

Buddy Can You Spare \$100?*

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This paper, an examination of sections 206 and 207 of the *Criminal Code*¹ and their application to “legal” lotteries, could just as easily be entitled “Buddy, Could You Spare a Few Hours?” Understanding the basics of Canadian promotional law requires time and patience. To minimize your investment, we will leave Quebec aside. Its *Lotteries Act*² and the regulatory scheme administered by the Régie des lotteries du Québec would triple the length of this paper. Fortunately Quebec is the only province to have focused on contests as a money-making proposition. Every contest open to Quebec residents is taxed on a scale of 0.5 per cent to 10 per cent of the value of the prizes offered. This tax and the very real administrative problems of dealing with the Régie des lotteries mean that many contests specifically exclude Quebec residents.

Contests offered in the rest of Canada are governed by the *Competition Act*³ and the *Criminal Code*.

The *Competition Act* provisions are relatively straightforward. Apart from a general prohibition in Section 52 against “false or misleading” advertising, there is a specific section that deals with promotional contests. Section 59 makes it an offence to conduct a contest, lottery or game of chance or skill or mixed chance and skill, for the purpose of promoting the sale of a product of any business interest unless:

1. the contest, lottery or game would otherwise be lawful;
2. there is adequate and fair disclosure of the number and approximate value of the prizes, of the area or areas to which they relate (i.e., regional allocation of prizes) and of any fact that affects materially the chances of winning;
3. distribution of prizes is not unduly delayed; and
4. selection of participation or distribution of prizes are made on the basis of skill or on a random basis.

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These requirements do not complicate the lives of contest promoters except for the “adequate and fair disclosure” requirement. The case law on this provision is beyond the scope of this paper; however the Marketing Practices Branch of Consumer and Corporate Affairs provides the following rule of thumb: disclosure should be made in a reasonably conspicuous manner at a time before the potential contestant is inconvenienced in some way or committed to the sponsor’s product or to the contest.

The real difficulty with Canadian promotional law lies in Sections 206 and 207 of the *Criminal Code*. These sections deal with “illegal” lotteries and games of chance and their many permutations. Sections 206 and 207 were drafted by a particularly obtuse drafter. They contain several internal contradictions and are difficult to understand even after many close readings. (Contest promoters and their lawyers have developed certain rules of interpretation for Section 206.) In fact, despite the language of Section 206, it is relatively easy to conduct a “legal” lottery or contest in Canada. We will, therefore, deal with the basic rules for legal “lotteries” in terms of a general analysis of Section 206, the level of skill required in a lottery or game of chance and the question of a purchase requirement.

A. Analysis of the *Criminal Code* Lottery Provisions

Section 206 of the *Criminal Code* sets out various combinations of elements which must be present before a contest becomes an illegal lottery (and therefore prohibited by the *Criminal Code*). If any of the elements in any of the combinations is absent, the contest is legal.

The first combination of elements prohibited by Section 206 is:

1. A disposition of property (goods, wares, merchandise, cash, etc.) in a situation where no purchase is required; and
2. by any mode of chance.

The courts have determined that where a legitimate skill-testing question must be answered correctly before a prize (property) is awarded (disposed of), the second element (mode of chance) is eliminated. The rationale for this determination, which has been consistently upheld by the courts, is that the awarding of property to a contestant who has been required to demonstrate a skill (e.g., correctly answering a skill-testing question) involves a game of mixed chance *and* skill. The *Criminal Code* prohibition with respect to this combination of elements only applies to games of pure chance.

The second combination of elements which would constitute an illegal lottery is:

1. A disposition of “goods, wares or merchandise” by way of a game of chance or a game of mixed chance and skill; and

2. in which the competitor pays money or other valuable consideration in order to participate.

