

# **OFFICE OF THE CONTRACTOR-GENERAL**

## **Report of Investigation**

### **Into the Delay in Issuance of Licence by the Betting Gaming and Lotteries**

#### **Commission (BGLC)**

#### **Ministry of Finance and the Public Service**

### **EXECUTIVE SUMMARY**

The investigation into the delay in the issuance of a Gaming Licence by the Betting Gaming and Lotteries Commission (BGLC) to Fortune Gaming Limited (FGL), was initiated by the Office of the Contractor General (OCG) on 2006 March 27. The investigation was undertaken pursuant to Section 15 of the Contractor General Act (1983) and was guided by clearly defined Terms of Reference.

Mr. Richard Lake, Director of Fortune Gaming Limited (FGL), made representations to the Contractor-General on 2006 January 6, that he had been experiencing difficulty with the BGLC in securing the award of a gaming licence on behalf of two companies in which he has interest - Best Promotions and Fortune Gaming Ltd.

Investigations have revealed that on 1994 October 5, Mr. Lake had applied for a Pool Betting Licence on behalf of Best Promotions Limited (BPL), a company in which Mr. Lake has interest. The application for the Pool Betting Licence was subsequently made on the behalf of FGL. The Betting Gaming and Lotteries Commission (hereinafter referred to as the 'Commission') approved Mr. Lake's application at its Board Meeting on 2006 March 29, subject to the drafting of Terms and Conditions of the Pool Betting Order.

During the course of the Investigation, the BGLC informed the OCG that the formulation of a tax regime, by way of a Ministerial Order, was the main condition for the non-issuance/delay of the licence. Records have revealed that the Ministerial Order was gazetted on 2007 August 29.

By way of letter dated 2008 January 24, which stated, inter alia, “Although Fortune Gaming Limited went on to satisfy the Commission’s conditions, the pool betting order still could not be granted since there is the (currently) outstanding issue of the tax regime applicable to this type of activity, and the approval of the Minister of the pool betting order pursuant section 18(7). Both of these matters are within the purview of the Ministry of Finance and Planning, not the Commission.”<sup>1</sup>

On 2008 August 4, Mr. Derek Peart, the Executive Director of BGLC, confirmed that, as at that date, the Pool Betting Licence had not been approved based upon the foregoing.

The application which was made by Mr. Richard Lake on behalf of FGL, as well as the prevailing circumstances surrounding the process of awarding the licence, is unprecedented in so far as it pertains to the regulatory framework to govern the licence.

Based upon the Findings of the OCG, the following Conclusions have been reached:

- The issuing of the Pool Betting Licence, which was applied for by FGL, has experienced extensive delays in the granting and approval process.
- In the first instance, FGL/ Mr. Richard Lake had applied for a Bookmaker’s Licence as well as a Pool Betting Licence. Due to the regulatory requirements that were designed to regulate operating practices and to restrict the co-existence of certain gaming operations at the same physical location, the applications for the two types of licences prompted concern from the BGLC and led it to question the applicant company about this potential conflict. This situation was later nullified when FGL

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<sup>1</sup> Letter from the Attorney General’s Chamber dated January 24, 2008. Attachment No. 99 File No. 18-1-302

withdrew the request for a Bookmaker's Licence and opted for the Pool Betting Licence.

- The Pool Betting Licence to FGL was approved subject to certain terms and conditions. These included, inter alia, the preparation of a Ministerial Order and satisfactory due diligence investigations and subsequent approval by the Minister pursuant to Section 18 (7) of the Betting, Gaming and Lotteries Act.
- The Ministerial Order has been gazetted. However, by way of letter dated 2007 December 21, the BGLC reiterated that, "the Commission had signalled its intention to permit the activity applied for, subject to a number of conditions, including the relevant taxation that was applicable. Upon enquiry, we were advised by the Attorney General's Chambers that the Betting, Gaming and Lotteries Act does not provide for a taxation regime for this type of betting."
- The BGLC, by way of letter dated 2007 December 21, stated that the Commission is still in the process of reviewing the application and that a further review of the application may be necessary, particularly in regard to the status of the agreement between FGL and its overseas counterpart.
- The BGLC has, based on records reviewed, made attempts to ensure that the Commission received the proper legal advice as it pertained to the award of a Pool Betting Licence to FGL.
- There is no evidence to suggest impropriety on the part of the BGLC as it pertained to the non-issuance/delay in the award of a Pool Betting Licence to FGL. However, there appears to be irregularity in the award of the licence to Mr. Richard Lake/FGL, given that it has taken approximately fourteen (14) years for a determination to be made in regard to the granting of the licence.

