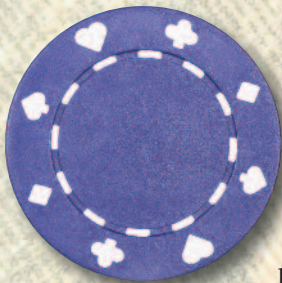


FIRST NATIONS CASINO GAMING IN CANADA AND THE COMING RECESSION

By Michael D. Lipton Q.C. and Kevin J. Weber

In 2004 Sheila Fraser, then Canada's auditor general, presented a report on the endemic problems of poverty among First Nations people in Canada (the Fraser Report). She reported that First Nations "need economic development to close the gaps in employment and income between Aboriginal and non-Aboriginal people in Canada. Institutional arrangements make a significant difference between remaining poor and achieving sustainable economic success."



In the course of addressing how economic development could alleviate Aboriginal poverty, the Fraser Report described 10 barriers that have traditionally stymied attempts at economic development on First Nations reserves. These barriers included restricted Aboriginal access to capital, the slow project-approval processes of the federal government (the level of government usually involved with First Nations projects) and a lack of resources to build institutional arrangements in a timely fashion.

Dr. Harold Wynne, a noted gaming researcher from the University of Alberta, took notice in 2007 that these barriers were either alleviated or removed entirely when the economic development project was a casino: casino investment capital is readily available; casino development projects require the approval of provincial governments, which approve projects more quickly and are less risk-averse than their federal counterparts; and there is an abundance of resources to assist in building institutional relationships when the goal is the establishment of First Nations casinos.

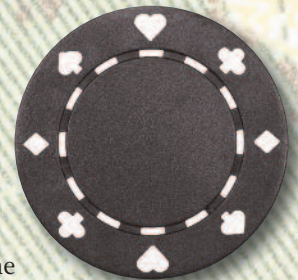
It is, however, open to question whether these advantages will continue to hold true in more trying economic times. If the drop in gaming revenues seen across the world is replicated in Canada, the capital and resources that have been available to First Nations casino projects may begin to

dry up. Provincial governments may become more risk-averse to approving casino projects than has traditionally been the case.

Proposed Casino Near Brandon, Manitoba

The First Nations casino project most recently given the green light in Canada provides an interesting case study. On Oct. 30, 2008, the government of Manitoba and the Assembly of Manitoba Chiefs (AMC) chose a site for a new First Nations casino in the rural municipality of Elton, just north of the city of Brandon. The land on which the casino is to be built is to be converted to reserve status, and this site was chosen after Brandon voters rejected the proposed casino development within the city itself in two different plebiscites.

The impetus for a Brandon-area casino came from a study conducted in August 2007 on behalf of the AMC and the province of Manitoba by gaming industry consultants HLT Advisory Inc. The Manitoba First Nations Gaming Market Study recommended the establishment of a First Nations-owned casino in the Brandon market area. The AMC and Manitoba agreed to implement this recommendation and began to seek an optimum site in the market area. After the plebiscites made it impossible to situate the proposed casino in the city of Brandon itself, the AMC and Manitoba established the Southwestern Region Casino Site Selection Committee to oversee a site recommendation process, which resulted in the selection of the site in the rural municipality of Elton.



Much has changed since August 2007. With casino revenues dropping worldwide, it is possible that the assumptions upon which the study based its recommendation for a casino in the Brandon area are no longer valid. Indeed, the study made viability of the casino contingent upon a number of factors,

and the recommendation that a casino be established in the area was far from unqualified.

The study stated that, based on data available as of August 2007, the Brandon market area could support a small casino. The study cautioned, however, that such a casino would have minimal growth prospects unless it could somehow extend its market reach beyond a 100-kilometre radius. The study acknowledged that the ability of a small casino to extend its market reach this far is not well understood in Canada, and that it may require the addition of ancillary facilities (hotel rooms, food and beverage, entertainment, etc.) to help increase its market appeal.

The study did not envision the casino having to be built in a rural municipality outside of Brandon. It certainly did not envision public opinion being marshaled against the casino through two unsuccessful plebiscites that foiled attempts to locate it within Brandon. Even with the casino being established within Brandon, the study cast doubts upon the ability of the casino to grow. When one factors in the effect of the global economic slowdown, it is not alarmist to suggest that the Brandon area may now be a more marginal casino market than appeared to be the case in August 2007. At the very least, an updated study for this particular First Nations casino may be advisable.

The Effect of Marginal Casinos on the First Nations Casino Gaming Debate

The possibility of the Brandon-area casino becoming a marginal economic project raises larger questions for First Nations gaming in Canada. The idea of casino gaming as a tool to promote economic development for First Nations has long been something of a paradox. If some of the First Nations casinos become marginal during harder economic times, it may bring to the forefront a dilemma that has long lingered beneath the surface.

It is well documented that Aboriginal people in Canada demonstrate a greater propensity to develop problem gambling issues than non-Aboriginal people. A Statistics Canada survey taken in 2002 showed that among non-Aboriginal persons engaged in gaming, 94 percent were “non-problem” in their behavior, with the other 6 percent split between “low-risk,” “high-risk” and “problem” gamblers. By contrast, a full 18 percent of Aboriginal persons engaged in gaming showed some degree of risk: 7 percent low-risk, 8 percent high-risk and 3 percent problem gamblers. Findings from surveys taken in Alberta and Saskatchewan in 2001 similarly showed higher risks for Aboriginal people engaging in gaming.

As First Nations casinos become more marginal, it may well be that the costs to some Aboriginal communities begin to exceed the economic development benefits provided by casino gaming. The way to right this balance will be to reduce the costs, rather than to abandon the benefits.

In this connection, serious thought will have to be given to prescriptions for action in the area of risky and problem gambling in the Aboriginal context. Wynne has proposed the formation of “gambling health coalitions” of concerned people from within each First Nation community, with a mandate to demand full disclosure from casino operations on an ongoing basis, to communicate with the local community regarding those findings, and to evaluate casino activity. With this information, these coalitions would develop safeguards for the community to prevent and treat risky and problem gambling, conduct community research, and lobby for changes to casino operations where necessary.

Through a cooperative model that stresses direct involvement with the First Nations communities affected by casino gaming, the provinces and First Nations may be able to pursue economic development through casino gaming in a manner that provides future benefits for these communities while minimizing social costs and inequalities. The fate of some casino operations may hinge upon the degree to which serious movement is made toward such a cooperative model.

More challenging economic times ahead may provide an opportunity to improve the First Nations’ casino gaming model across Canada. Falling casino revenues could be the impetus needed to spur the development of better ways to minimize the potentially negative impacts of casino gaming so as to retain the balance between benefits and costs in a way that is respectful of the experience of each First Nations community. It is up to the First Nations communities to take the initiative to ensure that this beneficial outcome occurs by maintaining vigilance over both the positive and negative effects of casino gaming on their people. □

Michael D. Lipton Q.C. is a Founding Member and Immediate Past-President of the IMGL. He is a partner in Dickinson Wright’s Toronto office. He can be reached at (416) 367-0874 or mlliptonqc@dickinsonwright.com.

Kevin J. Weber is a member of Dickinson Wright’s Toronto office. He can be reached at (416) 367-0874 or kweber@dickinsonwright.com.