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# First Nations Gaming in Canada: Gauging Past and Ongoing Development

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# First Nations Gaming in Canada: Gauging Past and Ongoing Development

YALE D. BELANGER\*

CANADA'S FIRST NATIONS GAMING INDUSTRY, now entering its third decade of operations, includes sixteen for-profit casinos operating in British Columbia, Alberta, Manitoba, and Ontario (two charity casinos also operate in Ontario) and eleven Nova Scotia First Nations operating just under six hundred Video Lottery Terminals (VLTs)<sup>1</sup> annually generating approximately one billion dollars gross revenues. Each of these sites was constructed with the goal of generating revenue for economically struggling communities, but in most cases, they quickly became the lightning rod of a complex sovereignty discourse underlined by First Nations claims that they possessed the inherent right to control on-reserve economic development. The greatest complications arose in the early 1990s when the provincial governments in Manitoba and Ontario rebuffed First Nations seeking permission to construct reserve casinos. A convoluted constitutional debate ensued regarding the precise legal responsibility for First Nations. Specifically, first, did the provinces have a legal right to compel First Nations to negotiate formal gambling compacts? and second, could the provinces enter into formal gambling compacts with First Nations? The Canadian courts responded that the provinces were correct in requiring First Nations to negotiate entry into the gambling industry, that the provinces were tasked with providing oversight, and that they could enter into formal compacts with First Nations seeking industry access.<sup>2</sup> Federal officials nevertheless remained uncertain about provincial motives, especially when provincial bureaucrats expressed concern that they would be seen as yielding to race-based rights should casinos be built. The media likewise questioned the suitability of permitting First Nations casino operations.<sup>3</sup> Some First Nations responded by protesting cases (many established what were by provincial standards illegal casinos), while others petitioned the courts to clarify their rights. Others initiated long-term negotiations.<sup>4</sup> Nevertheless, by 1996, First Nations casinos were operating in Saskatchewan (four) and Ontario (one).

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<sup>1</sup> "Video lottery terminal" ("VLT") refers to an electronic gambling machine that is located in an age-restricted licensed venue (bar) outside of a casino or horse race track. Most First Nations casinos generate the bulk of their gaming revenues through VLTs, as is the case in Nova Scotia. The provincial First Nations do however lose out on potential employment revenue, and additional site revenue associated with repeater market operations and destination integrated resort models.

<sup>2</sup> *R. v. Pamajewon* [1996] 2 SCR 821; *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; Hal Pruden "An Overview of the Gambling Provisions in Canadian Criminal Law and First Nations Gambling" (2002) 2:2 J Aboriginal Economic Development) n.p. at 37-40.

<sup>3</sup> Yale D. Belanger, *Gambling with the Future: The Evolution of Aboriginal Gambling in Canada* (Saskatoon, SK: Purich Publishing, 2006). See also Warren Skea, "Time to Deal: A Comparison of the Native Casino Gambling Policy in Alberta and Saskatchewan." Ph.D. dissertation (University of Calgary, 1997) [unpublished].

<sup>4</sup> Yale D Belanger, "(Re)Imagining First Nations Casinos," in Julie Pelletier & Becca Gercken, eds, *Gambling on Authenticity: Gambling, the Noble Savage, and the Not-So-New-Indian* (East Lansing: Michigan State University Press, 2017) 57.

Following this opening skirmish First Nations gambling policy in Canada began its slow evolution. After several years of tinkering, each province established their respective models. In recent years there has been very little development in this regard, both generally and in the specific provinces in which First Nations casinos operate. With the exception of one new casino opening in Manitoba in 2014 and another set to open in 2018 in Lloydminster, Saskatchewan, looking to the horizon, it appears that these projects represent the sum of all new developments.<sup>5</sup> Although legal sovereignty challenges in relation to gambling have to date been unsuccessful, the secondary objective of generating revenue for local development purposes has been accomplished.<sup>6</sup> Unfortunately, a paucity of publicly circulating data makes tracking these trends rather difficult. For example, whereas the Alberta government and the Saskatchewan Indian Gaming Authority (SIGA) are by far the most transparent—each year they publicly post detailed overviews of revenues generated—Nova Scotia is several years behind in its reporting. Acquiring similar data from B.C. and Ontario is only possible by mining government reports some of which are not made publicly available online. Finally, Manitoba has no protocols in place related to either the release of public distribution analogous information. Nevertheless, I have been tracking these trends for more than one decade, and with the data I have secured from websites, government and media reports, and file sharing, I have been able to generate a general overview of net revenue generated (years identifying last available data sets):