In light of the foregoing, and having regard to the other Findings and Conclusions detailed in this report, the OCG has made the following Recommendations:

- The Government and the BGLC must move with dispatch to develop the appropriate regulatory framework to govern the licensing regime to ensure that there is no recurrence of the lengthy delay which characterised the instant case of FGL's application.
- Once the appropriate regulatory framework has been developed, it should be clearly communicated to all stakeholders to ensure that each party is aware of their rights and obligations, with a view to ensuring impartiality and merit in the licensing process.

## **INTRODUCTION**

On 2006 March 27, the Office of the Contractor-General (OCG), acting on behalf of the Contractor General, initiated an investigation into the non-award of a gaming licence to Fortune Gaming Ltd (hereinafter FGL)/ Mr. Richard Lake.

In a complaint to the Contractor General on 2006 January 6, Mr. Lake alleged that he had been experiencing difficulty with the BGLC in securing the award of a gaming licence on behalf of two companies in which he has interest - Best Promotions and Fortune Gaming Ltd.

Records reveal that on 1994 October 5, Mr. Lake initially applied for a licence to operate three (3) Pool Betting Games, on behalf of Best Promotions Limited (hereinafter BPL). From as early as 1996 May 2, Mr. Lake was advised by the BGLC that his application 'will be forwarded to the Honourable Minister of Finance for a final determination'.<sup>2</sup> Up to and including the time of his formal complaint to the OCG on 2006 March 20, Mr. Richard Lake had neither been granted nor denied the Pool Betting Licence by the BGLC.

These allegations raised several stark concerns for the OCG, and in particular, the inexplicably protracted fourteen (14) years delay in processing the BPL's/FGL's application, which to this date has apparently still not been completed. The OCG's interest in this matter is premised upon the licence award principles which are enshrined in Section 4 (1) (b) of the Contractor General Act (1983).

Section 4 (1) (b) mandates a Contractor General, on behalf of Parliament, to "monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve

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<sup>2</sup> Letter from the BGLC addressed to Mr. Richard Lake. Dated 1996 May 2. Attachment No. 38 File No. 18-1-302

impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.”

The Terms of Reference of the OCG’s Investigation into the allegations of BGLC’s non-issuance of the licence to Mr. Lake’s company, Fortune Gaming Limited (FGL), were primarily developed in accordance with the mandate of the Contractor General as adumbrated in Section 4 (1) and Section 15 (1) (e) to (f) of the Contractor General Act (1983).

The BGLC had approved Mr. Lake’s application for the licence at its Board Meeting of 2006 March 29, subject to the drafting of the relevant terms and conditions, along with the formulation of the requisite Ministerial Order. However, despite BGLC’s approval of the application from the FGL, it was noted that, “the Commission would not be in a position to approve the granting of the same until the Terms and Conditions governing the Order were drafted”<sup>3</sup>

Mr. Lake submitted to the Office of the Contractor General, documents establishing his companies’ numerous representations for the Pool Betting Licence to the BGLC. It must be noted that, by way of letter dated 2006 June 6, the regulatory authority (BGLC), informed Mr. Lake of the conditionalities, including the development of the tax regime and regulatory framework, for the grant of the licence.

### **TERMS OF REFERENCE**

The primary aim of the Investigation was to ascertain whether there was compliance with the provisions the Contractor General Act (1983) in respect of the award of prescribed licences. The following specific objectives were targeted:

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<sup>3</sup> BGLC- Minutes of Board Meeting held on March 29, 2006. Attachment No. 66 File No. 18-1-302

1. Determine whether there was any impropriety or irregularity in the non-award of a Pool Betting Licence to Richard Lake/FGL.
2. Determine the merit of the complaint made by Mr. Richard Lake in respect of Richard Lake/FGL's application for a Pool Betting Licence.

