

BETTING ON DOG RACING. THE NEXT LEGALISED GAMBLING OPPORTUNITY IN SOUTH AFRICA? A CAUTIONARY NOTE FROM THE REGULATION OF GREYHOUND RACING IN BRITAIN

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I. INTRODUCTION

Legalised gambling in South Africa has mushroomed since the mid-1990s. It currently consists of: thirty-six operating resort-style casinos;¹ a potential of 50,000 limited payout machines² (LPMs);³ a few bingo halls;⁴ a national lottery and sports pool;⁵ horse race wagering;⁶ and lastly, the imminent licensing of interactive gambling sites.⁷ Gambling is regulated by eleven statutes, including the National Gambling Act 7 of 2004,⁸ with each province⁹ having its own gambling statute.¹⁰ The National Gambling Act provides for certain national norms and standards including: that all gambling activities be effec-

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¹ NAT'L GAMBLING BD., ANNUAL REP. 70 (2009); *see generally* Marita Carnelley, *Gaming, Wagering and Lotteries*, in 10(2) THE LAW OF SOUTH AFRICA 163 (Willem A. Joubert ed., 2d ed. 2004).

² Nat'l Gambling Act 7 of 2004 s. 26; GN R1425 of 21 December 2000.

³ The maximum aggregate stake to commence play is 5 rand ("R") and the maximum payout is 500 rand. Nat'l Gambling Act 7 of 2004 s. 26; GN R1425 of 21 December 2000.

⁴ Bingo licences are awarded by the provincial gambling boards. *See, e.g.*, Gauteng Gambling Act 4 of 1995 s. 46-47.

⁵ Lotteries Act 57 of 1997 s. 13, 55.

⁶ Wagering on horseracing is also licensed by the provincial gambling boards, and in particular, KwaZulu-Natal and Gauteng. *See, e.g.*, Gauteng Gambling Act 4 of 1995 s. 90-112.

⁷ *See* Nat'l Gambling Amend. Act 10 of 2008. The Draft Interactive Gambling Regulations have been published for comment. GN 211 of 27 February 2009.

⁸ The other national statute is the Lotteries Act 57 of 1997, which regulates lotteries and sports pools. This statute is ignored for the purposes of this article.

⁹ The nine South African provinces are: Gauteng, North West, Limpopo, Mpumalanga, KwaZulu-Natal, Free State, Northern Cape, Western Cape, and Eastern Cape. S. AFR. CONST. 1996 § 103(1).

¹⁰ E. Cape Gambling and Betting Act 5 of 1997; Free State Gambling and Racing Act 6 of 1996; Gauteng Gambling Act 4 of 1995; KwaZulu-Natal Gambling Act 10 of 1996; Mpumalanga Gaming Act 5 of 1995; N. Cape Gambling and Racing Act 4 of 1996; N. Province Casino and Gaming Act 4 of 1996; N.W. Gambling Act 2 of 2001; and W. Cape Gambling and Racing Act 4 of 1996.

tively regulated, licensed, controlled, and policed; that participating members of the public, society, and the economy be protected against over-stimulation of the latent demand for gambling; that vulnerable persons be protected; and that licensing activities be transparent, fair, and equitable.¹¹

Economically, the gambling sector has made a considerable contribution to the South African economy through taxes, investments, and charitable contributions. The casinos alone made a capital investment of more than 15 billion rand¹² (“R”) since 1997,¹³ representing 1.2 percent of the total South African capital formation during this period.¹⁴ The total value added by the gambling sector for the 2004-2005 year amounted to R11.5 billion, representing 0.9 percent of the GDP of South Africa.¹⁵ For the year 2006 alone, the nation received R1.07 billion from taxes on licensed gambling operators, excluding lotteries and sports pools. The national lottery, run by a licensed operator on behalf of the central government under the auspices of the National Lotteries Board, has also contributed substantially to philanthropic and community causes: from March 2, 2000, to February 14, 2005, it donated more than R2.5 billion.¹⁶

South Africans have also embraced gambling as a pastime as almost half of the adult population participates in one of the various forms of legalised gambling, with some individuals participating in more than one form of gambling.¹⁷ Only about twenty percent of the population finds gambling *per se* unacceptable.¹⁸

There is, and always has been, a predictable downside to the success of any gambling industry, namely the social and economic problems that result from a gambling addiction.¹⁹ A gambling addiction occurs when an individual

¹¹ Nat'l Gambling Act 7 of 2004 pmbi.

¹² The Rand is the official currency of South Africa.

¹³ See NAT'L GAMBLING BD., ANNUAL REP., *supra* note 1, at 54; *see also* AA LIGTHELM ET. AL., SOCIO-ECONOMIC IMPACT STUDY OF LEGALISED GAMBLING IN SOUTH AFRICA xiii (2005) [hereinafter 2005 SOCIO-ECONOMIC IMPACT STUDY].

¹⁴ 2005 SOCIO-ECONOMIC IMPACT STUDY, *supra* note 13, at xiii.

¹⁵ *Id.*

¹⁶ Press Release, Nat'l Lotteries Bd., R3 Billion to Good Causes in Less than 5 Years (Feb. 15, 2005), *available at* <http://www.nlb.org.za/pressarticle.asp?id=73>. This amount was made up as follows: 45% or R1.4 billion for charitable expenditures; 22% or R8 million for the development of sports and recreation; 28% or R821 million was paid towards the arts, culture and national heritage; and 5% or R27.5 million towards general purposes within the Minister's discretion. GN R1468 of 15 December 2004.

¹⁷ 2005 SOCIO-ECONOMIC IMPACT STUDY, *supra* note 13, at iii-iv, notes that almost half (49.8%) of the participants in the survey participated in legalised gambling during the period researched: 45.8% bought lotto tickets; 7.8% bought scratch cards; 7.1% participated in casino gambling; 1.6% wagered on horses; 1.1% participated in sports betting; 0.9% played LPMs; 0.4% played bingo; and 0.2% participated in internet gambling. Approximately 50.2% abstained from gambling altogether.

¹⁸ *Id.* at v.