- \$118.4 million was produced by five Alberta casinos benefitting forty First Nations (2016-17);<sup>7</sup>
- ~\$104 million was produced by Ontario's casino benefitting one hundred and thirty-three First Nations (2015-16);<sup>8</sup>
- \$81.1 million was produced by 6 Saskatchewan casinos benefitting seventy-two First Nations (2016-17);<sup>9</sup>
- \$37.9 million was produced by Nova Scotia Video Lottery Terminal sites benefitting thirteen First Nations (2012-13);<sup>10</sup>
- \$7-10 million was produced in Manitoba by three casinos benefitting roughly thirty First Nations (2010-11);<sup>11</sup>

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<sup>5</sup> Betty Ann Adam, "Lloydminster casino: reigning in the details", *Saskatoon StarPhoenix* (4 November 2017), online: <[thestarphoenix.com/news/local-news/lloydminster-casino-reigning-in-the-details](http://thestarphoenix.com/news/local-news/lloydminster-casino-reigning-in-the-details)> [<https://perma.cc/HK2G-FNCL>].

<sup>6</sup> Morden C Lazarus & Brian Hall, "The Need for the Creation of a Framework for Aboriginal Gambling to Legally Exist in Canada: The Compelling Case of the Mohawks of Kahnawá:ke" (2010) 14:2 *Gambling L Rev* 95; Morden C Lazarus, Edwin D Monzon & Richard B Wodnicki, "The Mohawks of Kahnawá:ke and the Case for an Aboriginal Right to Gambling under the Canada Constitution Act, 1982" (2006) 10:4 *Gambling L Rev* 369; Belanger, *supra* note 3.

<sup>7</sup> Alberta, *Alberta Lottery Fund*, online: <<http://albertalotteryfund.ca/AlfWhoBenefitsApp/>>. Charitable allocations are not included in this overview.

<sup>8</sup> See Ontario Lottery and Gaming Corporation (OLG), *Quarterly Performance Figures*, online: <<https://about.olg.ca/financial-annual-reports-2015-2016/>>.

<sup>9</sup> Saskatchewan Indian Gaming Authority (SIGA). *Building Success: 2016-2017 Annual Report*, online: <[https://www.siga.sk.ca/wp-content/uploads/2017/07/2016-17\\_SIGA\\_AR-for-publication.pdf](https://www.siga.sk.ca/wp-content/uploads/2017/07/2016-17_SIGA_AR-for-publication.pdf)> 3.

<sup>10</sup> Office of Aboriginal Affairs, Nova Scotia. *First Nations Gaming*, online: <<https://novascotia.ca/abor/resources/first-nations-gaming/>>.

<sup>11</sup> Data in author's possession. See Yale D. Belanger, "Gauging the Success of First Nations Casinos in Canada." *Alberta Gaming Research Institute*, 14<sup>th</sup> Annual Conference on Gaming Research. Banff, Alberta.

- \$3.8 million was produced by the Blue Heron Charity Casino operated by the Lake Scugog First Nations (2015-16);<sup>12</sup>
- \$1.13 million was produced by B.C.'s First Nations casino benefitting three First Nations (2015-16).<sup>13</sup>

In sum, this amounts to approximately three hundred and seventy-five million dollars generated annually for more than three hundred First Nations, representing roughly half of Canada's six hundred and thirty First Nations communities. Distinct from the experience in the United States, First Nations gambling successes have not led to rapid expansion across Canada.

## I. KEY CONCERNS

Reflecting on the industry's ongoing progress, Canadian and Indigenous leaders focus almost exclusively on whether First Nations communities have sufficiently advanced economically. From an Indigenous perspective, the focus is on the concessions required to promote this progress.

As to the first issue, the available research and online data sets detailing how First Nations casino revenues are spent demonstrate that Alberta, Ontario, and Saskatchewan casinos are the most successful.<sup>14</sup> In addition to generating revenues that are distributed to the province's First Nations communities, Indigenous casino-related employment in Ontario and Saskatchewan is considerable to a point that it adds roughly seventy million dollars (fifty million dollars in Saskatchewan, twenty million dollars in Ontario) to the provincial economies in the form of employee earnings.<sup>15</sup> Unfortunately the level of detail contained within provincial data sets varies dramatically, meaning that analogous trends are not immediately discernable for the remaining provincial jurisdictions. Anecdotal media reports suggest that these earnings are helping to fashion new economies while enhancing existing Indigenous businesses, as well as businesses housed in urban reserves located in Saskatchewan, non-Indigenous, and other First Nations communities. Media reports also suggest that monies are being directed towards improving First Nations infrastructure, local services, education, training, administrative costs, housing programs, local facilities, community safety, among other areas of interest.<sup>16</sup> Ostensibly, each province devised a First Nations gaming policy to aid with First Nations development. However, to date no province that is involved with the oversight of First Nations casinos has implemented what could be described as even the most basic measurement protocols to assess reserve casino economic effectiveness. Consequently, we have a limited understanding as to whether reserve casinos are

