence for a holiday. However, many visitors to somewhere like Hong Kong combine their holidays with business. Is the businessman visiting Hong Kong to be included in the legal definition of “tourist”?

An attempt could be made to define “tourist” by reference to nationality but this would be a failure in most jurisdictions and particularly so in Hong Kong. Many of our tourists are persons from other parts of China, which cover the Mainland, Macau and Taiwan. If they are to be included in the legal definition of “tourist” then nationality could not be used as an element of the definition.

“Length of stay” is possibly one way of defining a tourist. A person who visits for a short stay may be made qualified for the definition. However, how long is the short stay to be? What if a person visits so frequently in the course of a year his stays total several months but each visit is say only a few days?

In addition, some “tourists” including those from other parts of China and overseas Chinese may be used by unscrupulous persons to help place bets for that person under cover of the exemption.

- (2) ***exemption for betting with bookmakers licensed by an offshore jurisdictions***: The problem is that there are numerous “licensed” bookmakers all over the world given the lax licensing regimes adopted by some overseas jurisdictions. The proposed exemption will open up a wide range of lawful gambling opportunities to Hong Kong people and is thus a major departure from our gambling policy. In practice, it would be difficult for a bettor to ascertain whether a bookmaker is duly licensed overseas. Even if the bookmaker is licensed abroad, there is no way that we could tackle problems such as underage gambling and gambling frauds partly because of the rather lax regulatory regimes in some of the jurisdictions;
- (3) ***exemption for betting with bookmakers which do not promote their business in Hong Kong***: the proposed exemption will put the burden on the bettor who will have to find out themselves whether the offshore bookmaker with whom he bets has ever promoted its business in Hong Kong. It would also be difficult for the prosecutor to collect evidence to prove that the offshore bookmaker concerned has promoted its business in Hong Kong for example as some of the bookmakers simply put up advertisements in a website to attract bets from Internet users. There is also little difference between promotion on a local website and on an offshore website popular among Hong Kong people; and

- (4) ***exemption for persons aged 18 or above to bet with offshore bookmakers***: this proposal makes it lawful for Hong Kong people aged 18 or above to bet with any offshore bookmakers. Like (2) above, it opens up a wide range of lawful gambling opportunities to Hong Kong people. While the proposal may to some extent discourage the underage from betting with offshore bookmakers, it does not address the other problems mentioned earlier such as the availability of unlimited gambling opportunities and the possibility of frauds.

We have also considered the possibility of combining some of the above options, e.g. (2), (3) and (4), to see if a narrower exemption can be worked out (e.g., granting exemption for those who are aged 18 or above who bet with an offshore licensed bookmaker which does not promote its business in Hong Kong). The major problem remains that there are numerous such “licensed” bookmakers all over the world given the relatively lax licensing regimes of some of the jurisdictions. To allow Hong Kong people to bet with these offshore bookmakers lawfully is a major and fundamental departure from our existing policy. We would caution against such a policy change bearing in mind the implications arising therefrom (e.g. the Government will be accused of encouraging gambling with offshore bookmakers and our betting revenue and charity donation will be adversely affected). It is also for consideration whether a similar exemption should be made to the proposed amendments to section 7 (the offence of “bookmaking”) as offshore bookmakers may argue that they should be treated alike on equity grounds (i.e. to exempt offshore licensed bookmakers which receive bets from Hong Kong people aged 18 or above and which do not promote their business in Hong Kong).

To sum up, we have serious reservations on both principle and practical grounds about exempting any particular group(s) of bettors or unauthorized bookmakers from the proposed amendments to sections 7 and 8.

Regarding Members’ concern about the adverse impact of the proposed section 8 on individuals’ freedom, we recognize that the proposed amendments involve the imposition of certain restrictions on the satisfaction of human desire (in this case the “desire to gamble”). However,

such restrictions are necessary and justifiable in view of the social costs resulting from not tackling unauthorized gambling (e.g., a significant increase in lawful gambling opportunities and loss of revenue/charitable donations). Indeed, such restrictions have been in place for a long time insofar as betting with unauthorized local bookmakers is concerned.