## **BACKGROUND**

On 2006 January 6, Mr. Richard Lake made an enquiry to the Contractor General regarding the OCG's jurisdiction over the grant of licences by Government agencies.<sup>4</sup>

Mr. Lake relayed to the Contractor General the difficulties he had been experiencing with the BGLC in securing a gaming licence for two companies in which he has interest - FGL and Best Promotions. The Contractor General then advised Mr. Lake to formally detail the precise nature of his complaint to the OCG by way of a letter addressed to the Director of Licences and Permits<sup>5</sup>.

In his letter to the OCG, dated 2006 March 20, Mr. Richard Lake stated that his company, FGL, was of the view "that our application is not being considered on its merit and what is provided for under the law."<sup>6</sup> This letter was specifically framed to outline FGL's application for a Pool Betting Licence and comprised Mr. Lake's formal complaint to the OCG.

By virtue of the powers vested in the Contractor General under Section 15 of the Contractor General Act, a formal investigation was launched by the Office of the Contractor General to ascertain the circumstances surrounding the delay in the award of the Pool Betting Licence to FGL.

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<sup>4</sup> File Note dated Monday January 9, 2006 from Greg Christie. Attachment No. 1 File No. 18-1-302.

<sup>5</sup> File Note dated January 9, 2006 from Greg Christie. Attachment No. 1 File No. 18-1-302

<sup>6</sup> Letter from Mr. Richard Lake dated March 20, 2006 addressed to the Contractor General. Attachment No. 21. File No. 18-1-302

## **METHODOLOGY**

As was previously indicated, the Terms of Reference of the OCG's Investigation into the allegations of non-issuance of the licence to Mr. Lake's company Fortune Gaming Limited (FGL), were framed to accord with the parameters of Section 4 (1) and Section 15 (1) (e) to (f) of the Contractor General Act (1983).

The following methodology was used to inform the Findings, Conclusions and Recommendations:

1. Requisition of documents from the BGLC relating to FGL/ Mr. Richard Lake's application;
2. Review of the procedures and guidelines governing the approval, award and issuance of the Pool Betting Licence;
3. Review of the Betting, Gaming and Lotteries Act;
4. Review of letters from the Attorney General's Chamber dated 2008 January 4 and 2008 January 24 Re: Application for Pool Betting Licence- Fortune Gaming Ltd;
5. Review of Jamaica Gazette Supplement dated 2007 August 29: The Provisional Collection of Tax Act.

## **FINDINGS**

Mr. Richard Lake, acting on behalf of his companies, Best Promotions and Fortune Gaming Ltd, applied for a Pool Betting Licence and several other licences via the regulatory agency, BGLC. Documents perused reveal that the initial application for the Pool Betting Licence was made on 1994 October 5<sup>7</sup>.

The initial application for the Pool Betting Licence was applied for through Best Promotions, a company in which Mr. Richard Lake is a Director. However, subsequent to the initial application (1994), Fortune Gaming Limited (FGL), another company in which Mr. Richard Lake is a Director, assumed the role of the applicant-company through which Mr. Lake sought to acquire the licence.

From the initial date of application for the Pool Betting Licence, several pieces of correspondence have been exchanged between Mr. Richard Lake and the regulatory authority, BGLC.

A sequence of events and associated correspondence, relative to Mr. Richard Lake's application, indicates that from 1994 through to December 2005, Mr. Richard Lake and/or one or more of the companies in which he was a Director have made numerous representations to the BGLC with regard to the issuance of a Pool Betting Licence.