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<sup>12</sup> See Ontario Lottery and Gaming Corporation (OLG), *Quarterly Performance Figures*, online: <https://about.olg.ca/financial-annual-reports-2015-2016/>.

<sup>13</sup> Sports, Recreation, Arts & Culture, British Columbia. *Gambling Revenue Distribution*, online: <https://www2.gov.bc.ca/gov/content/sports-culture/gambling-fundraising/gambling-in-bc/where-money-goes>.

<sup>14</sup> Yale D Belanger, "Are Canadian First Nations Casinos Providing Maximum Benefits? Appraising Canada's First Nations Casino Industry in Ontario, Saskatchewan, and Alberta, 1996-2010" (2014) 18:2 UNLV Gaming Research & Rev 65.

<sup>15</sup> *Ibid.*

<sup>16</sup> Robert J Williams, Yale D Belanger, & Jennifer N Arthur, *Gambling in Alberta: History, Current Status, and Socioeconomic Impacts* (Edmonton: Alberta Gambling and Liquor Commission, 2011); Yale D Belanger, Robert J Williams, & Jennifer N Arthur, "Casinos and Economic Well-Being: Evaluating the Alberta First Nations' Experience," (2011) 5:1 J Gambling Business & Economics 23.

living up to their promise, and if they are not, what if any remedial can be implemented to improve economic performance and outcomes.

The second concern, about the concessions required to ensure this economic progress, raises contentious issues because in several instances, First Nations were forced to concede to provincial demands in order to guarantee operations. This has meant that reserve gambling remains as much a political enterprise as an economic endeavor. It also raises important questions regarding the ongoing provincial role in reserve casino oversight and whether the federal government, as a First Nations fiduciary, has failed by not preventing these demands and concessions. By far the most controversial conditions were those that directed a part of all First Nations casino revenues to provincial treasuries, which has been most impactful in the large First Nations gambling markets of Ontario, Alberta and Saskatchewan. In Alberta's case alone, since 2006 this has stripped away more than eight hundred million dollars from First Nations development, an alarming figure considering that provincial First Nations gambling policies presumably sought to improve reserve socio-economic outcomes. At least this is how the provincial premiers in Ontario, Saskatchewan, and Alberta initially framed their respective strategies. Yet not all gaming revenues supposedly earmarked for advancing First Nations development make it into the communities. As noted above, large portions are regularly diverted into provincial coffers, which are then reallocated to non-Indigenous development projects. This means that revenues generated in First Nations casinos for community betterment purposes frequently end up funding off-reserve, provincially-led ventures.<sup>17</sup> Maintaining this course in Canada's self-proclaimed age of reconciliation with Indigenous peoples is particularly troubling.<sup>18</sup>

Further to this, Ontario, Alberta and Saskatchewan also demanded that First Nations accept per capita revenue distribution pacts that ensured a portion of revenues was distributed to each First Nation (in Ontario, weighting includes allowance for population and community isolation). According to this model, every First Nation can benefit from the casino operations, provided, of course, that the host casinos remain profitable. But casino profitability varies greatly within provinces, thus revenue distribution remains uneven across provinces. In Alberta, of the five casinos, one casino is a break-even operation, and two are marginally profitable; the larger destination resorts dwarf the competition as their host First Nations handsomely profit. In Saskatchewan the formula is more equitable. However, the Mnjikaning First Nation in Ontario, where Casino Rama is located, must manage higher infrastructure costs and prospective gambling problems with proportionately less revenue.<sup>19</sup> Smaller casinos in B.C. and Manitoba remain marginally successful while divvying up nominal profits amongst multiple communities. The point

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<sup>17</sup> Yale D Belanger & Robert J Williams, "The First Nations' Contribution to Alberta's Charitable Gambling Model: Assessing the Impacts" (2012) 38:4 Can Public Policy 551.