Enforcement of the proposed section 8

We recognize that there may be problems with investigation, evidence collection and its satisfactory production in court. Betting with an offshore bookmaker is mostly done via telephone or the Internet. There are many other offences particularly those involving property and including conspiracies to commit offence, for example, fraud that may, depending on the circumstances, have similar problems of proof because of an extraterritorial element of the offence. The problem is evidential rather than one of the substantive law creating the offence. From the policy point of view, we consider it imperative to state clearly in the law Government's policy intention, i.e. that such betting will not be allowed or condoned by the Government and that bettors will not be able to turn to Government for help when they suffer financial loss as a result of engaging in unlawful gambling activities.

The effectiveness of the proposed section 8 should not be assessed on its own. Upon enactment of the Bill, we expect that credit-offering institutions will refrain from being involved in unlawful gambling transactions, which may result in debts not enforceable in Hong Kong because they arise out of illegal gambling. This will make such illegal betting more difficult as bettors would have to resort to other means of placing bets such as wire transfer or mailing cheques. Bettors' winnings may also be forfeited by virtue of the amended section 26. Moreover, some offshore licensed bookmaking companies have, as a matter of policy, refrained from accepting bets from jurisdictions that have outlawed such betting (e.g. the United States). We expect that some of them will extend the policy to Hong Kong after such activities have been made expressly unlawful in Hong Kong. These may help reduce, if not eliminate, such illegal betting activities.

Clarity of sections 7 and 8

The proposed section 7(1A)(a) clearly stipulates that bookmaking will be illegal whether the bookmaking process or the event on which the bet is made takes place in Hong Kong. The proposed section 7(1A)(b) provides for an exemption for bookmaking where the bookmaking process takes place *and* all the parties to the transaction are outside Hong Kong. The proposed section 8(2) contains similar provisions, making it illegal to bet with a bookmaker no matter where the bookmaking or the subject of bet takes place, unless the bet is made outside Hong Kong *and* both the bookmaker and bettor are outside Hong Kong.

In other words, *as long as the bettor is in Hong Kong*, both the bookmaker receiving the bet and the bettor would contravene the law. We consider that the proposed amendments to sections 7 and 8 have clearly stated what is lawful and what is not.

Deferring the consideration of the Bill

We are concerned with the suggestion by some Members that consideration of the Bill should be deferred until the completion of the gambling review. It should be noted that the Gambling (Amendment) Bill 2000, which seeks to plug the loopholes of the existing Gambling Ordinance, is independent of the review being conducted by the Home Affairs Bureau. The review looks at a wide range of gambling related issues including the application of the gambling policy in today's circumstances. Any decision arising from the review will **not** affect the amendments contained in the Gambling (Amendment) Bill 2000 or revert the policy the Bill seeks to uphold.

One of the issues being examined in the review, as some Members have mentioned, is the desirability and feasibility of providing legal and controlled outlets for betting on soccer. This is a controversial subject, and we wish to make it clear that the Administration has no foregone conclusion as to whether legal outlets should be provided for betting on soccer. Indeed, any recommendations to be made by the Administration will be subject to extensive consultation and debate within the community. Whatever the outcome of the review, the Gambling Ordinance will need to be amended as currently proposed to enable the Government to combat unauthorized offshore gambling, including that on

soccer, in order to uphold the policy.

We therefore do not consider it necessary or justifiable to defer the examination of the Bill until the above-mentioned review is completed, otherwise the Government would have no legal authority to combat unauthorized offshore gambling activities in Hong Kong in the face of a proliferation of such activities for a prolonged period of time.