It must be noted that by way of letter dated 1996 May 2, from a Mrs. Annette Smith, General Manager of BGLC, Mr. Richard Lake was advised that, "Your application for the grant of a licence to promote and conduct pool type gaming activities refers. I now wish to advise you that your application will be forwarded to the Honourable Minister of Finance for a final determination."<sup>8</sup> It is therefore apparent that from as early as 1996,

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<sup>7</sup> Refer to letter dated March 20, 2006 and attached documents outlining the historical background of Richard Lake's application to the BGLC. Attachment No. 52 File No. 18-1-302

<sup>8</sup> Letter from Mrs. Annette Smith dated May 2<sup>nd</sup>, 1996 addressed to Mr. Richard Lake. Attachment No.43 File No. 18-1-302

Mr. Richard Lake's application was under review by the BGLC and was awaiting the requisite advice from the Minister.

Subsequent to the letter of 1996 May 2, further correspondence was exchanged between Mr. Richard Lake, representing the companies and the BGLC regarding the referenced licence. It is instructive to note that on 2006 March 29, the BGLC Minutes of Board Meeting held on this date, in specific reference to Fortune Gaming Limited, indicates that<sup>9</sup>:

- The Board approved the application subject to the drafting of Terms and Conditions of the Pool Betting Order.
- The Board noted that the Terms and Conditions should include issues such as paid up share capital, bond, submission of company financials and annual returns.
- It was agreed that the applicant be informed that although there is no legal impediment to the granting of the Pool Betting Order, the Commission would not be in a position to approve the granting of the same until the Terms and Conditions governing the Order were drafted.
- The Board also agreed that the Executive Director should write to the Ministry of Finance & Planning advising them of the application and the contents of the Attorney General's advice and enquiring if there are any policy directions on the matter.

On 2006 April 10, Mr. Derek Peart, Executive Director of BGLC, wrote to Mr. Lake informing him that the advice received from the Attorney General was instructive in that the Betting, Gaming and Lotteries Act could accommodate FGL's proposed Pool Betting Activities. Despite this, however, the letter also indicated that the BGLC would nevertheless be seeking "a Ministerial Policy direction on the issuance of permits for pool

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<sup>9</sup> Minutes of the Board Meeting held on March 29, 2006. Page 4. Items Nos. 846, 847 & 848.

betting activity". Mr. Lake was also advised that his application would continue to be processed so as not to cause any delay, should the Ministerial Policy be affirmed.

Due to the perceived conflict associated with the Pool Betting and Bookmaking activities operating from the same physical infrastructure<sup>10</sup>, Mr. Richard Lake informed the BGLC, by way of letter dated 2006 May 17, that FGL was no longer interested in a Bookmakers Licence as the company's primary interest, in the circumstances was to obtain the Pool Betting Licence<sup>11</sup>.

By way of letter dated 2006 June 6, Mr. Derek Peart, Executive Director of BGLC, informed Mr. Richard Lake that the Board had approved the issuance of a Pool Betting Permit, subject to several terms and conditions.

The terms and conditions detailed in the above referenced letter were<sup>12</sup>:

1. Completion of due diligence investigations with a satisfactory outcome;
2. Submission of Rules that conform with the provisions of the Betting, Gaming and Lotteries Act (BGLA). In this connection, you may recall that the Commission is reviewing the Rules you submitted and is addressing conflicts and deficiencies;
3. Clarification from the Attorney General as to the applicable tax and contribution rates, which has been requested;
4. Evidence of issued and fully paid up shares of minimum \$5,546,000.00;
5. Bond of \$17,576,000.00;

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<sup>10</sup> Minutes of Special Board Meeting held on May 12, 2006- Page # 2 Item # 900, 901.

<sup>11</sup> Minutes of Board Meeting held on June 2, 2006. Page # 4 Item # 933 Attachment # 74 File No. 18-1-302

<sup>12</sup> Letter from Mr. Derek Peart dated June 6, 2006 addressed to Mr. Richard Lake. Attachment No. 69 File No. 18-1-302

6. Ensuring that the terms of the proposed contract between Fortune Gaming and Autotote/ Scientific Games are in keeping with the provisions of the BGLA;
7. Furnishing of all other information that has already been requested and not yet supplied.