Again, in order to conduct a legal contest, one of the elements must be eliminated. One manner in which this can be done is to award prizes which do not consist of “goods, wares or merchandise”. A strict construction of this phrase, which does not include the word “property” as used in other lottery sections of the *Criminal Code*, indicates that, in this situation, prizes consisting of cash (or cash equivalents such as cheques, money orders and possibly gift certificates), trips or services (such as a one-year membership in a health club) could be awarded. However, if one or more of the prizes is “goods, wares or merchandise”, the prohibition applies.

Obviously, the purchase requirement could be eliminated. This would, however, bring the contest under the first combination of prohibited elements noted above. The actual prize, whether it was goods or cash, would not matter in that case, but a skill-testing question would still be required.

If the advertiser wants to have a purchase requirement *and* award prizes consisting of “goods, wares or merchandise”, the advertiser must eliminate the remaining element of a game of chance or a game of mixed chance and skill.

If a purchase is required to enter a contest and the prizes consist of “goods, wares or merchandise”, persons eligible to win must be determined through a random draw rather than a “game”. The proposition that it is legal to hold a contest involving a purchase requirement and “goods, wares or merchandise” prizes awarded through a random draw has not been fully tested in the courts. The better part of caution dictates that all such contests should provide a non-purchase means of entry. In all promotional contests, if the prizes are cash, trips and/or services, purchase of a product or service arguably can be a requirement of entry eligibility. A skill-testing question is a basic requirement for all contests. If these basic requirements are met, the promotion would not violate the *Criminal Code*.

B. Level of Skill Required in Skill-Testing Questions and Other Displays of Skill

As noted above, under Section 206 of the *Criminal Code* it is illegal to conduct any scheme for the disposal of property by “any mode of chance whatsoever”. This section prohibits contests which “dispose of property”, i.e., award prizes of any description, on a purely random basis. Skill-testing questions, or other displays of skill, must be introduced so that winners are not selected merely by chance.

There are several tests for the level of skill that must be required of contestants in order to comply with Section 206. Unfortunately, these tests are not always consistent. There seem to be two factors which the courts have emphasized when they have required a particular level of skill:

1. Whether the “skill requirement” is merely a device to camouflage an illegal scheme to dispose of property by chance. In *Regina v. Robert Simpson (Regina Ltd.)* (1958), 121 C.C.C.39 (Sask. C.A.), the Court concluded that a Simpson’s promotion involved such a sham. The “skill” required of contestants in order to win a new car was to answer simple questions about the contents of a Simpson’s flyer. (Contest organizers had telephoned potential winners in advance to make sure that they had the flyer in hand.) Martin C.J.S. concluded that all that was required of winners was:

(1) That they must be able to see, to speak and to hear; (2) that they must be able to understand, to read and to speak English; (3) that they must have such control of themselves as to be able to answer these simple questions when asked. (at page 52)

He concluded that those requirements did not constitute “skill” according to the Oxford English Dictionary definition: “capable of accomplishing something with precision and certainty; practical knowledge in combination with ability; cleverness and expertness”. He commented that “such elementary knowledge is the accomplishment of more than 90 per cent of our adult population and that those who have not this ability are so far down the scale of our educational standards as to be a negligible proportion of our population”. (at page 53) This implies a secondary, and somewhat elitist, definition of “skill”.

2. Whether the “chance” portion of a contest involving chance and skill precedes the test of “skill”.

Thus in *Regina v. Wallace* (1954), 109 C.C.C. 351 13 W.W.R. (N.S.) 44 (Alta S.C. App. Div.) which held that potato-peeling was not a sufficient skill in the circumstances, the Court’s principal concern, as stated in the headnote, was that the vast majority of contestants would be eliminated by chance alone:

The outstanding and controlling factor of the scheme was that, of the many thousands of tickets contemplated to be sold to provide the money for the arena, only 20 contestants for the prizes of 10 automobiles were to be drawn by lot, or some other pure mode of chance; the remaining thousands being thus eliminated with no opportunity to enter this purported contest of skill.

