

THE EXTENT TO WHICH SOUTH AFRICAN GAMBLING LEGISLATION PROTECTS FAMILIES FROM PROBLEM GAMBLING

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1. I have been asked to participate in a webinar organised by the South African Responsible Gambling Foundation. The theme is the following:
2. Minimising the potential harmful effects of problem gambling: the relationship between problem gambling and gender-based violence.
3. One of the key pillars of the role of the South African Responsible Gambling Foundation ("*Foundation*") is to undertake research. The most important role though is that with the research the Foundation is able to intervene in an informed fashion when it provides solutions to assist problem gamblers and those around them who are affected.
4. People who are affected negatively by problem gambling are not only the problem gamblers but the immediate family members.
5. Gender-based violence is a societal scourge which all of us as a society have to fight. Over the years a number of laws have been passed in order to ameliorate the situation of victims of gender-based violence, so that they can get access to justice as efficiently and with as little cost as possible. However

even with the best efforts that the legislatures have put in place, the problem is not abating. The news reports are filled with horror stories of children and women being subjected to senseless violence simply because of who they are.

6. The Centre for the Study of Violence and Reconciliation produced a brief review of gender-based violence in South Africa, in April 2016.
7. In a section titled "*Legal Factors*" the report notes that the South African government has signed various international and regional conventions to protect the rights of women and girls and passed various laws such as the 1998 Domestic Violence Act, the 2012 Criminal Law (Sexual Offences and Related Matters) Amendment Act, the 1998 Maintenance Act and the 2011 Protection from Harassment Act.¹ They further observed that despite these policies, GBV remains a problem.
8. The Domestic Violence Act is meant to assist victims of domestic violence with easy remedies. Instead of following an elaborate and complicated legal route, the Act makes provisions to protect victims of domestic violence by giving them the right to apply and receive a protection order. The police officers have a duty to assist the victim of domestic violence. The police officers have a duty to arrest the perpetrator of domestic violence.

¹ p13.

9. The victim has a right to receive psychological and medical help.
10. The report of the Centre for the Study of Violence notes that the Domestic Violence Act is clear about things that need to happen to protect victims of domestic violence, but there are problems with its implementation. The report further observes that one of the problems is that although the police know what their role is, many police officers are unwilling to assist victims of GBV as they see these cases as a “*private matter between two partners/lovers*”. They also observe that many people are not familiar with how courts work and as a result the thought of going to court evokes feelings of fear and anxiety. They have also observed as one of the problems, budgetary constraints and lack of co-operation amongst government departments.

Subtheme

11. A subtheme of this webinar, is to discuss the extent to which South African gambling legislation protects families from problem gambling.

Regulation of Gambling

12. Gambling regulation is a matter that falls within the jurisdiction of both the national and provincial governments. The National Gambling Act 2004 provides the following in the preamble:

“To provide for the co-ordination of concurrent national and provincial legislative competence over matters relating to casinos, racing, gambling and wagering, and to provide for the continued regulation of those matters.

The preamble records that:

‘Considering that the Constitution of the Republic of South Africa 1986 Act (No. 108 of 1996), establishes that casinos, racing, gambling and wagering are matters of concurrent national and provincial legislative competence;

It is desirable to co-ordinate the activities relating to the exercise of the concurrent competence within the national and provincial spheres of government;

It is desirable to establish certain uniform norms and standards, which will safeguard people participating in gambling and their communities against the adverse effect of gambling, applying generally throughout the Republic with regard to casinos, racing, gambling and wagering, so that

- Gambling activities are effectively regulated, licensed, controlled and policed;*
- Members of the public who participate in any licensed gambling activity are protected;*

- *Society and the economy are protected against overstimulation of the latent demand for gambling; and*
- *The licensing of gambling activities is transparent, fair and equitable.*

It is expedient to establish certain national institutions, and recognise the establishment of provincial institutions, which together will determine and administer national gambling policy in a co-operative, coherent and efficient manner.”

