

CHAPTER IV

POSSIBLE RECOMMENDATIONS

During the course of preparing for this project paper, the writer had the pleasure of having a short interview with a Mr. Kong Fook Yew, Superintendent of Police, Records Division, Kuala Lumpur. He was very helpful and enthusiastic and we discussed some changes and recommendations which is necessary to help curb the rising rate of gaming in the country. With some help from him the writer was able to view things in a better perspective.

Illegal gaming is found to have increased steadily over the years. The figures in Appendix A show that in the year 1973 for instance, of which 2,682 raids were made, 6106 people were arrested. The number of arrests increased to 8,371 by the year 1975. This may not be a staggering figure by some standards but it is enough to warrant some concern by the authorities whilst it may be accepted that gambling is but a social vice nevertheless it leads to other criminal activities more dangerous, and for this reason it should be viewed with some concern.

Mr. Kong Fook Yew feels that there is in effect no way to stop gambling at all; it is well high

impossible to eradicate it totally. The evil is one of long repute for we read of Stamford Raffles taking stern measures to suppress gambling even in 1823. Legislation may match the cunning methods of evasion but it is very doubtful if the long arm of the law will reach the small and big time gamblers through legislation alone. This curse of gambling has its roots coiled around the Malaysian Society. It is at these roots that our efforts should be directed if gambling is to be suppressed.

I. ENHANCED PUNISHMENT

If we cannot eradicate gambling, we should at least try to contain or control it. One of the ways is through revising the penalty clauses and increasing the punishment meted out.

Records in the past have shown that courts have not imposed sufficiently heavy punishment to deter gamblers. This may be so because the maximum penalty provided for in the Common Gaming Houses Ordinance 1953 appears relatively light. Take for instance offences under S.4, 5 and 8 the maximum penalty is imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000 or to both such imprisonment and fine.

Under S.6, 7 and 9 the maximum penalty is a fine not exceeding \$250.

The Common Gaming Houses Ordinance came into force in 1953 and the penalties mentioned above were considered adequate in those days. Times have changed and by today's standards the maximum for fines especially would seem negligible. What more if those arrested are under the employ of the big kingpins, they would not feel the brunt at all. Infact the normal course taken by the accused was to plead guilty and pay a stipend fine for the big bosses usually supply them enough to meet "emergencies".

It is proposed therefore that the maximum penalties be increased substantially. According to the police, for offences under S.4, 5 and 8 the maximum penalty should be increased to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000 or to both such imprisonment and fine, and for offences under S.6, 7 and 9 the maximum penalty be increased to fine not exceeding five hundred dollars.

With the penalties increased, the courts may perhaps be encouraged to take a much more

serious view in such cases and mete out appropriate punishment to deter potential gamblers.

2. a) SCHEDULED INSTRUMENT OF GAMING
- b) SCHEDULED GAMES OF CHANCE OR MIXED GAMES OF CHANCE AND SKILL

The prosecution depends to a great extent on the presumptions under the Common Gaming Houses Ordinance to secure a conviction against persons arrested for gaming in a common gaming house. Despite these presumptions the prosecution still finds it extremely difficult to prove its case.

There have been instances in the past where as a result of the prosecution's inability to identify the type of game played, the accused were acquitted and discharged before the defence is being called. Take for example where the raiding party merely recovered a set of dominoes and does not actually see the type of game in progress at the time of the raid. Now, a set of dominoes could be used to play more than one type of game for example, "Pai Kow" "Tien Kow" or "Tan Ngau"; and since the prosecution was unable to identify the type of game played at the time of the raid, the prosecution invariably failed.

The Home Minister could perhaps take up this issue because by virtue of the powers vested upon him under S.2(2)(b) he can by notification in the Gazette declare any game, method, device, scheme or competition specified or described in such notification to be a game of chance or mixed game of chance and skill for the purposes of this Ordinance and thereupon it shall be irrebutable presumption of law that such game, method, device, scheme or competition is a game of chance or mixed game of chance and skill as the case may be for the purposes of this Ordinance. This will bring our Common Gaming Houses Ordinance in line with the Common Gaming Houses Act (cap.96) of Singapore⁽¹⁾.

The Singapore Authorities have not stopped there for they have lightened the difficulties of the prosecution by scheduling fifteen sets of instruments or appliances for gaming⁽²⁾. Hence there is not need for the prosecution to specially prove that a specific article is or is

(1) See Appendix B for the schedule of games gazetted by the Minister under the Singapore Ordinance.