The referenced letter also indicated that, "...a Ministerial Order permitting the proposed activity will be necessary and that a recommendation to this effect will occur upon the relevant conditions being met."<sup>13</sup>

On 2006 July 6, one (1) month after FGL had received conditional approval from the BGLC, Mr. Leslie Wright, Acting Executive Director of BGLC, again wrote to Mr. Richard Lake indicating that, "Fortune Gaming Ltd. had not complied with all the requirements for the granting of the licence as a preliminary examination of the amended rules indicate that several of the issues raised in our letter of 8<sup>th</sup> June 2006 as regards the following have not been addressed.

- i. Rules specific to bookmakers; and
- ii. Rules that require clarification and adjustment."<sup>14</sup>

Subsequent to this advice, Mr. Richard Lake wrote to the BGLC on 2006 July 7 indicating a willingness to "make any additional changes necessary, required by the BGLC. To this end we have asked our attorney Mr. Christopher Honeywell to liaise with you [*sic*] your in house attorney Mrs. M. Harrison-Beckford to effect these changes as quickly as possible."

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<sup>13</sup> Letter from Mr. Derek Peart dated June 6, 2006 addressed to Mr. Richard Lake. Attachment No. 69 File No. 18-1-302

<sup>14</sup> Letter from Mr. Leslie Wright dated July 6, 2006 addressed to Mr. Richard Lake. Attachment No. 76 File No. 18-1-302

The findings of the investigation are that the delay in the award of the licence to FGL and, by extension Mr. Richard Lake, was due to several legitimate concerns and constraints of the BGLC.

It is also apparent that the complex nature of the tax regime and creation of new policies were contributing factors to the delay. From all indications, the BGLC sought to examine the extent to which it was able to provide Mr. Lake with a Pool Betting Licence. In so doing, the BGLC took the necessary steps to ensure that, if and when the licence was granted, the proper framework would be in place in advance to govern and regulate the pool betting activities proposed by Mr. Richard Lake and FGL.

With regard to the process for the approval of the Pool Betting Licence, it is apparent that BGLC did not exercise care in ensuring that all the relevant procedures and documents pertaining to the application were either undertaken and/or submitted. However, on the face of it, it does not appear that there was any deliberate attempt on the part of the regulatory agency to withhold the licence from FGL.

The OCG, by way of letter dated 2006 December 15, enquired of the then Minister of State, Mr. Fitz Jackson “the likely time frame for the Ministerial Order”<sup>15</sup>. By way of a return telephone call of 2007 January 16, the Minister of State informed the OCG that, “...Mr. Lake’s matter was among other matters that were embodied in a submission to Cabinet, and that they were being addressed.”<sup>16</sup>

Further, on 2007 December 11, BGLC, in their response to the OCG’s letter of 2007 December 7, enclosed a letter which they had received from FGL advising, *inter alia*, “that on 29 August 2007 the new tax rate relative to pool betting ‘Supplemental Conditions’ was gazetted”. The OCG subsequently purchased a copy of the Gazette.<sup>17</sup>

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<sup>15</sup> Letter from the OCG dated December 15, 2006 addressed to Mr. Fitz Jackson, Minister of State.

<sup>16</sup> File Note dated January 16, 2007. Attachment No. 81. File No. 18-1-302

<sup>17</sup> The Jamaica Gazette Supplement: The Provisional Collection of Tax (Betting, Gaming and Lotteries) (No. 2) Order, 2007 dated Wednesday, August 29, 2007.

In subsequent correspondence, Mr. Derek Peart of BGLC advised the OCG that the suitability of the gazetted tax regime was then being questioned by the Commission through their attorneys at the Attorney General's Department. Consequently, he said, the matter was once again being referred to the Financial Secretary of the Ministry of Finance and the Public Service for advice.<sup>18</sup>

In his final letter to the OCG, Mr. Peart explicitly stated that, "in the passage of time material developments could have taken place requiring the Commission to conduct a further review of the application. One such is the status of the Agreement between the overseas supplier and Fortune Gaming Limited."<sup>19</sup>

It should be noted that the Attorney General's Chambers, by way of letter dated 2008 January 24, advised the OCG that, " Fortune Gaming Limited have relied on the letter dated June 6, 2008[sic] as indicating that a 'conditional licence' was in place. However, the Act does not recognize such a creature"<sup>20</sup>.

