

Off to the Races: Bill 31
*The Horse Racing Regulatory
Modernization Act*
*(Liquor, Gaming and Cannabis
Control Act And Pari-Mutuel Levy
Act Amended)*

L A U R E N G O W L E R *

ABSTRACT

The Horse Racing Regulatory Modernization Act, otherwise known as Bill 31, was first introduced to the Manitoba Legislative Assembly in October 2020. This piece of legislation seeks to modernize the regulatory framework for thoroughbred and standardbred horse racing in the province. Its main goal is to switch the regulator for the horse racing industry from the Manitoba Horse Racing Commission (MHRC) to the Liquor, Gaming and Cannabis Authority (LGCA). On its surface, Bill 31 ran a smooth race and successfully crossed the finish line. It received positive support throughout the legislative process, and was granted Royal Assent on May 12, 2021. However, this paper, while examining the bill itself and the discussion that surrounded its journey, will also explore the story underlying this piece of legislation and the

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motivating factors that got it to the starting gate in the first place. To truly understand the purpose of this Bill and the impact of the amendments contained within – it is necessary to dive into the world of horse racing; survey the current status of the horse racing industry in Manitoba; explore the government’s reliance on, and regulation of, gambling activities; and how regulations are made and regulators appointed. This paper seeks to highlight a number of concerns regarding the government’s complicated relationship with horse racing. Subsequently, this paper will pose a few recommendations on how the government could take steps to improve the transparency and accountability in the legislation and regulation-making process – especially when it comes to handling gambling policy and regulating sports, like horse racing.

Keywords: horse racing; Bill 31; *The Horse Racing Regulatory Modernization Act*; LGCA; MHRC; regulatory framework; law-making process

I. INTRODUCTION

Bill 31, otherwise known as *The Horse Racing Regulatory Modernization Act*, was first introduced to the Manitoba Legislative Assembly in October 2020, by the Honourable Cliff Cullen, the Minister of Justice and MLA for Spruce Woods.¹ This piece of legislation seeks to modernize the regulatory framework for thoroughbred and standardbred horse racing in the province, and reduce the regulatory burden and cost on the industry.² This bill is rather straightforward in what it seeks to accomplish. Its main goal is to switch the regulator for the horse racing industry from the Manitoba Horse Racing Commission (MHRC), which has regulated the industry for the last 55 years, to the Liquor, Gaming and Cannabis Authority (LGCA), a Crown

¹ “Bill 31, *The Horse Racing Regulatory Modernization Act* (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amendments)”, 1st Reading, Manitoba, Legislative Assembly, *Debates and Proceedings*, 42-3, Vol LXXV No. 5 (14 October 2020) at 145 (Cliff Cullen) [*First Reading*].

² *Ibid.*

corporation.³ It does this by making various amendments to two already existing statutes, *The Liquor, Gaming and Cannabis Control Act* and *The Pari-Mutuel Levy Act*, and repealing *The Horse Racing Commission Act*.⁴ Bill 31 generally received positive support throughout the legislative process, and was granted Royal Assent on May 12, 2021.

On its surface, the bill ran a smooth race and successfully crossed the finish line. However, this paper, while examining the bill itself and the discussion that surrounded its journey, will also explore the story underlying this piece of legislation and the motivating factors that got it to the starting gate in the first place. To truly understand the purpose of this bill and the impact of the amendments contained within – it is necessary to dive into the world of horse racing; survey the current status of the horse racing industry in Manitoba; explore the government’s reliance on, and regulation of, gambling activities; and how regulations are made, and regulators appointed. During this study, I will present personal concerns I have regarding this bill and the government’s relationship with horseracing. Subsequently, I will pose a few recommendations on how the government could take steps to improve the transparency and accountability in the legislation and regulation-making process – especially when it comes to handling gambling policy and regulating sports, like horseracing.

II. BACKGROUND

Horse racing is one of the world’s oldest sports. The premise is simple enough. The first horse to cross the finish line wins. But over the centuries this basic contest of speed and stamina has turned into a massive sporting spectacle and industry. Today, horse

³ “Bill 31, The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended)”, 2nd reading, Manitoba, Legislative Assembly, *Debates and Proceedings*, 42-3, Vol LXXV No. 32B (9 March 2021) at 1506 (Cameron Friesen) [Second Reading].

⁴ *The Liquor, Gaming and Cannabis Control Act*, CCSM c L153, [LGCC Act]; *The Pari-Mutuel Levy Act*, CCSM c P12, [*Pari-Mutuel Levy Act*]; *The Horse Racing Commission Act*, CCSM c H90.

racing is famously known for its high-stakes gambling, pageantry, and, of course, its equine athletes. No longer reserved as a “sport of kings”, horse racing has become a popular source of public-entertainment for the masses.⁵ Prestigious races, like the Kentucky Derby or Breeder’s Cup, draw 100,000s of spectators to their racetracks and have millions of fans watching at home. It’s hard not to get caught up in the excitement – when a crowd roars as twenty horses thunder down the final stretch.

Hoping to cash in on this contagious excitement, the industry places significant reliance and importance on the gambling and wagering of races. The most common form of wagering in the industry is called pari-mutuel wagering, where the racetrack sells tickets on each horse in a particular race. While tickets can be bought at the racetrack itself, in recent years most of the wagers have been placed online through the racetrack’s website. There are many different types of bets – win, place, double, trifecta, and quinella. All the bets made on a race are placed in a pool. In Manitoba, 75% of the pool is distributed to the winning customers, when they correctly bet. The exact pay-out price for a winning ticket is dependent on how much money the customer wagered on the winning horse in relation to the amount of money wagered on all of the horses in the race.⁶ The remaining 25% is called the “takeout.” This portion is set aside by the racetrack operator to cover a provincial levy, federal levy, and the costs of the industry.⁷ For example, this slice of generated money pays to maintain the infrastructure of the racetracks; is used for the prize money (purse) for future races; helps cover the costs of the veterinarians, officials, inspectors; and is often put towards breeding programs that raise foals and fillies. The reality is that everything in the horse racing industry relies on the revenue from wagering.

5 Manitoba, BluSlate Inc., 2018 Sustainable Review for the Manitoba Horse Racing Industry, (Manitoba Agriculture 10 October 2018) at 38, online: <www.gov.mb.ca/agriculture/surveys-and-consultations/pubs/final-mhr-report-oct-2018.pdf> [BluSlate Report].

6 *Ibid* at 45-47.

7 *Ibid*.

During most of the twentieth century, horse racing held a virtual monopoly over legal gambling in Canada. This was due to a small provision made in the *Criminal Code* in the 1920s. Section 204 permitted betting on horse racing via a pari-mutuel wagering system but largely prohibited all other forms of gambling.⁸ This prohibition led most Canadians to get their gaming fix at the racetracks, placing bets on their favourite ponies. However, while horse racing in Canada enjoyed its golden age from the mid to late twentieth century, the introduction of other forms of gambling and other forms of entertainment (films, television, other professional sports) substantially eroded horse racing's popularity.