¹⁹ S. AFR. LOTTERIES & GAMBLING BD., MAIN REPORT ON GAMBLING IN THE REPUBLIC OF SOUTH AFRICA 137-138 (1995) [hereinafter WIEHAHN REPORT] (Professor NE Wiehahn served as Chairman of the Lotteries and Gambling Board.). *See also* PETER COLLINS & GRAHAM BARR, NAT'L RESPONSIBLE GAMBLING PROGRAMME, NATIONAL PREVALENCE STUDY: GAMBLING AND PROBLEM GAMBLING IN SOUTH AFRICA 5, 9 (2006) [hereinafter NRRP 2006 PREVALENCE STUDY]. Bearing in mind the difficulty with defining and identi-

indulges in overspending, “lead[ing] to stressful interpersonal relationships, deterioration of family life, debt and the consequent inability to meet financial obligations. . . . [coupled with] feelings of stress, depression and anxiety caused by the loss of money,” and, in certain cases, loneliness.²⁰ At their extreme, some pathological gamblers eventually commit crimes to obtain funds to feed their gambling habits.²¹ In South Africa, these problems are generally addressed through the National Responsible Gambling Programme, funded by the gaming industry, which focuses on education, subsidised treatment, and rehabilitation.²² Legislation also provides for the exclusion of problem gamblers from gambling operations.²³ The legislature, gaming industry, and other concerned groups thus anticipated these socio-economic problems prior to the legalisation of gambling, and the industry, to some extent, is dealing with them.²⁴

During post-constitutional gambling regulatory developments, the legislature left an earlier component of the South African gambling industry behind, namely the legalisation of dog races and the betting thereon. In early 2008, the Department of Trade and Industry revived the discussion on dog races by initiating research into the feasibility of legalising greyhound racing in South Africa.²⁵ There are various reasons why the legislature should legalise the dog racing industry. Africa has a tradition of sport hunting with dogs and the South African people already have an interest in racing *per se* (the “poor man’s hor-

ying problem and pathological gamblers, the National Responsible Gambling Programme, in its 2006 Report, found that approximately 4.8% of adult South Africans could be considered problem gamblers, with less than 1% regarded as pathological or compulsive gamblers. *Id.*

²⁰ 2005 SOCIO-ECONOMIC IMPACT STUDY, *supra* note 13, at ix.

²¹ For a discussion of the legal issues and the unreported cases surrounding pathological gambling, see *S v. Nel* 2007 (2) SACR 481 (SCA) (51); Marita Carnelley, *The Role of Pathological Gambling in the Sentencing of a Person Convicted of Armed Robbery: A Comparative Discussion of the South African, Canadian and Australian Jurisdictions*, 21 S. AFR. J. CRIM. JUST. 291 (2008); Marita Carnelley, *Gambling Law Developments in South Africa: The Summer of 2004/2005*, 9 GAMING L. REV. 318 (2005); Marita Carnelley, *Sentencing of Pathological Gamblers in Canada. Lessons for South Africa*, (2004)(1) OBITER 184; Marita Carnelley, *Pathological Gambling as a Mitigating Factor*, 17 S. AFR. J. CRIM. JUST. 79 (2004); Marita Carnelley, *S v Wasserman 2004 - Is dobbelverslawing ‘n wesentlike en dwingende omstandigheid in terme van die Strafwysigingswet wat ‘n geringer vonnis regverdig?*, 30 J. JURISDICTIONAL SCI. (Tydskrif vir Regswetenskap) 153 (2005); and Marita Carnelley & Shannon Hoctor, *Pathological Gambling as a Defence in Criminal Law*, (2001)(2) OBITER 379.

²² See generally National Responsible Gambling Programme, <http://www.responsiblegambling.co.za> (last visited Feb. 23 2010) (providing information, reports, and statistics).

²³ Nat’l Gambling Act 7 of 2004 s. 14(1) states that “[a] person who wishes to be prevented from engaging in any gambling activity may register as an excluded person by submitting a notice to that effect in the prescribed manner and form at any time.”

²⁴ A full discussion hereof, however, falls outside the scope of this article although it is mentioned as it is relevant to the possible arguments against the legalisation of betting on dog races that is discussed *infra*.

²⁵ Media Release, Univ. of the Free State, Researchers to Look at Greyhound Racing (Aug. 22, 2008), available at <http://www.uovs.ac.za/news/newsarticle.php?NewsID=1061> (last visited Mar. 22, 2010).

seracing”). Of course, the people also have an interest in betting on such races.²⁶

This article commences with a brief overview of the history of dog racing in South Africa. It provides a synopsis of South Africa’s current legal position on dog racing and the betting thereon. The main question this article addresses is whether there is any policy reason why dog racing and wagering should not be legalised and regulated. Furthermore, some comments are included discussing how such regulation should fit into the broader existing gambling regulatory framework should the legislature make the decision to legalise dog racing and wagering.

The article concludes with a discussion of the greyhound racing industry in Britain and the recent developments in that jurisdiction. The rationale for the choice of this jurisdiction as a comparison is that a successful greyhound racing industry has existed in Britain for decades. Yet, notwithstanding the successes of dog racing in Britain, an independent review was commissioned to investigate the sport after two high-profile animal welfare incidents in 2006.²⁷ In December 2007, Lord Donoughue of Ashton, on behalf of the British Greyhound Racing Board and the National Greyhound Racing Club, published a report with recommendations for change titled, *Independent Review of the Greyhound Industry in Great Britain* (hereinafter “Donoughue Report”).²⁸ Although the Donoughue Report focuses exclusively on greyhound racing in Britain, this article submits that the principles used in Britain could be useful for any and all types of dog racing and could provide some useful guidelines for the decision concerning the possible legalisation and regulation of the South African dog racing industry.

II. DOG RACING IN SOUTH AFRICA

A. Historical Development

The history of the prohibition on dog racing in South Africa is rather ironic. Since its official inception in 1932 and until its ban in 1949, organised

²⁶ Albert Grundlingh, ‘Gone to the Dogs’: *The Cultural Politics of Gambling—The Rise and Fall of British Greyhound Racing on the Witwatersrand, 1932-1949*, 48 S. AFR. HISTORICAL J. 174, 178 (2003).

²⁷ On Sunday, July 16, 2006, Daniel Foggo published an article with photos in the *Sunday Times* alleging that, for the past fifteen years, one person from Seaham killed healthy greyhounds that were no longer considered to be fast enough for racing. Daniel Foggo, *Killing Field of the Dog Racing Industry*, SUNDAY TIMES (London), July 16, 2006 at 2G, available at <http://www.timesonline.co.uk/tol/news/uk/article688422.ece> (last visited Mar. 23, 2010). See also ASSOCIATED PARLIAMENTARY GROUP FOR ANIMAL WELFARE, THE WELFARE OF GREYHOUNDS 10 (2007), available at <http://www.apgaw.org/userimages/Report%20of%20APGAW%20Inquiry%20into%20the%20Welfare%20of%20Greyhounds.pdf> (last visited Mar. 23, 2010) [hereinafter APGAW REPORT] (discussing Seaham and the background of the APGAW inquiry) and Daniel Foggo, *Greyhound ‘Cull’ Trainers Suspended*, SUNDAY TIMES (London), July 23, 2006, at 3G, available at <http://www.timesonline.co.uk/tol/news/uk/article691452.ece> (last visited Mar. 23, 2010) (discussing two greyhound trainers photographed taking dogs to be slaughtered).