The above referenced letter further stated that, "Although Fortune Gaming Limited went on to satisfy the Commission's conditions, the pool betting order still could not be granted since there is the (currently) outstanding issue of the tax regime applicable to this type of activity, and the approval of the Minister of the pool betting order pursuant section 18(7). Both of these matters are within the purview of the Ministry of Finance and Planning, not the Commission"<sup>21</sup>.

It is therefore apparent that the Licence which Fortune Gaming Ltd. applied for and is awaiting requires the creation of the applicable tax regime to govern this type of activity.

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<sup>18</sup> Correspondence from BGLC to OC-G dated December 11 & 21 2007.

<sup>19</sup> Correspondence from BGLC to OC-G dated December 21, 2007.

<sup>20</sup> Correspondence from Attorney General's Chambers to OC-G dated January 24, 2008. Attachment No. 99. File No. 18-1-302

<sup>21</sup> Correspondence from Attorney General's Chambers to OC-G dated January 24, 2008. Attachment No. 99. File No. 18-1-302

## CONCLUSIONS

It must be stated that from the outset the application by FGL for a Pool Betting Licence, along with the requisite process for its approval, was a case of first impression for the Commission. The traditional procedure for approval had to be expanded to facilitate the processing of FGL's application. Consequently, there have been many delays in the issuance of a Pool Betting Licence to FGL/ Mr. Richard Lake.

Based upon the Findings of the investigation, the OCG has arrived at the following Conclusions:

- The issuing of the Pool Betting Licence, which was applied for by FGL, has experienced extensive delays in the granting and approval process.
- In the first instance, FGL/ Mr. Richard Lake had applied for a Bookmaker's Licence as well as a Pool Betting Licence. Due to the regulatory requirements that were designed to regulate operating practices and to restrict the co-existence of certain gaming operations at the same physical location, the applications for the two types of licences prompted concern from the BGLC and led it to question the applicant company about this potential conflict. This situation was later nullified when FGL withdrew the request for a Bookmaker's Licence and opted for the Pool Betting Licence.
- The Pool Betting Licence to FGL was approved subject to certain terms and conditions. These included, inter alia, the preparation of a Ministerial Order and satisfactory due diligence investigations and subsequent approval by the Minister pursuant to Section 18 (7) of the Betting, Gaming and Lotteries Act.
- The Ministerial Order has been gazetted. However, by way of letter dated 2007 December 21, the BGLC reiterated that, "the Commission had signalled its intention to permit the activity applied for, subject to a number of conditions, including the

relevant taxation that was applicable. Upon enquiry, we were advised by the Attorney General's Chambers that the Betting, Gaming and Lotteries Act does not provide for a taxation regime for this type of betting.”

- The BGLC, by way of letter dated 2007 December 21, stated that the Commission is still in the process of reviewing the application and that a further review of the application may be necessary, particularly in regard to the status of the agreement between FGL and its overseas counterpart.
- The BGLC has, based on records reviewed, made attempts to ensure that the Commission received the proper legal advice as it pertained to the award of a Pool Betting Licence to FGL.
- There is no evidence to suggest impropriety on the part of the BGLC as it pertained to the non-issuance/delay in the award of a Pool Betting Licence to FGL. However, there appears to be irregularity in the award of the licence to Mr. Richard Lake/FGL, given that it has taken approximately fourteen (14) years for a determination to be made in regard to the granting of the licence.

## **RECOMMENDATIONS**

The OCG has considered and reviewed all of the information which has been disclosed to it, and having regard to the Findings and Conclusions, arrived at the Recommendations entailed below.

In the circumstances, it is the OCG's considered and respectful opinion that the following actions should be taken:

- The Government and the BGLC must move with dispatch to develop the appropriate regulatory framework to govern the licensing regime to ensure that there is no recurrence of the levels of delay which are currently being experienced in the case of FGL's application.
- Once the appropriate regulatory framework has been developed it should be clearly communicated to all stakeholders to ensure that each party is aware of their rights and obligations, with a view to ensuring impartiality and merit in the licensing process.