Over the last forty years, provincial governments have taken steps to drastically increase the extent, availability, and variety of gambling in Canada. This expansion was first accomplished by introducing province-run lotteries, but later segued to building and operating casinos. The improvement of technology in the 1990s and 2000s allowed for the introduction of electronic gambling machines (like VLTs and slot machines) at casinos or bars.⁹ More recently, governments have launched online gambling initiatives, such as PlayNow.com, which essentially let one game anywhere.¹⁰ These new forms of gambling are appealing to the government since these initiatives generate more income and are less expensive to operate than a horse racing track.

⁸ *Criminal Code*, RSC 1985, c C-46, s 204.

⁹ Colin Campbell, "Canadian Gambling Policies" in James Cosgrave & Thomas Klassen, *Casino State: Legalized Gambling in Canada*, (Toronto: University of Toronto Press 2009) at 72 [*Casino State*]. This collection of essays provides a historical overview on the legalization of gambling activities in Canada and surveys the subsequent regulation that has been put in place. *Casino State* also provides a critical analysis of the state's role as promoter, regulator, and operator of gambling in Canada. Further recommended reading includes Colin Campbell, Timothy Hartnagel & Garry Smith, *The Legalization of Gambling in Canada*, (Law Commission, 6 July 2005) online: <https://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-64-2005E.pdf>.

¹⁰ Manitoba Liquor and Lotteries, "PlayNow", online: <<https://www.playnow.com/mb/>>.

Today, the provincial governments are the single largest beneficiary of gambling revenue.¹¹ In 2005, a study found that Manitoba was the province with the highest percentage (5.5%) of its total government revenue coming from gambling.¹² In 2019, the Manitoba government reported that gambling revenue now made up 7.8% (\$315 million) of the province's total revenue of \$4 billion.¹³ Canadians, once distrustful or ambivalent toward betting and gambling, clearly have embraced the variety of gaming formats. Indeed, the Canadian public's expectations and demands for government services ~ alongside a corresponding disdain for increased taxes ~ have made lotteries and other forms of gambling an appealing alternative form of government revenue, one which the provincial governments have been very eager to explore.

However, where does this leave the horse racing industry? Well, right now, they are being outraced. With this influx of gaming alternatives competing for people's money, the horse racing industry is struggling to hold onto just a sliver of the monopoly that they once held. Over the last two decades, the industry, worldwide, has seen a significant decline in wagering, around 40-50% in some locations. As expected, this is reflected in the horse racing industry in Manitoba.

While modest in comparison to the prestigious races in the United States or UK, horse racing in Manitoba does have a unique history. Stretching back to the nineteenth century; early settlers, Metis and First Nations, raced their horses on dirt roads and frozen rivers.¹⁴ In the twentieth century, Winnipeg was a hub for horse

¹¹ *Casino State*, *supra* note 9 at 69.

¹² *Ibid*, citing Jason Azmier, *Gambling in Canada: Statistics and Context*, Calgary: Canada Western Foundation.

¹³ Manitoba, Manitoba Liquor and Lotteries, *Manitoba Liquor and Lotteries 2019/20 Annual Report*, (MBLL, 30 September 2020) (Randy Williams) at 14, online: <https://www.mbll.ca/sites/mbll_corporate_2/files/pamphlets/pdf/ar_mbll_final_2019-2020.pdf>.

¹⁴ Keith Wilson & Antoine Lussier, *Off and Running: Horse Racing in Manitoba*, (Winnipeg: Peguis Publishers Limited, 1978) at 6, online: <<https://dspace.ucalgary.ca/bitstream/1880/530/1/ags.pdf>> [*Off and Running*].

racing in Western Canada, proud of its various tracks (Whittier Park, Polo Park, and Assiniboia downs) and its innovative and dedicated horse enthusiasts.¹⁵ Horse racing in Manitoba has always fallen into two categories: thoroughbred racing and standardbred racing. Thoroughbred horses are a particular type of horse that are bred for speed and stamina, and are ridden by a jockey. Today, thoroughbred races occur at Assiniboia Downs, a racetrack located on the west side of the Winnipeg, where fifty races are held each year.¹⁶ Standardbred racing is where a horse is harnessed to a lightweight cart called a “sulky” that is occupied by a driver. There are 10 standardbred races each summer, occurring in a number of rural Manitoba towns – Miami, Killarney, Glenboro.¹⁷

In recent years, these races together, generate around 20-25 million dollars in gambling revenue, through on-site and simulcast betting in Manitoba.¹⁸ Most of that comes from thoroughbred racing. Despite these seemingly significant numbers, horse racing has struggled to be self-sufficient. The industry has received direct funding grants and is further subsidized through VLT revenue at the Assiniboia Downs racetrack.

What this background information works to establish is the interesting position the provincial government is in with respect to the Manitoba horse racing industry. Clearly, the province has traditionally been a large benefactor in the revenues generated from horse racing. It has also taken many steps to help the industry including granting additional funding and assisting with the construction of Assiniboia Downs. Historians Keith Wilson and Antoine Lussier named the provincial government “the patron

¹⁵ *Ibid* at 45.

¹⁶ *BluSlate Report*, *supra* note 5 at 14

¹⁷ *Ibid* at 19.

¹⁸ Manitoba Horse Racing Commission, 2018-19 Annual Report, (1 June 2019) (Brett Arnasson) online: <www.manitobahorsecomm.org/pdf/documents/2019/MHRC_annual_report_2018-2019.pdf>; it should be noted that the 2020-21 season saw a surprising increase in simulcast wagering due to the fact that it was one of the only racetracks operating during COVID-19. They generated around \$63 million in gaming revenue, predominantly from partner racetracks who streamed the Assiniboia Downs' races.

saint of horse racing.”¹⁹ However, the province, through legislative changes, has also become the industry’s biggest competitor in Manitoba. The province, in creating new forms of gambling revenue for the government’s coffers, has mostly put Manitoba horse racing in financial peril.

The optics of this situation are only getting worse. This last summer, Parliament introduced another amendment to the *Criminal Code*, under Bill C-218, legalizing the long-prohibited single-event betting and authorizing the provincial governments to manage this new gaming format. Mr. Kevin Waugh, the sponsoring member from Saskatoon–Grasswood, urged MPs to “imagine what we could do with our share of a \$14 billion industry?”²⁰

It is a curious process whereby the government, through its powers, is continuing to reduce the profitability of horse racing while at the same time, with Bill 31, making one last ditch-effort to create sustainability in this otherwise quickly-dying industry. Is this the government feeling accountable to an industry that it has largely put out of business? With the introduction of Bill 31 and switching the regulator to the Liquor, Gaming and Cannabis Authority (LGCA), a Crown corporation, the provincial government will become more involved with the regulation of the industry. This obvious conflict of interest necessitates the need for the provincial government to be transparent and accountable in the regulation process. The government finds itself in conflicting roles. It is the principal competitor, potential benefactor, and, through the course of this bill, is positioning itself to be the regulator of this industry.