13. The primary institutions which the law has created to regulate and licence gambling, are the National Gambling Board, and the provincial Licensing Authorities.
14. The central point of departure of gambling regulation in South Africa is that any form of gambling or making available an opportunity to gamble is prohibited, unless the gambling happens within a regulated and licensed environment. So, the point of departure is that gambling and its related activities of offering gambling opportunities is prohibited unless it is licensed. This is because of the recognition that gambling may have negative consequences, such as problem gambling, and other vices like money laundering.
15. The emphasis of the regulation of gambling is therefore meant primarily to protect society from the adverse impacts of gambling, while enhancing and

promoting the positive aspects of gambling, such as entertainment and economic development.

16. The whole regulatory framework of gambling is therefore geared at protection while allowing space for people to entertain themselves and others to make money out of the business of gambling.
17. For many years the only form of gambling which has been allowed in South Africa and in many parts of the world has been horse racing. Other forms of gambling like casinos, bingos and others have been prohibited.
18. With the dawn of our new democracy and the new Constitution we had to do things differently. The Constitution guarantees certain fundamental rights. The central theme of the Constitution is that everyone is equal before the law and has a free will. As such everyone has a right to engage in any activity that they desire, except if it is harmful to others and prohibited by law. Everyone has a right of freedom of thought as well as religion.
19. The fact that one section of the population may dislike gambling, does not mean that those views should dominate over others. Those who like to gamble with their money are free to do so. Those who want to spend their time gambling are also free to do so because after all it is their time and money.

20. The role of the State in the private affairs and activities of the population is limited to a large extent by the Constitution. One of the fundamental rights is the right to privacy. What a person does in their own privacy is not the concern of the State unless the activity is unlawful or harmful to others. The law therefore has to strike a balance between protection against the adverse effects of gambling, while not unfairly impinging on the rights of people to privacy and freedom of association.

How does the law regulating gambling protect families from problem gambling?

21. In the first place, the law regulates premises where gambling can take place. Gambling is only allowed to take place in licensed premises. In addition, only people licensed to offer gambling are allowed to do so.

Minors

22. Section 12 of the National Gambling Act provides for protection of minors. It prohibits minors from entering a designated area within any licensed premises, to operate a gambling machine or a gambling device, to conduct or make available a gambling activity, engage in social gambling or a gambling activity other than an amusement game.²

² Section 12.

23. A licensee, licensed employee or a person in control of licensed premises or a gambling machine or a gambling device must not knowingly permit a minor to enter or remain in a designated area within such licensed premises or to engage in gambling. The licensee, licensed employee or a person in control of licensed premises is also obliged to take reasonable measures to determine accurately whether or not a person is a minor before permitting that person to engage in gambling within the licensed premises.

Credit granting to gamblers

24. Section 13 provides for restrictions on credit to gamblers. This section provides that a person licensed to make any gambling activity available to the public must not extend credit contrary to the Act, in the name of the licensee or a third party, to any person for the purposes of gambling.
25. The section seeks to limit access to credit and thus the opportunity to squander money on gambling.

Excluded persons

26. Section 14 deals with excluded persons and allows a person who wishes to be prevented from engaging in any gambling activity to register as an excluded person by submitting a notice to that effect in the prescribed manner and form at any time. Section 14(1) obviously places an obligation on the problem

gambler themselves to recognise that they have a problem and should be excluded from gambling.

27. The problem for victims of problem gambling, particularly those who are around them, such as family members, is that the system of self-exclusion is voluntary. Most problem gamblers do not accept that they have a problem and therefore would not readily exclude themselves voluntarily.
28. In order to grant other people other than the problem gambler some form of recourse, section 14(4) provides for the right of any person to apply to a court of competent jurisdiction for an order requiring the registration as an excluded of (a) a family member of the applicant; (b) a person on whom the applicant is economically dependent in whole or in part; (c) a person for whom the applicant is economically responsible in whole or in part; (d) a person who is subject to an order of a competent court holding that person to be mentally deranged or any person (i) to whom the applicant has a duty of care and (ii) whose behaviour manifests symptoms of addictive or compulsive gambling.
29. Section 14(5) provides that if, in the circumstances of an application in terms of subsection 4, the court considers it reasonable and just to prevent that person concerned from engaging in any gambling activity, the court may order the registration of that person as an excluded person.