²⁸ See generally LORD DONOUGHUE OF ASHTON, INDEPENDENT REVIEW OF THE GREYHOUND INDUSTRY IN GREAT BRITAIN (2007), available at <http://www.greyhounds-donoughue-report.co.uk> (last visited Mar. 23, 2010) [hereinafter DONOUGHUE REPORT].

dog racing was a lucrative industry notwithstanding its reputation as a crass and corrupt commercial exercise.²⁹ With three tracks in the Witwatersrand, between 7,000 and 10,000 persons attended the races at the Wanderers Track alone.³⁰ In 1941, the average profits at Wanderers were between £24,503 and £31,525 per week, not including the betting that occurred at the 4,000 or so illegal off-course betting shops.³¹

A published report soon changed people's enthusiasm about dog racing. In the early 1940s, Mr. D.N. Murray, the Acting Director of Social Welfare, Johannesburg, drafted a report on the social evils that could be attributed to dog racing (hereinafter "Murray Report").³² Thereafter, at the request of the Provincial Administration, the then Director-General of the Transvaal province charged the Beardmore Commission with investigating the accuracy of this report, determining whether immorality, insobriety, improvidence, poverty, and other social evils in Johannesburg could be attributable to dog racing, and whether dog racing should be abolished or curtailed.³³ The Beardmore Commission found that none of the social issues that could be attributed to dog racing (specifically the issues of improvidence and poverty but not immorality and insobriety) justified its abolition.³⁴ The Beardmore Commission recommended certain limitations and restrictions on the races and argued for a more effectively regulated industry.³⁵ However, for reasons of Afrikaner nationalism, societal and religious pressures, and political pragmatism, which had little to do with the races themselves, the Transvaal provincial authorities nonetheless banned dog racing, and other provinces subsequently followed suit.³⁶

The issue of dog racing again surfaced in 1993 with the Commission of Enquiry into Lotteries, Sport Pools, Fund-raising Activities and Certain Matters Relating to Gambling's report (hereinafter "Howard Report")³⁷ which proposed to legalise dog racing and wagering in the Natal province.³⁸ This Commission recommended the legalisation, regulation, and control of dog racing and wagering subject to certain reservations. These reservations included proper control and organisation of the industry similar to that of horse racing and creating a controlling body with a constitution, rules, and regulations dealing, *inter alia*,

²⁹ Grundlingh, *supra* note 26, at 174, 176.

³⁰ E. BEARDMORE, REPORT OF THE DOG RACING COMMISSION paras. 25 (1945) [hereinafter BEARDMORE REPORT]. This translated to one person in every fifty. *Id.* at para. 33.

³¹ Grundlingh, *supra* note 26, at 176, 179 (referencing evidence of MH Coombe given at the Beardmore Commission hearings).

³² See BEARDMORE REPORT, *supra* note 30, at para. 20.

³³ *Id.* at para. 1. See also the discussion of the Beardmore Commission in the COMM'N OF INQUIRY INTO LOTTERIES, SPORTS, POOLS, FUND-RAISING ACTIVITIES, AND CERTAIN MATTERS RELATING TO GAMBLING, REPORT 9.9 (1993) [hereinafter HOWARD REPORT].

³⁴ BEARDMORE REPORT, *supra* note 30 at paras. 58, 64, 96, 98; see also HOWARD REPORT, *supra* note 33, at 9.8.

³⁵ BEARDMORE REPORT, *supra* note 30, at paras. 98, 121, 201. These recommendations included: limiting dog races to one evening per week; limiting accumulator betting, book-making, and whippet racing; and curbing the publicity of the races.

³⁶ Grundlingh, *supra* note 26, at 188.

³⁷ See generally HOWARD REPORT, *supra* note 33, at pt. 9.

³⁸ *Id.* at 9.15; WIEHAHN REPORT, *supra* note 19, at 137.

with the welfare of the dogs during and after their racing days.³⁹ Its decision was based on the argument that dog-racing, as an age-old sport, has been successfully regulated in many countries including the United Kingdom, the United States, Australia, and New Zealand, and therefore, could be successfully regulated in South Africa also.⁴⁰ Again, political events overtook the report, and it was shelved without implementation.⁴¹

In 1994-1995, the Lotteries and Gambling Board again considered the issue of dog racing. The members of this board, in the *Main Report on Gambling in South Africa* (hereinafter “Wiehahn Report”),⁴² were divided on the issue of regulation and betting on dog races.⁴³ The Board avoided giving a recommendation by finding that dog racing was not originally included in the Board’s terms of reference,⁴⁴ and as such, did not necessitate a finding. The report recommended that further research be conducted to establish whether or not dog racing should be permitted, with specific reference to:

- a) Information regarding the keeping and training of dogs;
- b) The conditions and number of dogs required to establish an industry;
- c) The breeding of dogs, their breed, and, their welfare at the end of their racing careers;
- d) Control of the dogs at both the race tracks and the kennels;
- e) The control in relation to doping and other forms of malpractices;
- f) The establishment of totalizators,^[45] bookmakers and betting both on and off course;
- g) The condition under which race tracks will be licensed; and,
- h) The degree of public support required to maintain a viable industry able to support the necessary control measures in view of the introduction of new forms of gambling⁴⁶

This research has, to date, not been done.

³⁹ HOWARD REPORT, *supra* note 33, at 9.11-9.12. This decision was rather strange in light of an earlier statement that the Commission was only concerned with the betting on dog races, not with the question of whether or not dog races should remain prohibited or be allowed. *Id.* at 9.3.

⁴⁰ *Id.* at 9.10.

⁴¹ The Howard Report was initiated by the then Apartheid Nationalist Party government and completed in 1993 before the 1994 elections. With the release of Nelson Mandela, the unbanning of the ANC, and the adoption of the interim Constitution in 1992, the process of investigation into, and the reporting on possible gambling legalisation and regulation was started anew - this time with the inclusion of a wider and more representative group of participants. See Country Studies, South Africa – Government, <http://countrystudies.us/south-africa/71.htm> (last visited Apr. 24, 2010).

⁴² See generally WIEHAHN REPORT, *supra* note 19.

⁴³ *Id.* at 137-38.

⁴⁴ The terms of reference in the Wiehahn Report were set out in the now repealed Lotteries and Gambling Board Act 210 of 1993 s. 11. The terms expressly related to lotteries, sports pools, gambling, and fundraising activities. The Act made no mention of wagering on either dog races or horse races. It should be borne in mind that at the time, wagering on horse races was legal and well regulated. It is not clear whether it was a deliberate decision not to include wagering or a mere oversight.

⁴⁵ A totalisator is a system of betting, either mechanical or manual, on a lawful event, such as a horse race, in which the aggregate amount staked is divided amongst those persons who have made winning bets. For a full definition, see, e.g., Gauteng Gambling Act 4 of 1995 s. 1.

⁴⁶ WIEHAHN REPORT, *supra* note 19, at 138.