The Appeal Division, in fact, conceded “that skill is required to peel a potato properly” but it held that if most contestants were eliminated by chance, it was unlikely that any of the final contestants would possess “such required skill [in order] to make the competition a real one”.

Similarly in *Reference re Voluntary Tax Plan of City of Montreal*, [1979] 4 c.c. 326, 6 D.L.R. (3d) 411, [1969] Que. Q.B. 561 [affirmed, [1970] 2 C.C.C., 10 D.L.R. (3d) 315, [1970] S.C.R. 322] the Courts held that the ability to answer questions about the City of Montreal from material supplied to contestants was not a contest-saving “skill” in the circumstances:

I am not prepared to concede that a plan that involves any luck can be saved by the introduction as a last step, of a device, a gimmick, that at the most involves a degree of skill that must be qualified as minimal. (per Casey J. at p. 331)

While the courts will always be on the lookout for shams designed to circumvent the *Criminal Code*, it is arguable that the second factor discussed above—that the element of skill precede or coincide with the element of chance—is based on a mistaken view of the *Criminal Code* provisions (which do not specify an order for these two elements) and does not accord with the majority of decisions in this area. In practice, many, if not most, promotional contests pre-select potential winners by pure chance—usually a draw—before requiring a display of “skill”.

By and large, the courts have not required the demonstration of a great deal of skill. The reasoning of Smithe L.J. in *Hall v. Cox*, [1899] 1 Q.B. 198, 68 L.J.Q.B. 168 has been typical. In that case, contestants were required to guess the number of births and deaths in London in a given period. The Lord Justice stated:

The selection of the numbers for which, if correct, the prize is offered did not depend on mere chance. It depended largely upon chance, but not entirely, and the cases show that to constitute a lottery it must be a matter depending entirely upon chance. Here an element of statistical inquiry entered into the competition. (at p. 169)

This reasoning appears in a long line of “guessing” cases:

Regina v. Dodds (1884), 4 O.R. 390—guessing the number of beans in a jar;
Regina v. Johnston, [1904] 7 C.C.C. 525—guessing the votes that will be cast in an election;
Dunham v. St. Croix, [1897] 34 N.B.R. 243—guessing the weight of a block of soap;
Roe v. the King, [1949] S.C.R. 652—guessing the time that a barrel will take to travel a certain distance on the Red River;
Regina v. Regina Agricultural Exhibition, [1932] W.W.R. 131 (Sask. C.A.)—guessing the average temperatures of seven named cities on a certain date *and* the attendance at the Regina Fair on certain future dates.

In the *Regina Fair* case, Martin J.A., at p. 138, employs the following test:

...once it is admitted that a person of better judgment and better powers of observation might make a closer estimate, it is at once plain that skill plays a part, and the matter cannot be a “mode of chance”.

In *Roe*, Tascherau J. concluded that knowledge of Red River navigation and of mathematics would help in making a correct estimate and that therefore skill was involved.

To the extent that the cases can be reconciled, it would seem that the “skill” required to comply with the *Criminal Code* is fairly minimal. It only needs to be something which one person, through experience, education or natural aptitude

might be able to do better than another. Thus even peeling potatoes would be considered a skill in circumstances different from those in *Wallace*. The only “skills” which the courts will not accept are those rubber-stamp attempts to comply with the *Criminal Code*—such as Simpson’s contestants being asked to read portions of the store’s flyer—which the average person could accomplish without any special aptitude, training, effort or exercise of the mind. This is, or may be, particularly true if the final contestants who are being asked to demonstrate the “skill” have already been selected by chance alone.

There is one well-known case—*Regina v. Johnson* (1902), 6 Can. C.C. 14, Man R. 27— which was arguably wrongly decided by the jury which held that there was no skill involved in shooting a turkey at 50 yards in five shots. Even if this was a common ability in turn-of-the-century Manitoba, the ad implicitly stated that it was not a universal ability—and therefore should have been considered a “skill”—by the inclusion of the following statement: “In the case of a lady she may name a substitute to shoot for her”.