Subsequent to the introduction of the Gambling (Amendment) Bill 2000 into LegCo, it is likely that the loopholes in the Gambling Ordinance will become widely known to the offshore bookmakers. There is thus an urgent need to examine and enact the Bill; failing which more and more offshore bookmakers will exploit the loopholes and start enticing bets from Hong Kong people. Any suggestion to defer consideration of the Bill will only be welcomed by the unauthorized offshore bookmakers.

I should be grateful if you would convey the above information to Members. The officers attending the second meeting of the Bills Committee on 9 January 2001 will be as follows:

Mrs. Betty Fung	Deputy Secretary for Home Affairs
Mr. Stephen Wong	Deputy Solicitor General
Mr. J. D. Scott	Senior Assistant Law Draftsman
Mr. Gavin Shiu	Acting Senior Assistant Director of Public Prosecutions
Mr. Francis Lo	Principal Assistant Secretary for Home Affairs
Ms. Mabel Cheung	Government Counsel
Mr. Vic Yau	Assistant Secretary for Home Affairs

Yours sincerely,

(Mrs Betty Fung)
for Secretary for Home Affairs

cc D of J (Attn.: Mr. Stephen Wong)

Mr. J D Scott
Mr. Gavin Shiu
Ms. Mabel Cheung)

§ 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

(Added Pub. L. 87-216, § 2, Sept. 13, 1961, 75 Stat. 491; amended Pub. L. 100-690, title VII, § 7024, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101-647, title XII, § 1205(g), Nov. 29, 1990, 104 Stat. 4831; Pub. L. 103-322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$10,000".

1990—Subsec. (e). Pub. L. 101-647 inserted "commonwealth," before "territory or possession of the United States".

1988—Subsec. (b). Pub. L. 100-690, § 7024(a), inserted "or foreign country" after "State" in two places.

Subsec. (c). Pub. L. 100-690, § 7024(b)(2), struck out "Commonwealth of Puerto Rico, territory, possession, or the District of Columbia" after "State".

Subsec. (e). Pub. L. 100-690, § 7024(b)(1), added subsec. (e).

CROSS REFERENCES

Wire or oral communications; authorization for interception, to provide evidence of offenses under this section, see section 2516 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2516 of this title.

~~CHAPTER 50A—GENOCIDE~~

Sec.	
1001.	Genocide.
1092.	Exclusive remedies.
1093.	Definitions.

Cross References

Controlled substances in general, see Health and Safety Code § 11000 et seq.
Horse racing, generally, see Business and Professions Code § 19400 et seq.
Labeling of habit forming drugs, see Health and Safety Code § 111330.

Code of Regulations References

Blood and urine test sample required, see 4 Cal. Code of Regs. § 1858.
Disqualification upon positive test of prohibited drug, see 4 Cal. Code of Regs. § 1859.5.
Examination, postmortem, see 4 Cal. Code of Regs. § 1846.5.
Prohibition of improper medication, see 4 Cal. Code of Regs. § 1843.

Library References

Theaters and Shows ¶9.
WBSTLAW Topic No. 376.

C.I.B. Entertainment and Amusement; Sports
§§ 102, 103.

§ 337h. Racing or exhibition animals; administration of poison, drugs, etc., or use of device to affect speed

Any person who, except for medicinal purposes, administers any poison, drug, medicine, or other noxious substance, to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other livestock, entered or about to be entered in any race or upon any race course, or entered or about to be entered at or with any agricultural park, or association, race course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or who exposes any poison, drug, medicine, or noxious substance, with intent that it shall be taken, inhaled, swallowed, or otherwise received by any of these animals or other livestock, with intent to impede or affect its speed, endurance, sense, health, physical condition, or other character or quality, or who causes to be taken by or placed upon or in the body of any of these animals or other livestock, entered or about to be entered in any race or competition described in this section any sponge, wood, or foreign substance of any kind, with intent to impede or affect its speed, endurance, sense, health, or physical condition, is guilty of a misdemeanor.

(Added by Stats. 1953, c. 32, p. 636, § 6.)