Notwithstanding two positive reports and one inconclusive report, the legalisation of dog racing and wagering in South Africa is no closer today than it was in 1949. It should, however, be noted that notwithstanding the prohibition on these races, there is evidence that dog racing is still currently being conducted illegally in the country.⁴⁷

There is also a further South African element to consider. In 1999, the Centre for the Environment and Development published a report entitled *Traditional Hunting with Dogs: A Contemporary Issue in KwaZulu-Natal*.⁴⁸ The Report investigated the practice of traditional hunting with dogs in the African culture, which started as an economic activity, but today, is also done for sport.⁴⁹ This form of hunting often goes hand-in-hand with betting.⁵⁰ The Report noted that “[t]he sport of hunting (*inqina*) once rich with royal splendour now exists to generate revenues for dog breeders and illicit gamblers.”⁵¹ Furthermore, the Report identified the lack of suitable land as the crux of the illegal hunting and accompanying illegal gambling problems and recommended that the primary solution lay in the legalisation of dog racing.⁵²

⁴⁷ The Howard Report quoted evidence by the National Prosecuting Authority of South Africa that in the early 1990s, 4,000 race-trained greyhounds and whippets participated in illegal races coupled with illegal betting. HOWARD REPORT, *supra* note 33, at 9.6. The Society for the Prevention of Cruelty to Animals also confirmed the existence of “bush races.” *Id.* More recently, Melanie Gosling reported on an illegal gambling syndicate of poachers that targeted Cape Town nature reserves to hunt animals with packs of dogs. Melanie Gosling, *Betting Behind Poaching*, CAPE TIMES, Feb. 9, 2009, at 1. Additionally, the TV programme Carte Blanche reported on more traditional types of dog racing around a tract. *Speed Merchants* (Carte Blanche television broadcast Apr. 20, 2008), available at beta.mnet.co.za/carteblanche/Article.aspx?Id=2218&ShowId=3 (last visited Mar. 23, 2010). See also Greyhound Racing, Wikipedia, http://en.wikipedia.org/wiki/Greyhound_racing (last visited Mar. 23, 2010), where the following is written about dog racing in South Africa:

In the Republic of South Africa dogs are kept with their owners. Due to the amateur state of racing, owners are usually also the trainer and rearer of the dogs; it is very rare that a dog is kennelled [*sic*] with a trainer. Racing is controlled by a partnership between the United Greyhound Racing and Breeders Society (UGRABS) and the South African Renhond Unie (SARU - South African Racing Dog Union). The studbook is kept by the South African Studbook and [*sic*] organization who keep [*sic*] studbooks for all stud animals. Racing takes place on both oval and straight tracks. Racing is technically illegal in South Africa, which is strange as any other form of animal racing, i.e. horse racing, pigeon racing and even ostrich racing is perfectly legal. Great controversy rages because the use of greyhounds to hunt wild animals is a fairly common occurrence. The supporters of dog racing believe that legal racing, as an industry similar to that of Australia or Great Britain, would cause hunting to eventually stop.

⁴⁸ Antonio Abacar et. al., *Traditional Hunting with Dogs – A Contemporary Issue in KwaZulu-Natal* (1999) (unpublished MA thesis, Centre for Environment and Development, University of Natal, Pietermaritzburg) [hereinafter *Traditional Hunting Report*]. The Centre was part of the University of Natal.

⁴⁹ *Id.* at 97. This hunting practice is highly controversial in that it causes conflict between hunters, farmers, and conservation officials, and affects the game population and farm security. *Id.*

⁵⁰ *Id.* at abstract.

⁵¹ *Id.* at 59.

⁵² *Id.* at 97.

B. *The Current Legal Position*

Dog racing in South Africa is prohibited by provincial legislation, and betting on dog racing is prohibited by both national and some provincial legislation. The relevant provincial legislation is found in four former provincial ordinances that remain applicable to the current nine provinces:⁵³ Ordinance 11 of 1986 (Cape); Ordinance 11 of 1976 (Free State); Ordinance 4 of 1949 (Transvaal); and Ordinance 23 of 1985 (Natal).⁵⁴ The relevant national legislation is found in the National Gambling Act 7 of 2004.

1. *Provincial Legislation*

As there are subtle differences between these four ordinances, each is discussed separately.

The administration of Ordinance 11 of 1986 (Cape) has been assigned to and is applicable to the following provinces: Western Cape;⁵⁵ Northern Cape;⁵⁶ North West;⁵⁷ as well as the Eastern Cape.⁵⁸ The Ordinance states that “any person who holds, organises or attends a dog race shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”⁵⁹ The prohibition and criminalisation focuses on the dog races themselves, and there is no express prohibition on or criminalisation of gambling on these races.

The administration of Ordinance 11 of 1976 (Free State) has been assigned to and is applicable in the Free State Province.⁶⁰ This ordinance prohibits any person from holding, organising, or attending a dog race-meeting, with a penalty, on conviction, of a fine not exceeding R200 or to imprisonment for a period not exceeding six months or to both such fine and such imprison-

⁵³ See S. AFR. CONST. 1996 schedule 6 cl. 2(1)(a). Prior to 1994, South Africa was divided into four provinces: Transvaal, Natal, Free State, and the Cape. Republic of South Africa Constitution Act (Provincial Government Act) 32 of 1961 (repealed). Each of these provinces had legislative powers to draft legislation in the form of ordinances. With the adoption of the interim Constitution of the Republic of South Africa, 1992 (confirmed by the final Constitution of the Republic of South Africa, 1996), the country was divided into nine provinces. S. AFR. CONST. 1996 § 103(1). The existing ordinances of the four earlier provinces were assigned to the new provinces and remained applicable until amended or repealed. *Id.* at schedule 6 cl. 2(1)(a). Each of the nine provincial legislatures has legislative powers. *Id.* at § 104(1). As will become clear from the discussion *infra* Part II.B.1, some provisions of the original ordinances are still applicable, although other sections have been amended.

⁵⁴ Ordinance 11 of 1986 (Cape); Ordinance 11 of 1976 (Free State); Ordinance 4 of 1949 (Transvaal); Ordinance 23 of 1985 (Natal). Consideration should also be given to the hunting and animal welfare regulations; however, that discussion falls outside the scope of this article.

⁵⁵ Proc R115/1994.

⁵⁶ Proc R108/1994.

⁵⁷ Proc R110/1994 (as read with N. W. Gambling Act 2 of 2001, s. 2(2)).

⁵⁸ Proc R111/1994 (as read with the E. Cape Gambling and Betting Act 2 of 1997, s. 2(2)).

⁵⁹ Ordinance 11 of 1986 s. 1 (Cape Province).