The majority of “skill-testing questions” used in present day contests involve relatively simple mathematical problems. Provided that these problems comply with the aforementioned definitions of “skill”, i.e., that they require an ability or degree of knowledge that is more than “elementary” and less than “universal” such that certain contestants could be expected to answer incorrectly (a problem such as “ $2 + 2 = ?$ ” would probably be considered a “sham” because the vast majority of adult contestants could answer it easily), they should take the contests out of the *Criminal Code* prohibition. There is one unreported case that deals with the use of mathematical problems: *Regina v. The Canada Trust Company* (July 1984, Atla. Prov. Ct.). Plomp J. made the following comments in holding that the problem in question required sufficient “skill”:

The normal person in our community today does not require a constant use of mathematics to compete in society. It may or may not be true that the majority of residents of Alberta could answer the mathematical question, but it would appear from the Oxford [Dictionary] definition of skill that in order to answer the question it would require precision and certainty, practical knowledge in combination with ability.

Regardless of the different tests of “skill” enunciated by the courts, there is one over-riding concern: that the contest not be ruled by chance alone. Therefore, if the purported “skill” is one that every potential contestant possesses, there is no means of differentiating among contestants apart from chance. Clearly, then, any test of “skill” must involve the possibility that some contestants may not be able to pass it. This is a fairly minimal requirement. It does not require the sponsors of promotional contests to discourage potential entrants with difficult questions or displays of unusual skills. It does, however, require more than reading from supplied material or responding to questions that *every* normal adult could answer correctly.

C. Can You Have a Purchase Requirement?

Subsection 206(1)(f) prohibits the disposition of “any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant pays money or other valuable consideration”.

This subsection raises the following questions:

- a) what does “goods, wares and merchandise” include?;
- b) what is “other valuable consideration”?; and
- c) how do you provide a non-purchase means of entry?

Subsection 206(1)(f) can be addressed so as to allow a purchase requirement, if a contest’s prizes do not consist of “goods, wares and merchandise”. Clearly prizes consisting of cash (or cash equivalents such as cheques), services (such as free car repairs) and trips do not fall within a strict construction of the phrase “goods, wares and merchandise”. These prizes are commonly offered in cases where contest sponsors want to insist on a purchase as a condition for entering a contest. The more difficult case is a prize consisting of a gift certificate. While this is technically not “goods, wares and merchandise”, it is intended to be converted into merchandise and often specific merchandise, e.g., “\$300 Gift Certificate to be used for Mary Kaye Cosmetics”. The conservative view is that gift certificates straddle the “goods, wares and merchandise” line and should be avoided in contests involving a purchase requirement.

The phrase “other valuable consideration” is considered to apply in circumstances where the purchase of goods or services is required to enter a contest. This requirement is usually in the form of an entry ballot or scratch’n’win card which is only available in a particular package or a requirement that proof of purchase accompany the entry form.

In the event that a sponsor is offering “goods, wares and merchandise” as prizes in a contest that hinges on a purchase requirement, there must be a non-purchase means of entry. If the official entry ballot or scratch’n’win card is distributed in-pack, the sponsor must provide an address from which the ballots or game pieces can be obtained with a stamped self-addressed envelope at no cost (beyond the cost of two stamped envelopes). If the entry ballot must be accompanied by a proof of purchase, such as the product’s UPC Code, the sponsor must accept facsimiles of the proof of purchase. Although the rate of non-purchase participation is generally low, sponsors often place further hurdles in the path of non-purchase entries, partly to discourage the growing number of “professional” contestants. Thus, facsimiles of proofs of purchase are required to be “hand drawn” (as opposed to mechanically reproduced) and non-purchase entries must often be accompanied by a short essay. Once again, the conservative view is that too many hurdles in the path of non-purchase entry can be risky. It could certainly

be argued that difficult means of non-purchase entry constitute a “sham” and that such a contest effectively involves an illegal purchase requirement.