<sup>18</sup> See e.g. JR Miller, *Residential Schools and Reconciliation: Canada Confronts Its History* (Toronto: University of Toronto Press, 2017); and, Truth and Reconciliation Commission of Canada, *Final Report of the Truth and Reconciliation Commission of Canada*, (Toronto: James Lorimer and Company Ltd. Publishers, 2015) vol 1 at "Summary". Finally, for the official platform of the federal governing Liberal Party of Canada see Liberal Party of Canada, Truth and Reconciliation (n.d.) online: <<https://www.liberal.ca/realchange/truth-and-reconciliation/>> [perma.cc/LR9L-JXYG].

<sup>19</sup> Bob Kayseas, Bettina Schneider & Jo-ann Goodpipe, "First Nations Gambling in Saskatchewan: Fostering Entrepreneurship, Economic Diversification, Cultural Preservation and Awareness: A Proposed Research Agenda," (2010) 12:1/2 Global Business & Economic Rev 21.

is this: the fact that gambling has made but a handful of First Nations disproportionately wealthy in relation to other First Nations is frequently overlooked.

Also frustrating for First Nations leaders was the provincial willingness to leverage their Criminal Code of Canada-assigned authority to approve casino licenses and fashion gambling policies that reflect provincial desires.<sup>20</sup> Initially, certain provisions permitted the provinces to dictate, through internally crafted oversight policies, how First Nations could spend their revenues and the prescribed guidelines for releasing those funds. These actions guaranteed that the provinces retained centralized authority for regulating reserve casino operations while simultaneously restricting First Nations economic and political agency. Each provincial model resourcefully propelled its gambling bureaucracy's expansion during a period of economic reforms (Ontario and Alberta especially) by assigning First Nations annual operating fees for the privilege of operating casinos.<sup>21</sup>

First Nations have found it difficult to break away from this system that compels community leaders to seek provincial permission to become an industry player. Several attempts have tried to circumvent what has tellingly been portrayed as a provincial gambling monopoly. For instance, in 2010 B.C. First Nations created the "B.C. First Nations Gambling Initiative," which promoted plans for a Vancouver-based First Nations casino in 2012. An unenthusiastic provincial response prompted one First Nation's leader to advocate constructing an independently-run casino similar to those that were rapidly constructed in Manitoba, Saskatchewan and Ontario in the 1990s, thereby defying provincial law and policy.<sup>22</sup> Recent research has suggested that First Nations in Manitoba, Saskatchewan and Ontario leveraged direct action and the threat of further protest (*i.e.*, operating illegal casinos) into formal negotiations, eventually leading to the creation of provincial First Nations gambling policies.<sup>23</sup>

Unfortunately, additional claims to a right to regulate online gambling have made little headway. For example, in 2006 Alberta officials rejected the Alexander First Nation's request to open a server farm that would, among other services offered, host international online gambling operators; this would have been the same kind of operation as the Kahnawá:ke Nation's operations, which were opposed by Quebec but that remain operational.<sup>24</sup> Similarly, the Northern Bear Casino,

<sup>20</sup> See e.g. Robin Kelley, *First Nations Gambling Policy in Canada*, Gambling in Canada Research Report 12 (Calgary: Canada West Foundation, 2001); and more recently Ron Segev & Taylor Keene, "First Nations Gaming in Canada: A Case for Reform", *Canadian Gaming Lawyer Magazine* 10:2 (Fall 2017) 3.

<sup>21</sup> See generally Darrel Manitowabi, "Casino Rama: First Nations Self-Determination, Neoliberal Solution or Partial Middle Ground?" in Yale D Belanger, ed, *First Nations Gambling in Canada* (Winnipeg: University of Manitoba Press, 2011) 255; Darrel Manitowabi, "Neoliberalism and the Urban Aboriginal Experience: A Casino Rama Case Study" in Heather Howard & Greg Proulx, eds, *Aboriginal Peoples in Canadian Cities: Transformations and Continuities* (Waterloo: Wilfred Laurier Press, 2011) 109; Yale D Belanger & Robert J Williams, "Neoliberalism as Colonial Embrace: Evaluating Alberta's Regulation of First Nations Gambling, 1993-2010,"(2011) 13:4 Business & Politics 1371 .

<sup>22</sup> See e.g. Brent Richter, "Tsleil-Waututh Nation Follows CNV With Casino Bid", *North Shore News* (22 July 2016).

<sup>23</sup> Belanger, *supra* note 4.