III. ORIGINS OF BILL 31: THE BLUSLATE REPORT

In 2018, the provincial government commissioned BluSlate Inc. to prepare a report on the current state of horse racing in the

¹⁹ *Off and Running*, *supra* note 14 at 53.

²⁰ “Bill C-218, An Act to Amend the Criminal Code (Sports Betting)”, 2nd reading, Ottawa, House of Commons, 43-2 (3 November 2020) (Hon. Kevin Waugh), online: <<https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-25/hansard#10990330>>.

province and policy options that they could pursue to assist the industry.²¹

The picture that the report paints is pretty bleak. BluSlate states that, at this point, it's impossible that horse racing will ever be self-sufficient in Manitoba.²² One of the major challenges, as elaborated upon above, is that horse racing's gambling monopoly has been drastically eroded by the rapid expansion of competitive gaming alternatives by the provincial government. Horse racing itself is also a "relatively high cost gaming product."²³ It costs a lot of money to maintain the infrastructure required for horse races – the grandstands, track, equipment, and stables. Legions of people are required to organize races, ensure the safety of the horses and jockeys, and cater to the customer's experience. On the flip side, the industry provides opportunities for employment. One of the horse trainers, consulted by BluSlate, described the horseracing industry and horse farms as a "job factory...providing employment opportunities for people, including those who often fall into the difficult-to-employ category."²⁴ There are quite a few economic benefits that arise from the industry; economic activity, tourist attraction, and tax revenue for all three levels of the government.

The report argues that without the investment of the Manitoban government, all these economic impacts – including the revenue to the government – will be lost within a few years.²⁵ According to BluSlate, the only way that this industry will survive is if stakeholders take serious steps to streamline procedures, add race dates, increase wagering, and the provincial government provides public support. Analyzing the approaches of other provinces, BluSlate reveals that governments who have refused to extend public support, like Saskatchewan, have seen the demise of horse racing. Meanwhile, provinces, like Ontario, who have perhaps funneled too much money into horse racing through the

²¹ BluSlate Report, *supra* note 5.

²² *Ibid* at 12.

²³ *Ibid* at 9.

²⁴ *Ibid* at 10.

²⁵ *Ibid* at 11.

“Slots at the Races” Program, have caused the industry to become overly dependent on that support.²⁶ The report states that the best way for the government to strike a balance with their support is to provide (1) a measured financial investment, as well as (2) a regulatory framework that will reduce the regulatory burden and cost on the industry.²⁷

This second recommendation marks the inception point of Bill 31, to modernize the regulations that govern horse racing. BluSlate recommends that “the MHRC be absolved of responsibility for conducting the business of horse racing (in favour of MBLL) and conduct its regulatory role as part of the LGA.”²⁸ BluSlate came to this recommendation after undertaking consultations with the MHRC and learning of its intentions to change its leadership and plans to innovate its reporting structure. The report proposes that this presents an ideal time to fold the MHRC in with the LGCA to take advantage of a consolidated regulatory model. The report acknowledges that the adjudication of live races would be a new area for the LGCA, however argues that they are well suited to assume this responsibility as a regulatory agency who is focused on risk-based regulation.²⁹

IV. CONTENT OF BILL 31

Bill 31 is essentially an amending Act that proposes to make changes (adding new sections or making corrections) to a number of Consolidated Acts, pieces of legislation that have continuing application and force. Bill 31 proposes alterations to three statutes: Part 1 seeks to make various amendments and additions to *The Liquor, Gaming and Cannabis Control Act*, Part 2 makes a few minor tweaks to *The Pari-Mutuel Levy Act*, and Part 3 repeals *The Horse Racing Commission Act*.

²⁶ *Ibid* at 12.

²⁷ *Ibid* at 11.

²⁸ *Ibid* at 24.

²⁹ *Ibid* at 54-55.

Part 1: Amendments to The Liquor, Gaming and Cannabis Control Act

As stated before, the substantive changes and additions introduced by Bill 31, which apply to the *The Liquor, Gaming and Cannabis Control Act*, aim to transfer “the responsibility for regulation of all types of horse racing in Manitoba” to the Liquor Gaming Cannabis Authority (LGCA). Clause 4(1) of Bill 31 officially adds these new duties to the LGCA’s obligations:

- 8(2.2) The authority has the following duties in respect of horse racing:
 - (a) to regulate horse racing and persons who are involved in horse racing;
 - (b) to provide information and advice to the minister about horse racing³⁰

Clause 6 of Bill 31, however, does the majority of the heavy lifting, by adding “Part 4.2 Horse Racing” to *The Liquor, Gaming and Cannabis Control Act*. This clause lays out what responsibilities the LGCA, as the new “Authority”, must oversee and attend to with regards to live horse racing.³¹ As per most pieces of legislation, it begins, under Division 1, with a list of relevant definitions. Division 2 sets out three different types of licenses pertaining to the operators of horse race tracks (s.101.29), racing participants (s.101.30), and betting theater operators (s.101.31(1)). These sections stipulate a few things: (1) these individuals cannot act or operate without a license, (2) the licenses are issued by the Executive Director of the LGCA, and (3) the LGCA has the power to decide what types of activities are authorized under these licenses and what standards must be met in order to acquire these licenses.

Division 3 pertains to the rules of racing. While *The Liquor, Gaming and Cannabis Control Act* will not contain the rules of racing,

³⁰ Bill 31, *The Horse Racing Regulatory Modernization Act (The Liquor, Gaming and Cannabis Control Act Amendments and The Pari-Mutuel Levy Fund Act Amendments)*, 42-3, Legislative Assembly, Manitoba, 2020, cl 4(1) (assented to 12 May 2021), SM 2021, c7 [Bill 31].

³¹ *Ibid* at cl 6.

the amendments grants the executive director of the LGCA the authority to make, change or adopt rules that govern horse racing.³² For clarity, however, the amendment asserts that the rules of racing, themselves, are not regulations within the meaning of *The Statutes and Regulations Act*.³³ Regardless, the executive director is allowed to delegate the new powers and functions granted to the LGCA – like the power to enforce the rules of racing; or the power to enforce or collect penalties for contravening the rules – to specified racing administration officials, employees, or horse racing associations. Division 3 also stipulates that decisions made under the rules of racing can be appealed and reviewed. This part of the Act outlines who can review decisions, the basic structure of the review process, and the requirement that an adjudicator must provide written reasons for their decision.

Division 4 grants the LGCA the power to employ or retain stewards, judges, veterinarians and other officials to organize, regulate and govern live races. It requires that the LGCA provide these individuals with identification. Sections 101.43 thru 101.45 grant race administration officials with broad powers of inspection and examination. They can enter and inspect any part of the race track, stables, offices or premises of a racetrack official. They are allowed to conduct examinations of racehorses at any time, and can take samples of blood, saliva, urine from the horse for testing. They can require that a jockey, driver or other racing participant submit to an inspection of their person before or after a race, and provide bodily substances for alcohol and drug testing.