Brother Can You Spare \$100 To Win A Porsche?

Section 207(b) of the *Criminal Code* allows charitable and religious organizations the best of all possible worlds. They can sell contest tickets at any price and offer enticing “goods, wares and merchandise” prizes such as jewelry, automobiles, computers and stereo equipment. This section exempts charitable and religious organizations from Section 206 provided they are authorized to conduct the “lottery” by “a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof” and provided proceeds from the lottery are used for a charitable or religious object.

The difficult question is whether this exemption is worth pursuing. Authority to issue licences for most types of “lotteries” is delegated to the municipalities. So licences must be applied for, municipality by municipality, in the case of a large-scale contest or lottery. The municipalities generally take time to issue licences. If the contest is unusual, they may want to examine its structure. If there have been many such licences issued within a short time, the municipality may decide that an arbitrarily decided quota has been filled and refuse to issue the licence. It may take several months before any kind of response is received. In addition, municipalities impose an administration or licensing fee, sometimes based on the number of tickets sold, which may amount to thousands of dollars. Finally, once a licence has been obtained and the fees paid, there are usually many administrative details involved in running a licensed lottery.

Brother Do You Really Want To Spare \$100 To Give Away A Porsche?

The following example describes the mechanics and problems of running the licensed charitable lottery known as a “Nevada Lottery”.

Nevada lotteries or “break open ticket” lotteries are a lucrative means of generating revenue for organizations with a charitable or religious mandate. They provide a “controlled” method of issuing lottery tickets where the revenue and prize payouts can be determined beforehand. Nevada lottery tickets are sold in unit groupings and within each unit there are a specific number of tickets. As a result, the number of winning tickets can be predetermined for control and certainty. There are at present three types of unit groupings available in Ontario: Junior, Regular and Super Nevada units.

The *Junior Unit* contains 1664 or 1668 tickets. The price of each ticket is 25 cents. The gross revenue from ticket sales for the unit is \$416 or \$417 respectively. There are 224 winning tickets per unit with a total prize payout of \$284. Thus, the sale of a unit of Junior Nevada Lottery tickets will generate a guaran-

ted \$133 or \$132 in gross income. The Ministry of Consumer and Commercial Relations licence fee is five dollars per unit.

The *Regular Unit* is similar to the Junior Unit in that there are 1664 or 1668 tickets with 224 winning tickets per unit. However, the price per ticket is doubled to 50 cents per ticket and consequently the gross unit revenue also doubles to either \$832 or \$834 depending on the number of tickets per unit. The total prize payout is also increased to \$600. This leaves a gross income of \$234 or \$232 per unit sold. The licence fee in this case is \$10 per unit.

The *Super Unit* is the largest of the Nevada lottery schemes available in Ontario. It contains 2184 tickets per unit with a ticket price of 50 cents per ticket. The gross revenue generated from the complete sale of this type of unit is \$1092. The number of winning tickets is either 224 or 228. The prize payout remains, however, at \$800. This leaves a gross income of \$292 per unit sold. The licence fee is \$12 per unit.

It should be noted that the licensing fee stated for each type of Nevada lottery applies only in cases where the organization seeking the licence is not doing so under a province-wide mandate (e.g., a local amateur sporting association). If the organization is seeking a Nevada lottery licence under a province-wide mandate then the applicable licence fee is \$25 per unit regardless of the type of lottery unit chosen.

The value of any single prize awarded is not permitted to exceed \$100 for any type of lottery unit.

Who Is Eligible To Run A Nevada Lottery?

First and foremost, for an organization to even begin to be considered for a Nevada Lottery licence it must be in compliance with Section 207 of the *Criminal Code*. In the case of charitable or religious organizations, this means that the Lieutenant Government in Council or such person or authority as specified by the Lieutenant Governor in Council must issue a lottery licence to the organization before it will be permitted to run a lottery. In addition, the lottery must be used specifically for a religious or charitable object or purpose.