<sup>24</sup> Yale D Belanger & Robert J Williams, "Virtual Sovereignty? Exploring First Nations Internet Gambling Ventures in Canada" in Yale D Belanger, ed, *First Nations Gaming in Canada* (Winnipeg: University of Manitoba Press, 2011) 52; Yale D Belanger, "Legislating and Regulating First Nations Gambling: The Mohawk Council of Kahnawá:ke's Experience, 1999-2013" (2014) 18:4 Gambling L Rev & Economics 369.

billed as Saskatchewan's first online gambling website, and operated by a member of a First Nation, halted operations after two years of provincial protest and no profits.<sup>25</sup>

What is often overlooked is the impact of provincial policies at the community level. For one, gambling policies have driven a wedge between those who live on reserve and those who live off reserve. How substantial is the division at this point? Researchers are not sure, nor do we know or fully comprehend its implications. What is evident is that there is an ongoing political reliance on what could be described as the traditional provincial policy approach, whereby politicians and policy makers frame those living off reserve as "ordinary citizens" and no more. Reserve leaders who jealously guard their casino revenues from growing urban populations further divide civic and kinship communities. Some rightfully fear that by allowing revenues to leak out of the reserve community more members may abandon the reserve for the city if they have a nest egg to help ease their transition to urban living. Legally, urban Indigenous people have a right to vote in band elections and a right to not have their local membership compromised by living in the city.<sup>26</sup> This suggests that, when they occur, current practices of withholding gambling revenues from non-reserve resident band members are somewhat questionable.<sup>27</sup> Ongoing scrutiny of the Alberta data sets (the most comprehensive publicly available data sets detailing the impacts of First Nations gambling operations) suggest recent shifts are occurring: some First Nations are funneling revenue to non-reserve resident band members in the form of programs and other similar funding opportunities. However, in most cases, gambling revenues remain difficult to access for non-reserve resident band members.

Casino revenues have, among other things, improved reserve infrastructure and housing.<sup>28</sup> Unfortunately, financial success has permitted the federal government to slow and, in certain instances, forego the federal provision of analogous services by handing off these responsibilities to the beneficiary communities. These communities are then expected to overcome decades of federal neglect. By intimating that such actions are considered acceptable, both the media and observers have at times cunningly portrayed gaming First Nations as rich, greedy, and inauthentic.<sup>29</sup> This has perpetuated the belief that the pursuit of gambling dollars continues to trump local health and safety.<sup>30</sup> Initial concerns that host First Nations would experience increased crime have not occurred. For example, First Nations casinos have not become susceptible to

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<sup>25</sup> "Saskatchewan's 1<sup>st</sup> online casino shuts down" *CBC News* (9 October 2014), online: <[www.cbc.ca/news/canada/saskatchewan/saskatchewan-s-1st-online-casino-shuts-down-1.2793556](http://www.cbc.ca/news/canada/saskatchewan/saskatchewan-s-1st-online-casino-shuts-down-1.2793556)>

<sup>26</sup> Yale D Belanger, "First Nations Gambling and Urban Aboriginal Peoples: Does an Economic 'Fit' Exist?" in Yale D Belanger, ed, *First Nations Gaming in Canada* (Winnipeg: University of Manitoba Press, 2011) 140.

<sup>27</sup> *Ibid.*

<sup>28</sup> For Alberta, see Williams, Belanger & Arthur, *supra* note 16. Unfortunately a lack of research undermines our ability to effectively measure similar trends in other provincial jurisdictions. However, anecdotal media reports and grey literature suggest analogous trends occurring outside of Alberta.

<sup>29</sup> See Julie Pelletier, "The Noble Savage as Entrepreneur: Indian Gaming Success" in Julie Pelletier & Rebecca Gercken, eds, *Gambling on Authenticity: Gambling, the Noble Savage, and the Not-So-New-Indian* (East Lansing: Michigan State University Press, 2017) 33. See generally Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill: University of North Carolina Press, 2010).

<sup>30</sup> See generally Anne Flaherty, "American Indian Land Rights, Rich Indian Racism, and Newspaper Coverage in New York State, 1988-2008" (2013) 37:4 *American Indian Culture & Research J.* 53. For Canadian discussion, see generally Cathy Van Ingen, "Gambling on the Edge: The Moral Geography of a First Nations' Casino in 'Las Vegas North'" in Cheryl Teelucksingh, ed, *Claiming Space: Racialization in Canadian Cities* (Waterloo: Wilfred Laurier University Press, 2006) 153.

organized crime, patron fraud, or money laundering as predicted.<sup>31</sup> A very public incident of funding misappropriation at the Saskatchewan Indian Gambling Authority (SIGA) occurred in 2000, but was quickly resolved.<sup>32</sup> As for problem gambling, research shows no statistically significant differences in problem and pathological gambling rates prior to and following the introduction of casinos to Alberta's First Nation communities.<sup>33</sup> That said, additional funding—be that in the form of diverted gambling revenues or supplementary provincial or federal programs—has not been directed to First Nations problem and pathological gambling programs.