(2) See Appendix C for the schedule of the list of instruments.

not an instrument of gaming within the Ordinance.

3. ENGLISH GAMING ACT 1968⁽³⁾

It is proposed here to refer briefly into the recent amendment and repeal of the gaming laws in England and the adoption by them of a totally new outlook on the law of gaming. The writer does not wish this to be a direct proposal but it could be very enlightening to peruse the objects and reasons⁽⁴⁾ of the new gaming laws there, for it has a lot of practical appeal. After all the emphasis in the 1968 Gaming Act is more on method of control than on the question of the legality of gambling at all.

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- (3) The Gaming Act 1968 was passed on the 24th October 1968. It comprises 54 sections and 15 schedules. It also has four parts namely:-
- Part I (SS 1 to 8) deals with gaming elsewhere than on premises licensed or registered under the Act.
- Part II (SS.9 to 25) deals with gaming on premises licensed or registered under the Act.
- Part III (SS.26 to 39) is concerned with gaming by means of machines.
- Part IV (SS. 40 to 54) contains a no. of miscellaneous and supplementary provisions.

See: Shaws, Guide to the Gaming Act 1968, 2nd Edition, at page 3.

In the new act, Parliament has abolished the offence of "unlawful gaming" as such, and, discarded the "conditions of lawful gaming" as a universal test of criminality. In their place it has introduced a system of permission and control akin to that under which betting offices are licensed and operated. But in order to make a fresh start and clear the way for the new system the Act has repealed the whole of the law of gaming.

The new act defines certain categories of places or premises and lays down the sort of gaming that may be lawfully carried on in each of them. Consequently no sort of gaming is per se unlawful but may become unlawful if it is carried on otherwise than in the place and under the conditions which have been laid down for it. It follows that the type of gaming which will be permitted anywhere is that to which the degree of control exercised over the premises is appropriate.

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- (4) It was the failure of the Acts of 1960 and 1963 to achieve their purpose (to prevent the exploitation of gaming by Commercial interests) which has rendered the Act of 1968 necessary.

a) METHOD OF CONTROL

The instruments of control under the act are licence and registration. Registration is for member clubs of good standing, whether social clubs or what. The licence entails the greater degree of control; it is granted only after strict investigation by more than one body of persons and may be terminated if the conduct of the gaming or the accounts, management or staff of the club fall short of the required standard. Control by registration is much less strict.

b) MEANS OF ENFORCEMENT

The present Act is unlikely to fail (as the act of 1963 failed) for lack of means of enforcing it. It is on the contrary remarkable for the number of devices built into it and interlocking with each other designed to ensure, as far as possible, that the intentions of the legislature are carried out. There are 4 bodies who can provide, either separately or in combination, safeguard against a breakdown of the Act.

The Gaming Board, in addition to their powers of inspection and approval work hand in

hand with the licensing authorities, who can refuse, terminate, restrict or cancel a licence if there have been contravention or misconduct, and who, in exercising this powers, must take into account advice given them by the Board. The latter, in giving their consent to an application, will be in a position to take panoramic view of gaming throughout the country, leaving the justices free to confine their attention, if they so wish, to local considerations. Then come the regulations of the Secretary of State. They can prescribe in detail the conduct of the gaming and even the operation of machines, and can be a powerful means of securing that the gaming is in all respects fairly and properly conducted and that the provisions of the Act are not eroded by practices which are indirectly contraventions.

Furthermore, the Secretary of State is another link between the Gaming Board, with whom he must consult before making regulation, and the licensing authority, whose powers to grant or renew licences he can modify ^{by} his regulation.

Finally the fear of being disqualified by the Courts from holding a licence is more likely to

defer a promoter than the fine or imprisonment to which he is also liable.

Briefly that is how matters stand in England with regards to gaming. The authorities have tried to tackle the situation by providing guidance and the course along which gaming should flow. The writer submits that the idea is rather attractive and merits some consideration by the appropriate authorities. Presently, the only section akin to the English way is provided for in S.27A⁽³⁾ of the Common Gaming Houses Ordinance i.e. with regards to power to licence promotion and organisation of gaming by a company, upon whose sanction our local Empat Number Ekor and the Gentings Highland Casino were set up. We have already initiated an important step forward and it has proved to be very reliable, especially in view of the tremendous amount of revenue the Government can collect from these licensed clubs⁽⁴⁾. Furthermore the inherent evils in gaming can be curbed by the provision of strict rules vis-a-vis amount of stakes etc in the licensed clubs.

(3) Amended by Act A56/71.

(4) See Appendix D for sample of Revenue collected.