If an organization is in compliance with Section 207 of the *Criminal Code* then the Ministry of Consumer and Commercial Relations (MCCR) will determine if it is eligible for a Nevada Lottery Licence. An organization may be eligible for a lottery licence if it:

- (1) qualifies as a charitable or religious organization;
- (2) is responsible for the conduct and management of the lottery scheme; and
- (3) uses all the proceeds derived from the lottery for a charitable or religious object or purpose.

The MCCR finds an organization charitable “if no part of its income is paid or otherwise made available for the personal benefit of any of its proprietors, members or shareholders and if one of its primary aims includes projects or undertakings having a charitable object or purpose”.

Generally, MCCR accepts charitable or religious objects consistent with any of the following:

- (1) relief of poverty;
- (2) advancement of religion;
- (3) advancement of education;
- (4) service of a charitable purpose beneficial to the community.

With respect to (4), the MCCR has also maintained that medical research and treatment programs of a truly public nature are serving a charitable purpose beneficial to the community and therefore are eligible for a Nevada Lottery Licence. It should be noted that as long as an organization’s principal aims and objectives include the necessary element of benefit to the community under this category, then its organizational structure is secondary.

Social clubs, professional associations, recreational and adult sports, individual teams, politically-oriented organizations or trade unions which promote the private interests of their members do not usually qualify as charities.

How To Apply For A Nevada Lottery Licence

Forms

An application for a Nevada Lottery licence should be on the prescribed form (Provincial Nevada Licence Application). The forms are available from the Ministry of Consumer and Commercial Relations in Toronto.

In addition to filling out the form, the lottery applicant will also have to submit the following documentation:

- (1) a list of all the local chapters of the organization which are currently selling Nevada Lottery tickets;
- (2) the name, address, municipality and lottery licence number for each location where tickets are being sold; and
- (3) a sample of the ticket to be sold.

Deficient applications will be returned to the licence applicant with a Notice of Deficiency specifying the problem(s) with the application.

It should also be noted that signing officers on the Nevada Licence application form must be 18 years of age or older.

Terms and Conditions of Licence

There are 31 clauses in the *Terms and Conditions under which the Break-Open Ticket Licence is Issued* form, which is issued by the MCCR. Essentially this document sets out the maximum licensing period, the types of tickets that can be sold (Junior, Regular and Super Units), the manner in which the tickets can be sold and the treatment of the proceeds from the sale of tickets. The clauses appear to be standard contractual clauses that are generally self-explanatory; however the following clauses are of particular concern:

Clause 3:

A Break-Open Ticket Licence shall only be issued to a charitable or religious organization which owns or regularly occupies premises at which the tickets will be offered for sale.

Clause 4(b):

The designated location specified pursuant to this section shall not be a public, commercial, retail location, nor a location licensed by the L.L.B.O. as a public tavern or beverage room.

Clause 17(b):

The actual handling or selling of tickets shall not be delegated to any organization, company, entity, or to any other person who is not a bona fide member of the licensee.

If a charitable or religious organization does not have locations in every municipality in Ontario, it could be precluded from selling Nevada tickets there or allowing another party to sell the tickets for it. *The recent changes in lottery licensing policies now allow Nevada applicants to be exempted from clauses 3, 4(b) and 17(b).*

In *Interpretation Bulletin 007* the Ontario minister authorizes the amendments to the existing licensing policies which now allow charitable organizations having a proven provincial mandate to be eligible to sell tickets in more than one municipality. While the MCCR is responsible for the issuing of the province-wide licence, the local municipal council is ultimately responsible for deciding whether a particular organization is exempt from clauses 3, 4(b) or 17(b) of the application. This *Bulletin* sets out the conditions that the local municipalities should look for in permitting the sale of Nevada lottery tickets in their jurisdictions. They are as follows:

- (1) The local municipality must determine that the organization seeking to sell Nevada Lottery tickets in its jurisdiction has received a provincial Nevada licence from the MCCR. The MCCR generally provides the organization with a letter confirming the organization's provincial mandate and stating that it has been authorized to sell Nevada Lottery tickets province-wide. This must be shown to the municipality before it approves a local Nevada Lottery.