These positive outcomes aside, provincial officials continue to exercise oversight over First Nations casino operations, a process that dates to the development of the first five casinos to open in the 1990s (four in Saskatchewan, and one in Ontario) that each province quickly embraced. For example, Alberta, Ontario, and Manitoba's policies demanded that the host First Nations hire outside operators to manage the casinos, thus stripping control of daily operations from the First Nations.

Another, at times debilitating, policy demand was that First Nations confine casino construction to reserve communities. Even in Saskatchewan, where all but one of the six provincial First Nations casinos are located in an urban centre, the city casinos are sited on lands designated as urban reserves. Therefore, in one fashion or another, all First Nations casinos in Canada are located on reserve lands. Today the key point of contention hinges on the fact that most reserves (especially prairie First Nations) are located significant distances from larger urban centres. By restricting casinos to these communities, the provinces actively undermine First Nations' economic potential. Returns are dramatically less for those casinos located in or nearby smaller communities. In Saskatchewan, for example, the five urban reserve casinos are located in large towns and small cities and have thus seen marginal gains in recent years. Some First Nations casinos located outside of Calgary, Edmonton, Saskatoon, or nearby the Greater Toronto Area, perform well.<sup>34</sup> In contrast, one Ontario operation listed online as a casino is more akin to a large bingo hall, whereas three casinos (one in Alberta, two in Manitoba) remain break-even operations whose success remains largely dependent on external economic forces.

First Nations in Manitoba, and some in B.C., are challenging the provincial gambling monopoly. As with other host provinces, Manitoba demands that casinos be confined to reserves. This provision resulted in the erection of two casinos in isolated and economically limited locales.<sup>35</sup> In 2014, management representatives from one of these casinos—The Aseneskak Casino in The Pas—approached Manitoba officials seeking to relocate operations to Winnipeg, which

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<sup>31</sup> Jennifer N Arthur, Robert J Williams, and Yale D Belanger, "The Relationship between Legal Gambling and Crime in Alberta" (2014) 56:1 *Can J Criminology & Criminal Justice* 49.

<sup>32</sup> Yale D Belanger, "The Saskatchewan Indian Gaming Authority's Approach to Securing Public Trust, 2000-2004" (2010) 7:1 *J Aboriginal Economic Development* 69.

<sup>33</sup> Williams, Belanger & Arthur, *supra* note 11. See also Garry Smith, Cheryl Currie & James Battle, "Exploring Gambling Impacts in Two Alberta Cree Communities: A Participatory Action Study" in Yale D Belanger, ed, *First Nations Gaming in Canada* (Winnipeg: University of Manitoba Press, 2011) 118.

<sup>34</sup> Yale D Belanger, Robert J Williams, & Jennifer N Arthur, "Manufacturing Regional Disparity in the Pursuit of Economic Equality: Assessing Alberta's First Nations Gambling Policy, 2006-2010" (2012) 56:3 *Can Geographer - Le Géographe canadien* 11.

<sup>35</sup> Alison Dubois, Wanda Wuttunee & John Loxley, "Gambling on Casinos" (2002) 2:2 *J Aboriginal Economic Development* 56.



they and others describe as the only provincial market capable of generating significant revenue. Citing market saturation, Premier Brian Pallister denied the request. Then, in 2017, the province announced its decision to approve the Shark Club Gambling Centre. The Assembly of Manitoba Chiefs (AMC) responded by launching a lawsuit against the Manitoba government for restricting its development potential by refusing to consider its urban casino application. The \$888 million lawsuit claims Manitoba breached its promise to support First Nations gambling development, and is currently winding its way through the courts.<sup>36</sup> This lawsuit must be viewed within the longer history of tense and racially charged Indigenous-settler interface that led to the demise of a proposed First Nations casino project in Headingly, outside of Winnipeg, in the early 2000s,<sup>37</sup> and in 2008 arguably contributed to the downfall of a similar casino project planned for Brandon.<sup>38</sup>