The last most notable amendment in the first part of this bill is clause 8, which grants the LGCA board general powers to create regulation³⁴:

157(2) The board may make regulations (...)
 (ee) respecting the conduct of horse racing;
 (ee.1) prescribing standards for horse race tracks;
 (ee.2) fixing the number of race days that may be held in any area
 of the province;

³² *Ibid*; amendments to the *LGCC Act*, *supra* note 4 ss 101.32(1)(2)(3).

³³ *Ibid*; amendments to the *LGCC Act*, *supra* note 4 s 101.32(b).

³⁴ *Ibid* at cl 8; amendments to the *LGCC Act*, *supra* note 4 s 157(2).

- (ee.3) establishing rules of practice and procedure on a review of a decision made under the rules of racing;
- (ee.4) establishing requirements that must be met to hold a specified type of racing participant license;
- (ee.5) specifying an examination to be passed or a standard to be met to hold a specified type of racing participant license;
- (ee.6) respecting the records to be kept by horse race track operators and racing participants;

Part 2: Amendments to The Pari-Mutuel Levy Act, C.C.S.M. c P12

Part 2 of the Bill 31 makes amendments to *The Pari-Mutuel Levy Act*. While the Canadian Pari-Mutuel Association, a federal organization, is in charge of regulating how pari-mutuel wagering is conducted across the country, this piece of legislation concerns how the levy fund (generated from pari-mutuel wagering of horse racing in Manitoba) is remitted and distributed.

Tasks, such as dealing with the operators' remittances or distributing the fund, were largely managed by the Manitoba Horse Racing Commission. Thus, most of the proposed amendments seek to accommodate the switch from the MHRC to the LGCA, for example replacing "commission" with "authority", or "enforcement officer" with "inspector."³⁵ The substantive amendments made, delegate the power to LGCA to collect the levies from the racetrack operators and deposit that money into the Fund. The provisions dictate that the LGCA will distribute the fund in accordance with written directions from the Minister of Justice - who outlines the recipients of the Fund, the amount of each distribution, when the distributions occur.³⁶ The LGCA is required to provide the Minister with audited financial statements of the Fund and a detailed statement of all distributions in its annual report.³⁷

Most of the provisions regarding how betting theater operator licenses were issued, license restrictions, and what happens if a license was refused or suspended - were repealed.³⁸ This repeal was

³⁵ *Bill 31, supra* note 30 cl 10.

³⁶ *Ibid* at cl 20.

³⁷ *Ibid*.

³⁸ *Ibid* at cl 12.

likely due to the fact that the LGCA has a licensing scheme outlined in *The Liquor, Gaming and Cannabis Control Act*, or might be elaborating on the licensing in subsequently issued regulations

Part 3: Repealing The Horse Racing Commission Act, C.C.S.M. c. H90

The last part of Bill 31 seeks to repeal *The Horse Racing Commission Act*, and all other regulations made under that Act. Clause 35(2) dissolves the Horse Racing Commission, terminating all members of the Commission and extinguishing their accompanying obligations. Finally it transfers all “the rights and property of The Horse Racing Commission” to the government, and stipulates that the “liabilities and obligations” of the Horse Racing Commission are to be assumed by the government.³⁹

V. LEGISLATIVE JOURNEY OF BILL 31

A. *FIRST READING:*

At the first reading, on October 14, 2020, Mr. Cullen introduced Bill 31 as a piece of legislation that would transfer “the responsibility for the regulation of horse racing in Manitoba to the Liquor Gaming and Cannabis Authority.”⁴⁰ Mr. Cullen insisted that the government was committed to modernizing the regulatory framework and reducing the regulatory burden faced by the horse racing industry, in order to ensure its long-term sustainability.

B. *SECOND READING:*

The bill received its second reading the following spring, on March 9-10, 2021. This time it was presented to the House by the new Minister of Justice, the Honourable Cameron Friesen, MLA of Morden-Winkler. In his introductory comments, Mr. Friesen spoke to horse racing’s historical roots in the province. While many people consider horse racing to be a part of a bygone era, Mr.

³⁹ *Ibid* at cl 35(2)(c).

⁴⁰ *First Reading*, *supra* note 1 at 145 (Cliff Cullen).

Friesen was adamant that horse racing is still a very “important pastime and pursuit of many people.”⁴¹ Celebrating the historical significance of this industry but also asserting that the sport is not dead – Mr. Friesen explained that the purpose of Bill 31 came from the desire to bring the industry up to date. The Minister revealed that “the regulation of horse racing in Manitoba has not undergone any significant regulatory changes since its inception in 1965.”⁴² After fifty-five years of zero review or scrutiny, he asserted it was about time that the legislation received updating. Likening horse racing to many other sports and gaming events, Mr. Friesen insisted that “effective regulation is essential to ensure the integrity of racing” so that both the racing participants and the betting public can trust the outcome of each race.⁴³

In order to create this modern effective regulation, Minister Friesen reiterated the bill’s ambitions to overhaul the current regulatory system – eliminating the Manitoba Horse Racing Commission – and give all its regulatory responsibility to the LGCA. He insisted that this amalgamation of “creating a single, provincial agency responsible for liquor, gaming, cannabis and now horse racing” would reduce red tape and unnecessary costs for the industry.⁴⁴ Echoing the reasons outlined in the BluSlate report, Minister Friesen argued that the LGCA was “well positioned to add horse racing to its regulatory framework” given its familiarity and experience with handling risk-based regulatory systems for liquor, gaming and cannabis.⁴⁵ He explained that the amendments proposed in Bill 31 would result in “reducing the number of licensed categories, streamlining regulatory services to industry, improving transparency in how appeals of racing decisions are conducted, clarifying how testing for alcohol and drugs is administered and reducing unnecessary administrative burden.”⁴⁶

⁴¹ *Second Reading*, *supra* note 3 at 1506 (Cameron Friesen).

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid* at 1507.