Cross References

Horse racing, generally, see Business and Professions Code § 19400 et seq.
Misdemeanor defined, see Penal Code § 17.
Punishment for misdemeanor, see Penal Code §§ 19, 19.2.

Code of Regulations References

Blood and urine test sample required, see 4 Cal. Code of Regs. § 1858.
Disqualification upon positive test of prohibited drug, see 4 Cal. Code of Regs. § 1859.5.
Examination, postmortem, see 4 Cal. Code of Regs. § 1846.5.
Prohibition of improper medication, see 4 Cal. Code of Regs. § 1843.

Library References

Legal Jurisprudences
Cal Jur 3d (Rev) Criminal Law § 1053.

Treatises and Practice Aids
Wilkin & Epstein, Criminal Law (2d ed)
§ 839.

§ 337i. Transmittal of racing information to gamblers

Every person who knowingly transmits information as to the progress or results of a horserace, or information as to wagers, betting odds, changes in betting odds, post or off times, jockey or player changes in any contest or trial, or purported contest or trial, involving humans, beasts, or mechanical apparatus by any means whatsoever including, but not limited to telephone, telegraph, radio, and semaphore when such information is transmitted to or by a person or persons engaged in illegal gambling operations, is punishable by imprisonment in the county jail for a period of not more than one year or in the state prison.

This section shall not be construed as prohibiting a newspaper from printing such results or information as news, or any television or radio station from telecasting or broadcasting such results or information as news. This section shall not be so construed as to place in jeopardy any common carrier or its agents performing operations within the scope of a public franchise, or any gambling operation authorized by law.

(Added by Stats. 1967, c. 1618, p. 3859, § 1. Amended by State. 1968, c. 578, p. 1247, § 2; State. 1976, c. 1139, p. 5116, § 189, operative July 1, 1977.)

Historical and Statutory Notes

The 1968 amendment substituted at the end of the first paragraph "for a period of not more than one year or in the state prison for a period not exceeding two years" following "imprisonment in the county jail" for "or state prison in the discretion of the court, for a period of not less than 30 days and not more than one year."
The 1976 amendment deleted "for a period not exceeding two years" from the end of the first paragraph.

Library References

Gaming ¶66.
Telecommunications ¶271.
WBSTLAW Topic Nov. 189, 372.
C.J.S. Gaming § 85 et seq.
C.I.B. Telegraphs, Telephones, Radio, and Television § 236.

of wagering information a criminal offense.
5 ALR Fed 166.

Legal Jurisprudences
Cal Jur 3d (Rev) Criminal Law § 1017.
38 Am Jur 2d Gambling §§ 129 et seq.

Treatises and Practice Aids
Wilkin & Epstein, Criminal Law (2d ed)
§ 863.

WBSTLAW Electronic Research

See WBSTLAW Electronic Research Guide following the Preface.

Notes of Decisions

1. Validity
This section proscribing dissemination of gambling information is reasonable exercise of police power and proper prohibition of speech which is itself criminal; thus this section did not violate the First Amendment (U.S.C.A. Const. Amend. 1). *People v. Milano* (App. 2 Dist. 1979) 152 Cal.Rptr. 318, 89 Cal.App.3d 153.

2. Discriminatory prosecution
Inasmuch as dissemination of gambling information to persons engaged in illegal gambling operations is not protected speech, selective prosecution of defendants was not based upon unjustifiable or invidious standard; thus defendants were not entitled to reversal of conviction on basis of defense of discriminatory prosecution. *People v. Milano* (App. 2 Dist. 1979) 152 Cal.Rptr. 318, 89 Cal.App.3d 153.

2025 RELEASE UNDER E.O. 14176
 RECORDED FROM THE CALIFORNIA'S PENAL CODE

Extract from the Criminal Code of Canada

Annex D (031)

Gaming and Betting**Keeping gaming or betting house**

201. (1) Every one who keeps a common gaming house or common betting house is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

Person found in or owner permitting use

(2) Every one who

(a) is found, without lawful excuse, in a common gaming house or common betting house, or

(b) as owner, landlord, lessor, tenant, occupier or agent, knowingly permits a place to be let or used for the purposes of a common gaming house or common betting house,

is guilty of an offence punishable on summary conviction.