The AMC lawsuit against Manitoba is not the first time that the Canadian courts have been petitioned to resolve First Nations gambling-related concerns. As previously noted, several early cases determined issues ranging from whether provinces had jurisdiction to negotiate with First Nations (they do) and whether First Nations have an inherent right to operate reserve casinos (they do not). In the AMC case, the court denied that gambling on reserve lands was ever deemed the subject of regulation or that anything resembling high-stakes gambling ever occurred. This decision is, of course, site specific and consequently must be interpreted according to the location and the facts presented, but for now it remains the most relevant decision to guide our legal interpretation.<sup>39</sup> More recently, the courts have been called upon to resolve revenue-related disagreements and to clarify labor disputes. Ontario courts resolved one complaint by denying the Mnjikaning First Nation's assertion that they were entitled to a thirty-five percent share of net revenues, in perpetuity, from CasinoRama, located on their lands.<sup>40</sup> A second suit led to a negotiated agreement in 2008 that resulted in the controversial Win-Tax's repeal.<sup>41</sup>

In Saskatchewan, the Federation of Sovereign Indian Nations (FSIN)<sup>42</sup> refused to acknowledge that provincial laws applied to casino workers. The Saskatchewan Court of Appeal followed by ruling the province retained jurisdiction over unionized employees at First Nations casinos. Not unlike CasinoRama's successful attempt to halt the Teamsters from labor organizing, the appeals court suggested that the FSIN was engaged in a union busting scheme (even through

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<sup>36</sup> *Assembly of Manitoba Chiefs v The Government of Manitoba*, Manitoba Court of Queen's Bench, Court file CI17-01-10731, statement of claim filed October 17, 2017. See also Kristin Annable, "Manitoba Chiefs Suing Government for almost \$1b Over Denial of Winnipeg Casino," *CBC News* (19 October 2017), online: <[cbc.ca/news/canada/manitoba/winnipeg-casino-lawsuit-1.4361557](http://cbc.ca/news/canada/manitoba/winnipeg-casino-lawsuit-1.4361557)> [perma.cc/S6SL-SMGY].

<sup>37</sup> Belanger, *Gambling with the Future*, supra note 3, ch 8.

<sup>38</sup> See for example "Brandon Voters Reject Casino," *CBC News* (13 March 2008), online: <[cbc.ca/news/canada/manitoba/brandon-voters-reject-casino-1.705760](http://cbc.ca/news/canada/manitoba/brandon-voters-reject-casino-1.705760)> [perma.cc/4HW2-RL2F].

<sup>39</sup> *Ibid*; Bradford W Morse, "Permafrost Rights: Aboriginal Self-Government and the Supreme Court in *R v Pamajewon*" (1997) 42:4 McGill LJ 1011; John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 161-180.

<sup>40</sup> *Chippewas of Mnjikaning First Nation v Chiefs of Ontario*, 2010 ONCA 47 [*Chippewas v Chiefs*].

<sup>41</sup> The Win-Tax was first implemented in 1996 and by 2007 was redirecting roughly \$100 million annually from the province's First Nations and into Ontario's treasury. See Ontario First Nations Limited Partnership. *Her Majesty the Queen in Right of Ontario and Ontario Lottery and Gaming Corporation and Ontario First Nations (2008) Limited Partnership and Ontario First Nations Limited Partnership, Gaming Revenue Sharing and Financial Agreement*, online: <[ofnlp2008.org/docs/4\\_gamingrevenuesharingandfinancialagreement.pdf](http://ofnlp2008.org/docs/4_gamingrevenuesharingandfinancialagreement.pdf)> [perma.cc/8R65-3ZF8]; Chinta Puxley, "First Nations Get \$3B from Gambling Revenue," *Toronto Star* (8 February 2008), online: <[thestar.com/news/canada/2008/02/08/first\\_nations\\_get\\_3b\\_from\\_gaming\\_revenue.html](http://thestar.com/news/canada/2008/02/08/first_nations_get_3b_from_gaming_revenue.html)> [perma.cc/DXR7-KTPX].