The Minister of Justice also gave a few perfunctory comments to Part 2 of the bill, specifically that the amendments to *The Pari-Mutuel Levy Act* continued to “fund industry programs, such as race purses and breeder programs, while streamlining the process for collecting and distributing these monies.”⁴⁷

After Minister Friesen’s introductory and explanatory comments about the legislation, the Speaker opened the floor up to questions. Mr. Jon Gerrard, the MLA for River Heights, was the only member to raise concerns and questions during this debate period. His most pressing concern being the elimination of the MHRC – the organization who has held the reins on horse racing for the last half century – and transitioning to the LGCA. He asked whether the government is taking things out of the hands of the people who have experience, expertise and dedication to horses and horse racing?⁴⁸ He argued that the regulation of liquor, gaming and cannabis is quite a bit different than the regulation that is required for live thoroughbred and standardbred horse racing. MLA Gerrard poked at the question: is the LGCA the right organization for the job? He urged that the government should not see horse racing as “some other casino-type game, some sort of gambling. It is quite different and it needs to be continued to be considered as such.”⁴⁹

His second inquiry questioned the bill’s lack of guidance, specifically regarding the minister’s power to select recipients of the Pari-Mutuel Levy Fund under section 14.1(2). Member Gerrard surmised that the Minister likely doesn’t have “unbridled authority” to authorize distributions to whomever he or she chooses – like friends or family.⁵⁰ However, he urged Minister Friesen to provide clarification and to address this concern in the

⁴⁷ *Ibid.*

⁴⁸ “Bill 31, The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended)”, 2nd reading Debates, Manitoba, Legislative Assembly, Debates and Proceedings, 42-3, Vol LXXV No. 33 (10 March 2021) at 1527 (Jon Gerrard) [Second Reading Debates].

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

standing committee's review of the bill, in order to ensure accountability of the Executive Branch. He noted that "it may seem natural in a government like the current Conservative government, to take all the control in the hands of the Ministers, but I think that it is really important that power is used very carefully and very fairly and with good decision making."⁵¹

C. COMMITTEE STAGE:

In the standing committee, Mr. Gerrard's concerns and comments were largely ignored. In fact, very little was said regarding Bill 31 in the Standing Committee on Justice Meeting on March 22, 2021.⁵² Despite representations that the horse racing industry endorsed this bill, none of the stakeholders attended to voice support for this regulatory reform or advocate for more government support. Representatives from neither the MHRC, nor the LGCA, deigned to make an appearance to vocalize their approval or provide insight into how this transition was going to occur. Furthermore, no one attended to speak up against Bill 31.

In the nearly three hour meeting with three pieces of legislation on the table, Bill 31 was discussed for less than a total of five minutes. Mr. Friesen made a few remarks, mostly re-using comments from his second-reading speech - hitting on catchphrases like "reducing red tape" etc. There were no questions, no discussion. The chairperson buzzed through the clauses - each of which was accepted, and no edits were made.

D. THIRD READING:

Bill 31 came before the House on April 6, 2021, for its third reading. Introduced once again by Minister Friesen, he maintained that it was time "for us to evolve and change with the times when

⁵¹ *Ibid.*

⁵² "Bill 31, The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended)", Committee Stage, Manitoba, Legislative Assembly, The Standing Committee on Justice, 42-3, Vol LXXV No. 2 (22 March 2021) at 28 [Committee Stage].

it comes to horse racing issues and the horse racing industry.”⁵³ As he had indicated at the second reading and through debate, horse racing regulation has not undergone any significant changes in Manitoba since 1965. In a joking remark, the Minister suggested that “perhaps our commitment as a province should be that every fifty years, whether it’s required or not, we look into the regulatory possibility of updates.” Continuing to advocate for the switch to the LGCA, Minister Friesen admitted that this would mark the end of an era – and thanked the MHRC for their service. However, he explained that all the members of the commission would be transferred to the LGCA – a note that seems to contradict what he had previously stated. On further inspection of the 2020-21 MHRC Report, Peter Fuchs, the vice-chair of the MHRC, is the only member of the commission joining the LGCA Board to help with this regulatory transition.⁵⁴ As an aside, I am not sure that a politician should be joking about the fifty-year lack of effort his colleagues have committed to improving the regulations for an industry that the Manitoba government has slowly rendered unsustainable.

During the question and debate period, Members Ms. Nahanni Fontaine (MLA for St. John’s), Mr. Scott Johnston (MLA for Assiniboia) and, once again, Mr. Jon Gerrard (MLA for River Heights) placed their thoughts on the record regarding Bill 31. Ms. Fontaine, a long-time advocate of animal rights, sought to bring awareness to the issue of horse slaughtering in Canada. She specifically referred to an incident that occurred in February 2020, where a group of horses stood on the tarmac at the Winnipeg Richardson International Airport in -40 degrees Celsius weather waiting to be shipped off for slaughter. She explained that each year

⁵³ “Bill 31, The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended)”, 3rd reading, Manitoba, Legislative Assembly, *Debates and Proceedings*, 42-3, Vol LXXV No. 43B (6 April 2021) at 2198-2200 (Hon. Cameron Friesen) [*Third Reading*].

⁵⁴ Manitoba Horse Racing Commission, *2020-2021 Annual Report*, (1 June 2021) (Brett Arnasson) at 3, online: <www.manitobahorsecomm.org/pdf/documents/2021/MHRC-Annual-Report-2020-21.pdf>.

3,000 to 5,000 horses are shipped live (usually by plane) to different parts of the world for slaughter.⁵⁵ The implication being that some of these horses are attributable to the disposable nature of the horse racing industry. Mr. Scott Johnston, the MLA for Assiniboia, addressed some of the concerns posed by Ms. Fontaine. He assured her that all precautions are taken for the horse's safety while at Assiniboia Downs, and that the facility's veterinarian works hard to lead efforts to ensure the animals' welfare. Member Johnston spoke to the significance of Assiniboia Downs as a "world-class horse racing facility" and its importance for his constituency and Manitobans at large.⁵⁶ Mr. Gerrard reiterated his previous and largely ignored concerns.

Thus, with general approval from all parties, the House adopted the concurrence and all members voted in favour, resulting in the motion being passed. On May 12, 2021, Bill 31 received Royal Assent by his Honour Chief Justice Richard Chartier, who was acting as Deputy Speaker.

VI. IMPLEMENTATION OF BILL 31

While switching regulators looks good on paper, how is this transition going to occur in reality? Are the amendments proposed by Bill 31 actually going to "reduce red tape" or "streamline the regulatory process" for the horse racing industry? Both the wording of the legislation and Minister Friesen's remarks during the readings offer sparse hints concerning the practical reality of this endeavor. Perhaps though, that is what's to be expected.

As this paper has explored thus far, Acts, passed through the legislative assembly, are considered, debated and voted on by democratically-elected officials. Regulations, on the other hand, are created through a different process, and are made by a person or entity pursuant to powers delegated to them by the Legislature. What Bill 31 does is effectively outsource governance. While it imposes duties and responsibilities, the bill empowers the LGCA

⁵⁵ *Third Reading, supra* note 53 at 2199 (Nahanni Fontaine).