⁶⁰ Proc R113/1994.

ment.⁶¹ Again, the prohibition and the criminalisation are limited to the dog races and not the gambling aspect of those races.⁶²

The Free State High Court, in *United Greyhound Racing and Breeders Society (UGRABS) v. Vrystaat Dobbel en Wedrenraad*,⁶³ confirmed the criminality of illegal dog racing and the gambling thereon under Ordinance 11 of 1976 (Free State). The court found that the ordinance had not been abrogated by disuse and that criminal prosecution could follow.⁶⁴ The court also found that it was not possible to issue a licence for dog racing under the Free State Gambling and Racing Act 6 of 1996.⁶⁵ Unfortunately, the court could not assess the constitutionality of the ordinance in this matter due to a lack of evidence.⁶⁶

Ordinance 23 of 1985 (Natal) has been assigned to KwaZulu-Natal.⁶⁷ It prohibits

any person from holding, organising, attending, advertising, canvassing or in any other manner inviting persons to attend, or use or make available any land or premises for the purposes of, a dog race meeting; provided that the preceding provisions of this section shall not apply to or in respect of a dog race meeting which forms an integral part of trials held under the auspices and in accordance with the rules of any association, institution or organisation which has been approved⁶⁸

Any person who contravenes any provision of this ordinance is guilty of an offence, and on conviction, is liable for a fine not exceeding R1,000 and/or imprisonment for a period not exceeding one year.⁶⁹ As above, the ordinance, although wider in its wording and application than its counterparts, still does not include any prohibition on gambling on any races.

Ordinance 4 of 1949 (Transvaal) has been assigned to, and is applicable to the provinces of Gauteng;⁷⁰ Limpopo;⁷¹ and Mpumalanga.⁷² This ordinance is different from the others in that it prohibits not only the dog races, but also the betting on such races. It provides that “no person may hold any dog race meeting, attend any such dog race meeting, accept or lay any bets on the result of any dog race or conduct a totalisator for the purpose of betting on any dog

⁶¹ Ordinance 11 of 1976 s. 2 (Orange Free State Province).

⁶² It is interesting to note that the Free State delegate to the NCOP (Dr. Frik van Heerden) has shares in RZT Zelpy (Pty) Ltd., a South African company that lists the legalisation of dog racing as a business activity. JOINT COMM. ON ETHICS & MEMBERS' INTERESTS, REGISTER OF MEMBERS' INTERESTS 2008, at 190 (2008), available at http://www.parliament.gov.za/content/mireport_1.pdf (last visited Mar. 23, 2010).

⁶³ *United Greyhound Racing and Breeders Soc'y (UGRABS) v. Vrystaat Dobbel en Wedrenraad* 2003 (2) SA 269 (O) (S. Afr.) (The “*Vrystaat Dobbel en Wedrenraad*” is the Afrikaans name for the “Free State Gambling and Betting Board.”).

⁶⁴ *Id.* at 273g-274f.

⁶⁵ *Id.* at 274g-275f.

⁶⁶ *Id.* at 324h-325e. See discussions by Marita Carnelley, *Pathological Gambling as a Mitigating Factor*, 17 S. AFR. J. CRIM. JUST. 79 (2004) and Labuschagne JMT, *Verval van wetgewing deur onbruik en herroeping daarvan by implikasie*, 37(1) DE JURE 143 (2004).

⁶⁷ Proc R107/1994.

⁶⁸ Ordinance 23 of 1985 s. 2 (Natal Province).

⁶⁹ *Id.* s. 3.

⁷⁰ Proc R114/1994.

⁷¹ Proc R109/1994.

⁷² Proc R112/1994.

race.”⁷³ Any person found contravening these provisions is guilty of an offence and is liable on conviction to imprisonment with or without hard labour for a period of not less than six months, but not exceeding two years.⁷⁴

In Limpopo and Mpumalanga, the presumption created in the original Ordinance 4 of 1949 (Transvaal) is retained, namely that any person who holds or attends any dog race meeting shall be presumed, until the contrary is proven, to have held or attended such dog race meeting for the purpose of betting on or in connection with a dog race taking place thereat.⁷⁵ This section has been deleted in the updated Gauteng legislation, presumably in light of possible constitutional challenges.⁷⁶

To conclude, it is only in Gauteng, Limpopo, and Mpumalanga, based on the Transvaal ordinance, where gambling on dog races is prohibited. Theoretically, a prosecution under the other ordinances would be limited to holding, organising, or attending a dog race. This *lacuna* has, however, been rectified by the national gambling statute, the National Gambling Act 7 of 2004.

2. National Gambling Act 7 of 2004

Because of the generality of the wording in the National Gambling Act 7 of 2004, any gambling on dog racing would be unlawful. The Act provides that an activity is a gambling activity if it involves the placing of a bet or wager, or the placing or accepting of a totalisator bet.⁷⁷ A person may not engage in conduct, or make available a gambling activity, unless it is a licensed gambling activity.⁷⁸ Moreover, “a person must not engage in, conduct, or make available a gambling activity if the outcome of that activity depends directly, indirectly, partly, or entirely on a contingency related to an event or activity that is itself unlawful in terms of any law.”⁷⁹

Therefore, betting on dog races is doubly prohibited under the Act, not only as an unlicensed gambling activity in terms of section 8, but also as gambling on an unlawful activity prohibited in terms of section 7. Under the Act, any person who engages in, conducts, or makes available such a gambling activity in contravention of the law would be committing a criminal offence,⁸⁰ and may, on conviction, be liable to a fine not exceeding R10 million and/or to imprisonment for a period not exceeding ten years.⁸¹ Thus, even if there is no

⁷³ Ordinance 4 of 1949 s. 2(1) (Transvaal Province).

⁷⁴ *Id.* s. 2(2).

⁷⁵ *Id.* s. 4.

⁷⁶ See *Scagell and Others v. Att’y-Gen. of the Western Cape* 1996 (11) BCLR 1446 (CC) (S. Afr.). This issue falls outside the scope of this article.

⁷⁷ Nat’l Gambling Act 7 of 2004 s. 3(a)-(b). A “bet” or “wager” is defined to include the staking of “money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency.” *Id.* s. 4(1)(a). A totalisator bet is similarly defined. See *id.* s. 4(1)(b).

⁷⁸ *Id.* s. 8(a). A person may also engage in “social gambling that is licensed or otherwise permitted in terms of any applicable provincial law” or “an informal bet, unless, in the circumstances, there are valid grounds to conclude that any of the parties to the bet intended to establish an enforceable contractual relationship when they staked, or accepted the stake of, money on that contingency.” *Id.* s. 8(b), (c).

⁷⁹ *Id.* s. 7(a).

⁸⁰ *Id.* s. 82(1).

⁸¹ *Id.* s. 83(1).

prohibition in the relevant provincial statute, the prohibition in the national statute would apply to illegal and unlicensed dog race gambling.

C. *The Policy Decision – To Legalise or Not to Legalise?*

1. *The Decision-Makers*

From the outset, it should be noted that the decision to legalise dog races and/or gambling opportunities thereon rests with the legislature and not the courts. The Constitutional Court confirmed this principle in a matter dealing with the legalisation of prostitution.⁸² In *State v. Jordan*, the court noted that the responsibility to combat social ills falls on the legislature provided that it acts consistently with the Constitution.⁸³ It is not for the courts to interfere simply because they may consider a statute to be ineffective or because there may be other ways of dealing with the problem that better serves societal interests.⁸⁴ The court concluded that in a democracy, “those are decisions that must be taken by the legislature and the government of the day.”⁸⁵ The implication is that once the legislature makes legislation concerning dog racing, there is no further recourse in the courts, unless an argument could be made that the legislative instrument used is unconstitutional.