30. In terms of subsection 6 an excluded person affected by an order in terms of subsection 5 may apply to the court that made the order at any time to set aside the order, and the court may do so if, after considering the grounds for making the original order and any new evidence before it, the court is satisfied that it is no longer reasonable and just to prevent that person from engaging in any gambling activity.
31. The Act obliges the National Gambling Board to establish and maintain a national register of excluded persons in the prescribed manner and form and to make the information in the register continually available to each provincial licensing authority and every person who is licensed to make a gambling activity available to the public.
32. The Minister, by regulation, made in accordance with section 87, may prescribe (a) forms, standards and procedures for the registration of persons on, and cancellation of registrants from the register of excluded persons; (b) fees for services in connection with the maintenance and access to the register of excluded persons, other than the registration of excluded persons; or (c) standards to be employed by licensees in giving effect to the exclusion.
33. There is an obligation placed on licensees not to admit to their premises, persons who have been excluded. Section 14(1) provides that a licensee, licensed employee, or person in control of licensed premises or a gambling machine or gambling device must not knowingly permit an excluded person to

enter or remain in a designated area within those premises; (b) operate that gambling machine or gambling device; (c) conduct or make available a restricted activity or an activity licensed as social gambling, within those premises; or (d) engage in social gambling or a restricted gambling activity within those premises.

34. The licensee must take the prescribed measures to determine accurately whether or not a person is an excluded person, before permitting that person to engage in any form of gambling in the premises. The Act also provides that the licensee is not liable under the Act or any other civil or criminal law for admitting the registered person provided the licensee has taken the prescribed measures.
35. Every licensee authorised to make a gambling activity available to the public must make available at all of its licensed premises the prescribed form to be used by a person wishing to register as an excluded person a directory of locally recognised counselling, treatment or education services addressing the problems of compulsive and addictive gambling. The licensee must also prominently post a notice advertising the availability of those materials, in the prescribed manner and form, at every entry to those premises. This is where the Foundation comes in. It provides free counselling and treatment as well as education to make people aware of the adverse effects of gambling.
36. The Provincial Licensing Authorities play a role in terms of assisting in the exclusion of problem gamblers from gambling activities. The Provincial

Licensing Authorities are the main agencies which police compliance with the legislation. Most licences are issued by the Provincial Licence Authorities. This includes casinos' licences which is the predominant mode of gambling. Casinos are still the dominant mode of gambling, although other forms of gambling like sports betting are gaining in popularity. If a licensee should contravene any of the provisions of the Act or provincial legislation, the provincial licensing authorities have the power and obligation to institute disciplinary proceedings against the licensee and in extreme cases to even withdraw or cancel the licence.

Domestic violence

37. The law relating to gambling applies mainly in and around premises where gambling activity takes place. Once a person leaves the gambling premises and goes home, the reach and authority of the gambling authorities ceases.
38. Gambling authorities can only, through advocacy and by adhering to the regulations, bring to the attention of potential problem gamblers, the help which they may find in counselling and other interventions. However once a problem gambler leaves and goes home, then it becomes a law enforcement issue.
39. If a problem gambler engages in domestic violence then the gambling industry's ability to intervene within the regulatory framework becomes limited. This is where the Foundation comes in. It provides counselling for free and this is how

the gambling industry contributes in ameliorating the negative impact of gambling. The Foundation also comprises of regulators and is therefore a joint effort between the regulators and the industry.

Conclusion

40. While the legal regulatory framework of gambling provides protection for the population against the adverse effects of gambling, it has limited ability to prevent and deal with domestic violence.