⁵⁶ *Ibid* (Scott Johnston).

with regulation-making powers. The Legislative Assembly grants the LGCA permission to create regulation (colloquially known as “little laws” or “secondary laws”) even though they are not officially members of the Legislature. This type of delegation makes sense. While the members of the House obviously enjoy retelling personal stories of their experiences with horses, they don’t have the time, knowledge or expertise to properly address all the technicalities, challenges and matters that are required to create a comprehensive regulatory scheme. As such, *The Liquor, Gaming and Cannabis Control Act* is simply a “skeleton” which the LGCA can add “meat-and-flesh” onto by issuing regulations, and thus giving the modern framework life.⁵⁷

For comparison purposes, this is best illustrated by a recent example. The last major change to *The Liquor, Gaming and Cannabis Control Act* occurred back in 2018 with the legalization of marijuana. The provincial government adopted Bill 11: *The Safe and Responsible Retailing of Cannabis Act*, which like Bill 31, sought to make amendments and add “Part 4.1 Cannabis” to *The Liquor and Gaming Control Act*.⁵⁸ This new part of the Act, authorized the LGCA to regulate the retail sale and distribution of cannabis in the province. These amendments were granted Royal Assent in June 2018, but wouldn’t come into force until October 2018. This gave the LGCA time to craft “Cannabis Regulation, 120/2018” that would be included under *The Liquor, Gaming and Cannabis Control Act*.⁵⁹ These regulations, which were released in September 2018, provided all the nitty-gritty details that cannabis stores, distributors, and customers would want to know about when dealing with cannabis products.

⁵⁷ Bryan Schwartz et al, “Democratizing the Regulation Making Process in Manitoba: Drawing on National and International Best Practices” (2012) 35:2 Man LJ at 1 [Regulatory Reform].

⁵⁸ Bill 11, *The Safe and Responsible Retailing of Cannabis Act*, (*The Liquor and Gaming Control Act*, and *Manitoba Liquor and Lotteries Corporation Act Amended*), 41-3, Legislative Assembly, Manitoba, 2018, (assented to 4 June 2018), SM 2018, c9 [Bill 11].

⁵⁹ *Cannabis Regulation*, 120/2018.

Bill 31 has received Royal Assent and has been officially enacted, however it still hasn't been proclaimed into force and effect.⁶⁰ This delay is reflective of the likely scenario that the LGCA is currently working on the accompanying regulation and hopes to launch it at the same time the amendments to *The Liquor, Gaming and Cannabis Control Act* come into force.⁶¹ While timelines may vary, it is likely that this regulation and the proclamation will occur before next summer and the start of the 2022 race season.⁶²

The best glimpse into what the LGCA is planning comes from the *Manitoba's Horse Racing Modernization: 2020 Report to Stakeholders*, a report that details the LGCA's consultations and conversations with industry stakeholders, such as the Manitoba Jockey Club, and the Horsemen's Benevolent and Protective Society.⁶³ In the interest of transparency, I would have expected that this document would have been posted on the LGCA website, as it is referenced in their Annual Report. Surprisingly, I had to request the document from them. This process required a few weeks of patience and multiple email exchanges. The LGCA reports that the findings from the stakeholders consultations highlighted a need for change in four areas of the regulatory framework: (1) streamlining licensing, (2) improving drug testing, (3) increasing transparency in appeals, and (4) updating mechanisms for distributing the pari-mutuel levy. I think that some of the suggestions made in the report appear like positive instances of regulatory reform. For example, the licensing under the MHRC had 26 different licensing categories

⁶⁰ The comments made in this section reflect the state of the law as it was in December 2021.

⁶¹ On April 1, 2022, The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended) as well as the LGCA's Horse Racing Regulation, 40/2022 came into force and effect.

⁶² Since this article was originally written, the LGCA has developed regulation; "rules of racing" governing standardbred and thoroughbred racing in Manitoba; and has implemented a new licensing regime. These new changes can be seen on the LGCA's website: <<https://lgcamb.ca/horseracing>>.

⁶³ Manitoba, Liquor, Gaming & Cannabis Authority of Manitoba, *Manitoba's Horse Racing Modernization: 2020 Report to Stakeholders*, (LGCA 22 March 2020) [LGCA Consultation Report].

and 73 different types of licenses. Stakeholders emphasized that the “complexity and number of license types creates unnecessary burden and highlighted a desire from the community for a simplified licensing structure.”⁶⁴ The LGCA responded to this by developing the licensing structure, introduced in Bill 31, which only includes three licensing categories.⁶⁵ This allows an individual (like a horse owner or trainer) to perform numerous functions under a single category if they meet the required conditions. The LGCA explained that it seeks to “eliminate the practice of using licenses as a security pass to enter the backstretch” and better concentrate its regulatory efforts to license those individuals who have “an impact on the horse race or the safety of the racehorses.”⁶⁶

VII. CONCERNS AND RECOMMENDATIONS

Concern 1: Is the LGCA the right organization for the job?

I have concerns about whether the LGCA is the right organization for the job. The LGCA has little experience concerning sport or racing – horses or otherwise. Their expertise comes from regulating the sale and distribution of addictive substances and facilitating games of chance. Thus, I share the same concerns raised by Member Gerrard at the second reading. Despite generating money through wagering, I think it’s an ill-conceived plan to view horse racing as simply another “casino-type game.” Pinning it solely into that category disregards the complexity and integrity of the sport itself.

⁶⁴ *Ibid* at 2.

⁶⁵ The terms and conditions for the new “Horse Racing Participant” licenses can be found on the LGCA’s website “Thoroughbred Horse Racing” <<https://lgcamb.ca/horseracing/thoroughbred-horse-racing/>> and “Standardbred Horse Racing” <<https://lgcamb.ca/horseracing/standardbred-horse-racing/>>.

⁶⁶ LGCA Consultation Report, *supra* note 63 at 2.

Horse Racing is a highly competitive and dangerous sport. This is a sport where horses and human athletes challenge themselves to push their physical limits. In 2018, over five hundred horses died on racetracks in the United States.⁶⁷ Most of these deaths occurred due to the use of illegal performance-enhancing drugs and substances. Perhaps greater consideration should have been given to improving the governing model of the MRHC. It's possible amending those constrictive regulations that the organization had to navigate for fifty years could've really helped the industry a long time ago. After all, this organization's sole mandate was the integrity of horse racing. Is it possible that the LGCA is equipped to do a better job? Furthermore, maybe greater consideration should have been given to the sporting side of horse racing, whereby Sport Manitoba could have taken on this oversight. Unarguably, the organization has more experience with high-level athletes, anti-doping practices and policies, and the expertise in regulating, facilitating, and adjudicating competitive sports. Additionally, I wonder if a more national approach should be taken to tackle horse racing issues across the country. This approach is what's being attempted in the United States, in the hope of addressing similar problems; *The Horse Racing Integrity and Safety Act* was passed federally last spring.⁶⁸

Concern 2: What about the ethical concerns of horse racing?

Given the recent challenges of illicit drugs, racehorse deaths, and severe injuries – the protests of animal rights advocates have become louder – leaving many wondering if this ancient sport can “continue to justify itself” in a time of changing sensitivities?⁶⁹ A

⁶⁷ Joe Drape, “Horse Deaths are Threatening the Racing Industry. Is the Sport Obsolete?”, *The New York Times* (19 April 2019), online <<https://www.nytimes.com/2019/04/29/sports/horse-deaths-kentucky-derby.html>>.