2. *Possible Outcomes*

If the legislature decides to create laws regarding dog racing and wagering, there are three foreseeable outcomes: the *status quo* remains and dog racing and wagering remains illegal; dog racing and wagering is legalised in South Africa; or, authorities legalise interactive betting in South Africa on dog races outside of South Africa, without actually legalising dog racing in South Africa itself. The third option is possible through online bookmakers/totalisators, with races being televised in South Africa from other countries such as the United Kingdom or Australia.

Any policy decision resulting in one of the three outcomes should take into account these considerations: firstly, the arguments for and against the activity itself, and secondly, the general gambling regulatory guidelines. Both of these aspects are discussed separately hereunder.

3. *Pros and Cons of Legalising the Races*

The legislature’s policy decision to legalise dog racing would be based on the pros and cons of dog racing itself. The arguments in favour of dog racing include: cultural issues,⁸⁶ the enjoyment that the dogs derive from racing, and the good care the dogs receive from their owners and racers.⁸⁷ Proponents argue any welfare concerns can be addressed by proper control and regula-

⁸² *S v. Jordan (Sex Workers Educ. and Advocacy Task Force as Amici Curiae)* 2002 (6) SA 642 (CC) (S. Afr.).

⁸³ *Id.* at para. 25.

⁸⁴ *See id.* at paras. 26, 30.

⁸⁵ *Id.* at para. 30.

⁸⁶ As mentioned *supra* in Part II.A, hunting with dogs is regarded as part of the African culture in KwaZulu-Natal. *See* the Traditional Hunting Report, *supra* note 48.

⁸⁷ WIEHAHN REPORT, *supra* note 19, at 137-38; HOWARD REPORT, *supra* note 33, at 9.5.

tion.⁸⁸ Proponents also argue that “a proper and well-run breeding programme for dogs would improve [the] breeds [and] largely eliminate over-breeding and curtail culling.”⁸⁹

Furthermore, proponents argue that the legalisation of dog racing would create sustainable employment opportunities and contribute to the economy of the country, *inter alia*, through an increase in provincial taxes.⁹⁰ Moreover, licensed dog racing operators would assist law enforcement authorities with the closing down of illegal and unregulated operators who theoretically negatively influence the licensed operators’ profits.⁹¹

Opponents of legalising dog racing base their claims mainly on two issues: firstly, the potential for cruelty to animals; and, secondly, the social evils associated with dog races, mainly the gambling thereon, which, according to their argument, makes it socially abhorrent.⁹²

Firstly, opponents of dog racing base their concerns on the welfare of the dogs.⁹³ The Howard Report dealt with dog welfare concerns in the British dog racing industry and included evidence from the Society for the Prevention of Cruelty to Animals (“SPCA”) regarding racing dogs’ welfare, even though the Report found the evidence to be exaggerated.⁹⁴ According to the SPCA, dog racing inevitably causes pain and suffering to the animals in that:

- a) The dogs in training are kept in small cages or limited enclosures;
- b) Live animals such as rabbits are used as a quarry to train young dogs;
- c) Keen competition could lead to drug use;
- d) Dogs sustain injuries in the course of training and racing as the dog tracks are too small;
- e) There is animal abuse associated with the transportation of the animals;
- f) The legalisation of dog racing would exacerbate canine over-population, and, as a by-product, unwanted animals would be culled or the dogs would be misused for coursing and hunting as the dogs can only race for two of their fourteen year lifespan;⁹⁵
- g) There is a decrease in dog racing overseas; and,
- h) A majority of people are opposed to dog racing because of the abuse of the animals.⁹⁶

Several reports have compared the regulation of dog racing to the regulation of horse racing, although the reports have come to different conclusions.

⁸⁸ WIEHAHN REPORT, *supra* note 19, at 137-38; HOWARD REPORT, *supra* note 33, at 9.7.

⁸⁹ WIEHAHN REPORT, *supra* note 19, at 138; HOWARD REPORT, *supra* note 33, at 9.7.

⁹⁰ WIEHAHN REPORT, *supra* note 19, at 138; HOWARD REPORT, *supra* note 33, at 9.10.

⁹¹ WIEHAHN REPORT, *supra* note 19, at 137-38.

⁹² *Id.* at 137; *see also* HOWARD REPORT, *supra* note 33, at 9.9 (noting that people will lose their money with equal certainty whether they back slow horses or slow dogs).

⁹³ It is clear from the discussion *infra*, that this remains a concern for the British greyhound racing industry.

⁹⁴ HOWARD REPORT, *supra* note 33, at 9.4-9.7.

⁹⁵ *Id.* at 9.4; WIEHAHN REPORT, *supra* note 19, at 138.

⁹⁶ WIEHAHN REPORT, *supra* note 19, at 138. It should be noted that section 2 of the Animals Protection Act 71 of 1962 would be applicable in cases of animal abuse, although more specific legislation aimed at the prevention of the possible abuses associated with dog racing would be preferable. Animals Prot. Act 71 of 1962 s. 2 (listing the animal abuse offences and prescribing a penalty on conviction of a fine or imprisonment for a period not exceeding twelve months).

The Howard Commission was of the opinion that essentially no difference exists between dog and horse racing, and that if dog racing is regulated in a similar way to horse racing, “there can be no justification for prohibiting the one and allowing the other.”⁹⁷ The Wiehahn Report disagreed with this view mainly because of the size of the tracks and the number of animals injured during dog races.⁹⁸

Secondly, opponents argue against the legalisation of dog racing because of the associated gambling, which is abhorrent to some because it creates social evils. This argument is now only of academic interest as the Constitution and the existing legislature have already legalised certain types of gambling – notwithstanding the social evils that might be forthcoming from such gambling.⁹⁹ Furthermore, the Beardmore, Howard, and Wiehahn Commissions all noted that none of the social evils connected to dog racing justified the abolition of such races and the gambling thereon – they merely indicated that there should be limited legalisation and proper regulation of dog racing.¹⁰⁰ The Wiehahn Report, however, specifically noted that historically, persons that partake in gambling on these races cannot afford to do so. The same argument has been made in regard to other forms of legalised gambling, and it is likely that the social issues of betting on dog races would be substantially similar to those associated with other forms of gambling.¹⁰¹ Although the legislature has already decided to legalise gambling, this article does not argue that dog racing would be free from socio-economic problems.¹⁰²

4. Gambling Regulatory Guidelines

As mentioned *supra*, the gambling regulatory guidelines are relevant to any policy decision to legalise gambling on dog racing. The preamble of the National Gambling Act provides for a gambling policy that is administered in a co-operative, coherent, and efficient manner.¹⁰³ It provides for uniform norms and standards to safeguard people participating in gambling and their communities against the adverse effects of gambling.¹⁰⁴ It specifically provides that:

gambling activities [must be] effectively regulated, licensed, controlled[,] and policed; members of the public who participate in any licensed gambling activity [must be] protected; society and the economy [must be] protected against over-stimu-

⁹⁷ HOWARD REPORT, *supra* note 33, at 9.9.