<sup>42</sup> The FSIN was formerly known as the Federation of Saskatchewan Indigenous Nations.

the majority of would-be union members were themselves band members).<sup>43</sup> A similar event occurred after the Ontario Labour Relations Board determined that the Mississaugas of Scugog Island First Nation was not permitted to establish a local labor code to the exclusion of the Canada Labour Code. Dissatisfied with the ruling, the chief and council appealed to the Ontario Divisional Court seeking a judicial review to answer the question: did the Mississaugas have the legal right to “enact its own labour code to govern collective bargaining in relation to a commercial undertaking that operates on reserve lands?” The appeal ultimately failed, and the Mississaugas of Scugog Island First Nation were not granted a judicial review.<sup>44</sup>

## II. CONCLUDING THOUGHTS

This brief survey of the last two decades of operations illustrates that the First Nations gambling industry generates revenues that, while representing only a fraction of what American Indian operations produce, serve First Nations well.<sup>45</sup> Housing and essential infrastructure have improved in many communities that have likewise strengthened their political and economic influence. Casino employee earnings in Ontario and Saskatchewan nearly match operational net revenues, resulting in greater wealth circulation and distribution, and improved community development potential.<sup>46</sup> Despite these and other positives, revenues from casino gambling are not equally realized across First Nations in Canada. This is because of varied profitability of casinos and different revenue sharing arrangements.<sup>47</sup> For the most part Alberta, Saskatchewan and Ontario First Nation casinos perform well, while similar operations in B.C. and Manitoba struggle to gain a foothold. Definitive research has yet to substantiate which economic models are best suited to specific regions or how neighboring non-Indigenous communities benefit.<sup>48</sup> The same can be said about some of the more contentious issues, such as problem gambling and casino-related crime, that to date have been fairly well investigated but that nevertheless demand additional complementary research that breaks away from emphasizing regional concerns to instead concentrate on producing larger national, comparative studies.<sup>49</sup> Whereas the provinces tend to

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<sup>43</sup> See Yale D Belanger, “Labour Unions and First Nations Casinos: An Uneasy Relationship” in Yale D Belanger, ed, *First Nations Gaming in Canada* (Winnipeg: University of Manitoba Press, 2011); see also Brock Pitawanakwat, “Indigenous Labour Organizing in Saskatchewan: Red Baiting and Red Herrings” (2006) 58 *New Socialist* 32.

<sup>44</sup> *Mississaugas of Scugog Island First Nation v National Automobile, Aerospace, Transportation and General Workers Union of Canada*, 2007 ONCA 814. See also Yale D Belanger, “Indigenous Workers, Casino Development, and Union Organizing” in John Peters, ed, *Boom, Bust, and Crisis: Labour, Corporate Power and Politics in Canada* (Halifax: Fernwood Publishing, 2012) 144.

<sup>45</sup> Pelletier, *supra* note 29.

<sup>46</sup> Belanger, *supra* note 14.

<sup>47</sup> In Manitoba, on two separate occasions, community plebiscites were held to ascertain citizen support for First Nations casino construction, and in each case a negative voter outcome led to the respective projects’ termination. In terms of local or regional challenges to First Nations casino operations, little overt resistance to operations in Manitoba is evident at this time. The same can be said of First Nations casinos located outside of Manitoba. However, to date, no work academic work exploring these trends has been accomplished.

<sup>48</sup> See Belanger, *supra* note 14 for a summary of the literature.

<sup>49</sup> See for example Robert J Williams, Rhys Stevens & Gary Nixon, “Gambling and Problem Gambling in North American Indigenous Peoples” in Yale D Belanger, ed, *First Nations Gaming in Canada* (Winnipeg: University of Manitoba Press, 2011) 166; Arthur, Williams & Belanger, *supra* note 14; Yale D Belanger, Robert J Williams & Yvonne Prusak, “Tracking the Westernization of Urban Aboriginal Gambling in Canada’s Prairie Provinces” (2016) 17:1 *International Gambling Studies* 1; Robert J Williams, Yale D Belanger & Yvonne Prusak, “Gambling and Problem Gambling among Canadian Urban Aboriginals” (2016) 61:11 *Canadian Journal of Psychiatry* 724.

still depict casinos as niche operations, albeit critical to local First Nations development, First Nations continue to cite gaming development as an inherent right that is traced to their status as nations.

A good starting point would be to pursue qualitative research with former and current provincial officials to determine whether the provincial “intent” was to truly aid First Nations. Despite confronting various social, legal, economic, and legal barriers to success, the First Nations have turned most of these operations into effective producers of capital that continue to fuel business development, infrastructure improvements, and local progress. In this regard, how could the current national reconciliation dialogue, which promotes renewed Indigenous-state relationships, inform this larger discussion about the role that revamped gambling policies could play in improving First Nations development potential? The picture we currently have regarding First Nations casinos in Canada points to some positive outcomes that, if strategically exploited, could advance new economic and political relationships to the benefit of all the major actors.

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