⁶⁸ Horseracing Integrity and Safety Authority, “The Horseracing Integrity and Safety Act” (20 September 2020), online: <<https://www.congress.gov/116/bills/hr1754/BILLS-116hr1754rds.pdf>>.

⁶⁹ William Finnegan, “Can Horse Racing Survive?” *The New Yorker* (15 May

further question one has to consider is whether the government is being socially or ethically responsible when they continue to support animal-based gambling?

During the third reading, Ms. Fontaine touched on a serious problem in Canada, the live transport of horses for slaughter. Not mentioned by Member Fontaine, but still quite shocking, is the fact that 25,000 horses are slaughtered each year in Canada.⁷⁰ While these horses are presumably from a wide variety of different places and industries -- it leads one to consider how many of these horses are ex-racehorses? A darker side of the horse racing industry reveals that racehorses are often considered to be expendable. Typically thoroughbred and standardbred horses race for 2-3 seasons between the ages of 2 and five years old, when they can generate the most prize money. However, once a horse can no longer race – their value declines rapidly – but the costs continue, especially if the horse requires treatment for injuries. According to Camille Labchuk, a Canadian animal rights lawyer with Animal Justice, all too often “the standard response is to euthanize an injured horse who can no longer turn a profit.”⁷¹ While many organizations, like Winnipeg-based Final Furlongs, advocate and help ex-racehorses

2021), online: <<https://www.newyorker.com/magazine/2021/05/24/can-horse-racing-survive>>.

⁷⁰ Avery Haines, “A glimpse inside Canada’s ‘sinister’ horse meat industry” CTV News (27 February 2021), online: <<https://www.ctvnews.ca/w5/a-glimpse-inside-canada-s-sinister-horse-meat-industry-1.5324002>>. In December 2021, as the Liberal Party of Canada was seeking re-election, Prime Minister Justin Trudeau mandated that the Minister of Agriculture, Marie-Claude Bibeau, ban the live export of horses for slaughter. However, according to a Globe & Mail article “Horses are still being exported for slaughter. Will Trudeau stake action?” published in January 2023, authors Jann Arden and Jessica Scott-Reid note that sixteen months after Trudeau’s promise neither Minister Bibeau nor the Liberal party have taken steps to prohibit the live exportations of horses. In fact, the authors note, that over 2,300 horses have been exported to Japan for slaughter since Trudeau made his promise in December 2021.

⁷¹ Jessica Scott-Reid, “Government funding of horse racing is unnecessary, unsustainable, unethical”, *Toronto Star*, (25 March 2019), online: <<https://www.thestar.com/opinion/contributors/2019/03/25/government-funding-of-horse-racing-is-unnecessary-unsustainable-unethical.html>> citing Camille Labchuk.

transition into their “second careers” as trail horses or breeders – it still leaves one wondering how many horses are left at the slaughterhouse?

Demonstrating the polarizing opinions on horse racing, Jessica Scott-Reid, writing a Toronto Star article on the Ontario government’s pledge to give \$10 million a year to the industry, opined that horseracing is “about as necessary as the circus, as ethical as Marineland, and as worthy of such funding as any other form of mere exploitative entertainment.”⁷²

Concern 3: What about the government’s conflict of interest?

Finally, the provincial government still possesses an inherent conflict of interest – concurrently acting as the benefactor, collecting a levy tax from race wagering; as a major competitor, eagerly expanding into the realm of single-event betting; and now as a regulator, under the auspices of the LGCA.

The traditional rebuttal from the government has been to reiterate that there is an “internal separation of responsibilities” that ensures that the goals of one branch of government don’t override the obligations of another.⁷³ However, it is slightly ironic that the regulation for horse racing is being put under the care of the same organization, which has been instrumental in siphoning away horse racing’s revenue from wagering.

While the government purports to care deeply about horses and horse racing, I’m going to argue that what they really care about is the money and gaming revenue it generates. In his comments during the third reading, I think MLA Scott Johnston really honed in on the underlying motivations of the government’s efforts: “The Assiniboia Downs horse racing attracts a great deal of tourist dollars, and certainly, the Province is always wanting to protect that interest...horse racing contributes a significant amount of gaming

⁷² *Ibid.*

⁷³ Ray MacNeil, “Government as Gambling Regulator and Operator: The Case of Electronic Gaming Machines” in James Cosgrave & Thomas Klasesen, *Casino State: Legalized Gambling in Canada*, (Toronto: University of Toronto Press 2009) at 148.

revenue to the province.”⁷⁴ Bill 31 does not explicitly deal with horse racing wagering. However, it does deal with regulating the races, horses and individuals that generate that money.

Concern 4: Lack of Transparency, Accountability and Public Involvement in the Law-Making Process

All of these concerns are made worse by the lack of transparency, accountability and public involvement in the law-making process.

The discussions that occurred in the House were largely superficial, often skirting around the issues, preferring to focus on the optimistic future of horseracing rather than fixating on the cause of its troubles. In the efforts of honest law-making, I believe that the member sponsoring this bill should have at least acknowledged the fact that the government possessed a conflict of interest, and provided an explanation or strategy on how it was going to handle its competing interests. I am also concerned with the lack of presenters and discussion at the Committee Stage. The BluSlate Report and Minister Friesen both speak of an industry made up of resilient, passionate and dedicated Manitoba horsepersons. However, as noted earlier, no one was willing to attend the Committee meeting and voice their support of this regulatory change, or advocate for more government support. Either everyone in Manitoba thinks that this legislation is perfect...or they simply don't care. What I found most surprising, however, is that neither the old nor the new regulator made an appearance or submitted a report. Considering that the legislative amendments only set out the foundations of the framework, I think it would have been helpful for the LGCA to speak to the current worries or challenges raised by stakeholders in the consultations, expand on its suitability for this position, or provide a basic game plan for this transition and subsequent regulatory changes. This stage of the legislative journey is really a form of performative consultation or “window dressing”, to make it appear as though the

⁷⁴ *Third Reading, supra* note 53 at 2200 (Scott Johnston).

government is taking the necessary efforts to elicit public opinion, without actually doing so. I would argue that this stage allows the government to check the box for consultation and simply move ahead with their planned course of action.

However, I think where the problems of transparency and accountability are most fervent is in the regulation-making process. As explained earlier, regulations are often made by public regulatory agencies, like the LGCA, pursuant to power delegated to them by the House. The “little laws” or “secondary laws” that emerge from regulations are no less binding on Manitobans than the laws publicly debated and enacted by Members of the Legislative Assembly. In fact, regulations might have a bigger impact on Manitobans' lives. Yet, the process of making these regulations is discrete, often arising out of conversations with the regulator, invited stakeholders and the appropriate ministers, while being reviewed by the Treasury Board and approved by the Lieutenant Governor in council.⁷⁵ How can the general public be a part of the regulation-making process, or keep a regulator accountable, when there is no opportunity to examine or speak to the regulation until it's been approved. Thus, most people are unaware of the existence of these types of laws until they have a direct impact on their personal lives.