⁹⁸ WIEHAHN REPORT, *supra* note 19, at 138.

⁹⁹ S. AFR. CONST. 1996, s. 104(1)(b)(i) (as read with schedule 4 part A and the eleven gambling statutes currently operational in the country). The legislature chose the legalisation of gambling knowing there would be some negative consequences, but found that on a policy basis, the positive consequences outweighed the negative.

¹⁰⁰ WIEHAHN REPORT, *supra* note 19, at 137; HOWARD REPORT, *supra* note 33, at 9.8 (with reference to the Beardmore Commission).

¹⁰¹ See NRG 2006 PREVALENCE STUDY, *supra* note 19, at 20. It should be noted that, by definition, problem gamblers gamble more than they can afford. In terms of the NRG, approximately 1.4% of the total population is regarded as problem gamblers. *Id.*

¹⁰² Any argument regarding the social evils of gambling is largely academic since certain forms of gambling are already legal in South Africa. See *supra* note 99 and accompanying text.

¹⁰³ Nat'l Gambling Act 7 of 2004 pmbl.

¹⁰⁴ *Id.*

lation of the latent demand for gambling; and the licensing process [must be] transparent, fair, and equitable.¹⁰⁵

Upon deciding whether or not to legalise and regulate dog races, the legislature should consider the uniform norms and standards in existence that have been successfully applied in other forms of gambling regulatory activities. As gambling *per se* has been legalised in South Africa, only two issues remain: whether the legalisation of gambling on dog races would tip the scale toward over-stimulation;¹⁰⁶ and whether proven public support should be a prerequisite for legalisation of dog races.

Firstly, it should be asked whether the legalisation of gambling on dog races would tip the scale towards a situation where there is too much gambling in South Africa. This would be an irrational argument in light of the imminent legalisation of interactive gambling that has the potential to increase gambling in the country exponentially—far more than gambling on dog races ever would.¹⁰⁷

Secondly, the legislature should also consider the amount of public support for legalising dog racing and wagering. This should include an inquiry into “[t]he degree of public support required to maintain a viable industry able to support the necessary control measures[,]”¹⁰⁸ including the expenses of the stewards, investigating officers, veterinarians, laboratory, and other staff.¹⁰⁹ To re-phrase, should the lack of existing evidence of the popularity of dog races play a role in the decision of the legislature to legalise dog races? This aspect, although relevant, should not be over-emphasised. Although the evidence mentioned *supra* reflects a demand for gambling in South Africa, there is no specific evidence about the demand for betting on dog races other than its popularity some sixty years ago and evidence of current illegal activity. It should be remembered, however, that when the government issued gambling licences for the first time under the new gambling legislation, there was no evidence of the popularity of other types of gambling, such as bingo. Although the popularity of bingo commenced slowly,¹¹⁰ the statistics show that the demand for bingo has grown and is sustainable.¹¹¹ This could be the same with

¹⁰⁵ *Id.*

¹⁰⁶ WIEHAHN REPORT, *supra* note 19, at pt. 4.0. One of the arguments in the Wiehahn Report was that there was already a latent demand for gambling in the country and that gambling should be legalised to provide for this demand. However, the Report specifically noted that society must be protected against excessive gambling, and as such, a demand for gambling which does not exist should not be stimulated.

¹⁰⁷ See, e.g., Nat’l Gambling Amendment Act 10 of 2008.

¹⁰⁸ WIEHAHN REPORT, *supra* note 19, at 138.

¹⁰⁹ HOWARD REPORT, *supra* note 33, at 9.13.

¹¹⁰ Steve McCain, Managing Director, Galaxy Bingo, Bingo Association of South Africa (powerpoint presentation at Nat’l Gambling Board Conference in Durban, S. Afr.) (Apr. 14-15, 2000); see also 2005 SOCIO-ECONOMIC IMPACT STUDY, *supra* note 13, at 86 (noting that although participation in bingo was extremely limited (0.2 %), the gross gambling revenue in 2002 reported by the Bingo Halls in Gauteng amounted to R98.7 million).

¹¹¹ The Gauteng Gambling Board currently lists twelve licensed bingo sites in its jurisdiction. Gauteng Gambling Board, Bingo’s, http://www.ggb.org.za/index.php?option=com_content&view=article&id=66&itemid=12 (last visited Mar. 23, 2010).

gambling on dog races as there is already evidence of greyhound racing in South Africa today.¹¹²

5. Conclusion

The legislature, after considering the above factors, would have to decide, leaving aside the third possible outcome of only allowing dog racing interactively, whether to continue the status quo or to legalise dog racing and the gambling thereon. In light of the legalisation of interactive gambling, this article submits that the gambling issue would not be a major stumbling block towards legalisation because the legislature has shown it is not opposed to legalising various forms of gambling. The matter that would likely require the most consideration is the welfare of the dogs because that is the opponents' main concern with the legalisation of dog racing and wagering.

Lastly, it should be noted that the third option of prohibiting dog racing in South Africa but allowing gambling on foreign races from South Africa could be a compromise between the other two options. It would not resuscitate the dog racing industry, and as such, it would avoid any welfare fears about the dogs in South Africa. The gambler would still have the opportunity to gamble on legal and regulated dog races, and it would secure taxes for the provincial government. This form of gambling could be regulated by the National Gambling Act provisions on interactive gambling. What it would not do, however, is provide the gambler, and others, with the fun and excitement of a day at the races. It would also not satisfy the African cultural aspect of hunting with dogs as a sport,¹¹³ and therefore, this option might defeat the purpose of reconsidering the legalisation of dog racing in the first place.

D. Regulatory Guidelines

1. Introduction

Assuming that the legislature were to legalise dog racing and wagering, the next issue would be how to ensure that both the races and the betting are well regulated, controlled, and policed.

2. The Races

The dog racing regulation should address the following issues:

- a) The existence of a national racing-club authorised to hold race-meetings on licensed and regulated dog race-courses;
- b) The keeping and training of dogs and the conditions and number of dogs required to establish an industry;
- c) The registration and updating of information about the dogs, including the race records;

¹¹² The sport is currently controlled by a partnership between the United Greyhound Racing and Breeders Society (UGRABS) and the South African Renhond Unie (SARU). Greyhound Racing, Wikipedia, http://en.wikipedia.org/wiki/Greyhound_racing (last visited Mar. 23, 2010). The English translation of "South African Renhond Unie" is South African Racedog Union. See also *United Greyhound Racing and Breeders Soc'y (UGRABS) v Vrystaat Dobbel en Wedrenraad* 2003 (2) SA 269 (O) (S. Afr.).

¹¹³ See Traditional Hunting Report, *supra* note 48, at 97.