- (2) The provincial licence issued by the MCCR will only be valid in a local sales location if it is displayed with the accompanying formal letter of approval from the local municipality.
- (3) The local municipality can only approve *one sales location within its jurisdiction* for an organization. If the local chapter of the organization already runs a Nevada Lottery in that municipality, the municipality cannot approve a sales location for the provincial organization.
- (4) The MCCR licensing cost per unit sold is \$25 regardless of the type of unit. This is payable on a quarterly basis to the MCCR.

In addition, *Provincial Nevada Lottery Licence, Additional Terms and Conditions* provides for supplemental requirements in the issuing and maintenance of a Nevada Lottery licence.

In essence, this supplement sets out the conditions that the licensee must comply with in order to receive and maintain a Nevada Lottery licence. They are as follows:

- (1) The MCCR lottery licence and the local municipal council's formal approval letter must be displayed at each sales location.
- (2) Copies of all the municipal approvals must be sent to the MCCR, Entertainment Standards Branch.
- (3) The applicant organization must designate at least one of its members to co-ordinate the administration of the licence. This person must be listed on the application form and will be the contact person for the MCCR.
- (4) The Nevada Lottery must be primarily administered from one central location with the member in charge being responsible for the ordering, distributing and tracking of the tickets and proceeds from the lottery as well as administrative control of the trust account for the funds.
- (5) A maximum of \$25 in administrative costs must also be directly related to the administration of the lottery. Organizations that are incorporated as nonprofit charitable organizations with the Public Trustee of Ontario do not have to comply with the \$25 restriction.
- (6) Nevada licences will be issued for a one-year period (up from the six-month maximum period stated in the *Terms and Conditions for Break-Open Ticket* application). Within that year, however, the organization is required to provide the MCCR, Entertainment Standards Branch, with reports at four, seven and 10 months. Also an audited financial statement, prepared by a certified accountant, must be submitted within 60 days after the licence has expired.
- (7) The quarterly reports must include:

- (a) a list of all locations where tickets are being sold including the name, address and municipality;
- (b) the number of units ordered and distributed in each location;
- (c) the number of boxes sold;
- (d) the bank balance of the lottery trust account;
- (e) the list of administrative expenses;
- (f) the list of charitable donations (if any); and
- (g) the \$25-per-unit licence fee for tickets ordered during the quarter.

Failure to submit this information could result in the cancellation of the Nevada licence by the MCCR.

Use Of Proceeds

Finally, an organization can only use the proceeds of a Nevada lottery to:

- (1) pay out the prizes and administrative expenses directly related to the conduct and management of the lottery event for which they are licensed; and
- (2) donate funds to the charitable or religious objective as approved in the application for licence.

Proceeds from the lottery must also be kept in a separate account. Failure to comply with these criteria could result in the cancellation of the Nevada Lottery licence and/or criminal actions.

Summary

Given the many complications and uncertainties of running a licensed charitable lottery, charitable organizations should consider abandoning their pursuit of a licence and structuring their lotteries and contests to comply with Section 206 of the *Competition Act*. Usually, this does not involve many difficulties or compromises (as explained in the analysis of Section 206 set out above). In this way, the lottery can be up and running within weeks and municipal and provincial licensing authorities, with their delays, licensing fees, arbitrary quotas and administrative demands, can be avoided altogether.

FOOTNOTES

- 1. R.S.C. 1985 C-46.
- 2. R.S.Q. L-6.
- 3. R.S.C. 1985 C-34.