Critics of this, such as Professor Bryan Schwartz and Professor Paul Thomas, recommend that the regulatory-making process should be made more democratic, allowing for public involvement before, during and after regulations are created.⁷⁶ Professor Schwartz insists that citizens in a democratic society should have a full opportunity to be informed about and participate in regulatory decision-making in order to be able to properly “regulate the regulator and judge the regulatory performance of the government.”⁷⁷ He further submits that “Parliamentary democracy

⁷⁵ Government of Canada, Department of Justice, “How new Laws and Regulations are Created”, (21 July 2021), online: <<https://www.justice.gc.ca/eng/laws-lois/infograph.html>>.

⁷⁶ *Regulatory Reform*, *supra* note 57 at 14.

⁷⁷ *Ibid* at 15 - quoting Paul Salembier, *Regulatory Laws and Practice in Canada*, (Markham: LexisNexis Canada Inc, 2004) at 371.

is a system of government which requires that the executives be responsible to the legislature and both be accountable to the people” however the public can hold neither accountable nor responsible when they have no knowledge of what has been done during the regulatory-process.⁷⁸

Perhaps, in the past, the governments used this rather opaque decision-making avenue to their advantage, passing laws that the public may push back on or not necessarily support. Within the book, *Casino State: Legalized Gambling in Canada*, Colin Campbell explain that provincial cabinets have tended to control the formation and implementation of gambling policy, via orders in-council or regulatory agencies, without resorting to legislative bodies: “Western Canadian provinces, the first provinces to dramatically increase the level and extent of permitted gambling, opted to expand, license and otherwise regulate gambling by passing orders in-council rather than enacting legislation that would have required the passage of bills through provincial legislatures.”⁷⁹ They continue, by stating that “policy formation in respect to gambling has been in many respects ad hoc, reactive, and incrementalist and controlled and developed by executive levels of government for political and economic advantage.”⁸⁰ Provincial governments have preferred to keep matters related to gaming policy under wraps and out of the public spotlight of the legislature. Decision-makers have maneuvered policies and regulations behind the scenes in order to protect major sources of governmental revenue from threats and criticism.

It is also much more difficult to hold a regulatory agency accountable rather than a democratically-elected politician. Provincial Crown corporations are “government-owned corporations that are, ostensibly, at arm’s length from government control.”⁸¹ They are usually formed to pursue “economic and social

⁷⁸ *Ibid* at 13 – quoting “*The MacGuigan Report*” Preface, *Third Report of the Special Committee on Statutory Instruments*, (Ottawa: Queen’s Printer for Canada, 1969) at vii.

⁷⁹ *Casino State*, *supra* note 9 at 78.

⁸⁰ *Ibid* at 79.

⁸¹ *Casino State*, *supra* note 9 at 74.

objectives that generate revenue” by selling goods and services to the public.⁸² But, Crown corporations predominantly serve the government, and are under the supervision of a minister. Some scholars, like Theodore Lowi, worry that governments are abdicating too much power to regulatory agencies, and are essentially creating “a fourth and largely unaccountable branch of government.”⁸³

The Province of Manitoba has long struggled to include the public in conversations regarding the creation of regulation. However, in 2019, the Pallister government introduced a website called the Manitoba Regulatory Consultation Portal, where proposed regulations are posted for a 45-day consultation period and Manitobans can review and comment on what is being proposed.⁸⁴ Each piece of regulation is accompanied with a Regulatory Impact Accountability Statement (RIAS). I think that this is a good step in the right direction, however I have concerns that this is just another attempt of “performative consultation” similar to that seen at the standing committee stage. On the efficacy of this project, I would largely agree with the comments Professor Thomas made regarding this online portal: “This portal may contribute marginally to transparency, consultation and accountability, but realistically few Manitobans, beyond organizations directly affected, will ever be aware of the portal, so it is not a substitute for the democratic, representative and accountable processes that are meant to take place through the legislature.”⁸⁵

It is important to get a wide variety of input while regulations are being created, but there also needs to be more oversight of regulation once it's created. I agree with Minister Friesen that the

⁸² *Ibid.*

⁸³ *Regulatory Reform*, *supra* note 57 at 12.

⁸⁴ Government of Manitoba, *Manitoba Regulatory Consultation Portal*, online: <https://reg.gov.mb.ca/home>

⁸⁵ Paul G. Thomas, “Little Laws Have Big Impacts”, *Winnipeg Free Press*, (16 May 2020), online: <https://www.winnipegfreepress.com/opinion/analysis/little-laws-have-big-impacts-570529341.html>

regulatory framework for horse racing ought to be brought up to date to better serve the industry. However, what deeply troubles me is the fact that the government has neglected to review, re-evaluate or provide any significant changes to the regulation over the last fifty years. While I understand that horseracing regulation might not be a top priority for the government, this lack of attention demonstrates that the government sees little value in doing the tedious, yet necessary, job of reviewing regulations and governmental orders to make sure that those laws are still effective and not overly restrictive. While the Pallister Government has spent the last five years advocating for eliminating burdensome regulation and reducing red tape, it might be time for the Standing Committee on Statutory Regulation and Orders (SCSRO) to resume their work. Technically all regulations are tabled in the legislature, which means they stand permanently referred to the SCSRO. This Standing Committee is supposed to hold regular meetings to review, prune, and check whether “regulations exceed the authority granted to the executive and whether there have been abuses in the application of regulations.”⁸⁶ However, this committee has not met for decades. While at the federal level, the “SJCRC meets nearly bi-weekly, and reviews hundreds of regulations a year.”⁸⁷ I agree with the recommendation put forward by Professor Schwartz and his collaborating authors, that the SCSRO should reconvene, and that a “Legislative watchdog charged with the task of reviewing new regulation would inject much needed accountability into the process.”⁸⁸ This Standing Committee could also play a greater role in facilitating meaningful conversations with the public on the development and review of regulation, whether that’s by hosting community meetings, providing notice to people or organizations to whom this regulation may affect or requiring the regulatory agency who crafted the regulation to properly address concerns raised by members of the public.

⁸⁶ *Ibid.*

⁸⁷ *Regulatory Reform, supra* note 57 at 34.

⁸⁸ *Ibid* at 42.

VIII. CONCLUSION

Ultimately, what I think is missing from the legislative and regulatory process of Bill 31 is an answer to the following question: do Manitobans actually want horse racing? Understandably, the legions of trainers, jockeys, horse owners and the Assiniboia Downs racetrack stakeholders want horseracing to continue, and the government is keen to receive a portion of wagering in the form of tax revenue. However, does the ordinary citizen care enough about horse racing that the government should continue to invest millions of tax dollars and resources into keeping the industry afloat?