R.S., c. C-34, s. 185.

Betting, pool-selling, book-making, etc.

202. (1) Every one commits an offence who

(a) uses or knowingly allows a place under his control to be used for the purpose of recording or registering bets or selling a pool;

(b) imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting;

(c) has under his control any money or other property relating to a transaction that is an offence under this section;

(d) records or registers bets or sells a pool;

(e) engages in book-making or pool-selling, or in the business or occupation of betting, or makes any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or betting;

(f) prints, provides or offers to print or provide information intended for use in connection with book-making, pool-selling or betting on any horse-race, fight, game or sport, whether or not it takes place in or outside Canada or has or has not taken place;

(g) imports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, book-making, pool-selling or betting on a horse-race, fight, game or sport, and where this paragraph applies it is immaterial

- (i) whether the information is published before, during or after the race, fight game or sport, or
- (ii) whether the race, fight, game or sport takes place in Canada or elsewhere.

but this paragraph does not apply to a newspaper, magazine or other periodical published in good faith primarily for a purpose other than the publication of such information;

(h) advertises, prints, publishes, exhibits, posts up, or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest

(i) wilfully and knowingly sends, transmits, delivers or receives any message by radio, telegraph, telephone, mail or express that conveys any information relating to book-making, pool-selling, betting or wagering, or that is intended to assist in book-making, pool-selling, betting or wagering; or

(j) aids or assists in any manner in anything that is an offence under this section.

Punishment

(2) Every one who commits an offence under this section is guilty of an indictable offence and liable

(a) for a first offence, to imprisonment for not more than two years;

(b) for a second offence, to imprisonment for not more than two years and not less than fourteen days; and

(c) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

R.S., c. C-34, s. 186; 1974-75-76, c. 93, s. 11.

Placing bets on behalf of others

203. Every one who

(a) places or offers or agrees to place a bet on behalf of another person for a consideration paid or to be paid by or on behalf of that other person,

(b) engages in the business or practice of placing or agreeing to place bets on behalf of other persons, whether for a consideration or otherwise, or

(c) holds himself out or allows himself to be held out as engaging in the business or practice of placing or agreeing to place bets on behalf of other persons, whether for a consideration or otherwise,

is guilty of an indictable offence and liable

(d) for a first offence, to imprisonment for not more

than two years,

(e) for a second offence, to imprisonment for not more than two years and not less than fourteen days, and

(f) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

R.S., c. C-34, s. 187; 1974-75-76, c. 93, s. 11.

Exemption

204. (1) Sections 201 and 202 do not apply to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked, to be paid to

(i) the winner of a lawful race, sport, game or exercise,

(ii) the owner of a horse engaged in a lawful race, or

(iii) the winner of any bets between not more than ten individuals;

(b) a private bet between individuals not engaged in any way in the business of betting;

(c) bets made or records of bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races if

(i) the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race-course in or out of Canada, and, in the case of a race conducted on a race-course situated outside Canada, the governing body that regulates the race has been certified as acceptable by the Minister of Agriculture and Agri-Food or a person designated by that Minister pursuant to subsection (8.1) and that Minister or person has permitted pari-mutuel betting in Canada on the race pursuant to that subsection, and

(ii) the provisions of this section and the regulations are complied with.

Exception

(1.1) For greater certainty, a person may, in accordance with the regulations, do anything described in section 201 or 202, if the person does it for the purposes of legal pari-mutuel betting.

Presumption

(2) For the purposes of paragraph 1(c), bets made, in accordance with the regulations, in a betting theatre referred to in paragraph (8)(e), or by telephone calls to race-course of an association or to such a betting theatre, are deemed to be made on the race-course of the association.