- d) The breeding of dogs and post-racing career welfare;
- e) The control of the dogs at the race track, including the electronic and/or mechanical hare;
- f) Track safety;
- g) Which officials to include, such as the racing manager, stewards, paddock stewards, weighing clerk, time keeper, starter, hare operator, and veterinarian surgeon; and
- h) The control of doping and other forms of malpractice including the regulation of the procedures at the races as well as the laboratories that test drug samples.¹¹⁴

3. *Gambling on Dog Racing*

Regarding the regulation of betting, it is important that any new form of regulation be part of the existing national and provincial gambling regulatory scheme in South Africa¹¹⁵ and adhere to the uniform norms and standards as set out in the National Gambling Act.¹¹⁶ This article submits that the actual regulation of gambling on dog races should fall within the competency of the provinces under the auspices of the provincial gambling boards,¹¹⁷ and that it should be left to each of the provinces to decide whether or not they want to legalise betting on dog races and to what extent.

Most of the regulations for betting on dog races are already in existence for horse races, and amending them to include dog racing should be straight forward. The regulation scheme should address the following aspects: the issuing of licenses for the establishment of totalisators and bookmakers, and for betting both on and off course; the registration of certain personnel including bookmakers' managers and clerks; restrictions on betting through an agent; approval of fees by the regulatory board; and the obligation to pay prescribed fees and taxes. Other current prohibitions on gambling could also be extended to betting on dog races including the restrictions on advertising; the extension of credit; exclusion of minors and other vulnerable persons; and the disclosure of financial interests in licences. It is assumed that the regulation would include probity investigations, require sound accounting principles at all levels, and that any gambling contract made under a licensed race would be enforceable.¹¹⁸

¹¹⁴ These suggestions include those made in the WIEHAHN REPORT, *supra* note 19, at 138, and the UK Rule Book of the National Greyhound Racing Club Ltd, *available* at <http://www.ngrc.org.uk>; *see also* Charles Cuddon C., *Greyhound Racing*, *available* at http://uk.encyclopedia.com/text_781331005_0/Greyhound_Racing.html (last visited Apr. 3, 2008).

¹¹⁵ An analogy can be drawn to the primary regulatory objectives set out in the proposed changes to interactive gambling laws, which include consistency with the existing legislation. NAT'L GAMBLING BD. REPORT ON THE REGULATION OF INTERACTIVE GAMBLING 5 (2005), *available* at <http://www.ngb.org.za/uploads/reportOnTheRegulationOfInteractiveGambling1.pdf> (last visited Mar. 23, 2010).

¹¹⁶ *See* discussion *supra* Part II.B.2.

¹¹⁷ *See* HOWARD REPORT, *supra* note 33, at 9.15 (recommending that dog racing should be regulated by the provinces).

¹¹⁸ These principles would be in line with current legislation. *See* Gauteng Gambling Act 4 of 1995; Gauteng Gambling Regulations, GN 570 of 1997, *available* at <http://www.ggb.org>.

E. Conclusion

Due to political and other non-gambling related reasons, dog racing has never been legalised in South Africa, although the possibility of it has never been excluded. With the possibility currently under discussion, it would be expedient for the legislature to consider in detail all relevant aspects of the legalisation and regulation of dog racing so it can make a final decision. If the legislature decides to legalise dog racing and wagering, it should place particular emphasis on the welfare of the dogs. It should again be noted that once the legislature has made a decision, there would be no recourse with the courts. If the decision is in favour of legalisation, the current regulatory standards in South Africa should be applied to ensure an organised and lawful sport without re-creating the negative reputation of the 1940s, and the regulations should be in line with the current good practices and reputation of the existing legalised gambling industry.

III. DOG RACING IN BRITAIN

“Greyhound racing is a wonderful sport which gives huge pleasure to owners, trainers, spectators, punters and dogs alike.”¹¹⁹

The legalised commercial gambling market in Britain was worth £84.2 billion in 2006-2007, with a gross gambling yield¹²⁰ estimated to be £9.9 billion annually.¹²¹ The gambling industry includes casinos; a national lottery; betting on horses, dogs, and sporting events; bingo; and arcades and other gaming machines.¹²² Gambling is thus embraced by the British public as a past time with sixty-eight percent of the population having participated in some form of gambling activity during 2007.¹²³ As in South Africa, there are socio-economic problems associated with gambling, with the number of problem gamblers estimated to be about 0.6 percent of the population in Britain.¹²⁴

za/index.php?option=com_docman&task=doc_download&gid=21&&Itemid=53 (last visited Mar. 23, 2010).

¹¹⁹ DONOUGHUE REPORT, *supra* note 28, at 5.

¹²⁰ Gross gambling yield is the amount retained by operators after payment of winnings, but before deduction of costs. GAMBLING COMM’N, ANNUAL REPORT 2007/08, at 9, *available at* [http://www.gamblingcommission.gov.uk/pdf/annual report 2007 - 2008 – july 2008.pdf](http://www.gamblingcommission.gov.uk/pdf/annual%20report%202007%20-%202008%20-%20july%202008.pdf) (last visited Mar. 23, 2010).

¹²¹ *Id.*

¹²² The Gambling Commission, which regulates gambling in Great Britain, lists which gambling activities it does and does not regulate at http://www.gamblingcommission.gov.uk/gambling_sectors.aspx.

¹²³ NAT’L CTR FOR SOC. RESEARCH, BRITISH GAMBLING PREVALENCE SURVEY 2007, at 9 [hereinafter NCSR 2007 PREVALENCE SURVEY]; *see also* David Miers, *Implementing Great Britain’s Gambling Act 2005: The Gambling Commission and the Casino Question*, 10 GAMING L. REV. 472, 472 (2006) (noting that the commercial gambling market in Great Britain was worth approximately £53 billion in 2003-2004).

¹²⁴ NCSR 2007 PREVALENCE SURVEY, *supra* note 124, at 10.

A. Historical Development

Greyhound racing launched commercially in Manchester in 1926.¹²⁵ The sport enjoyed immediate popularity and grew rapidly mainly because it offered readily accessible cash betting opportunities to those who could not afford to travel to attend horse races.¹²⁶ In 1928, the racecourse promoters established the National Greyhound Racing Club (“NGRC”) as a controlling organisation to counter malpractice and irregularities.¹²⁷ Although most of the larger tracks adopted the NGRC system and joined, others chose not to.¹²⁸

By the 1930s, greyhound racing had grown to the second largest spectator sport in Britain.¹²⁹ In 1934, after the Royal Commission on Betting and Lotteries issued its Interim Report, the Betting and Lotteries Act of 1934 legalised the operation of a greyhound totalisator by the track promoter and brought greyhound racing under strict statutory control for the first time, with severe operating restrictions.¹³⁰ These restrictions resulted in the closure of numerous independent tracks, but the overall patronage still increased until the end of WWII when an additional pool betting tax was introduced.¹³¹ Although this tax was lifted in 1949, the attendance at races began to fall steadily.¹³² This negative trend continued even after the Betting and Gambling Act of 1960 amended the legislation by no longer restricting persons to betting shops at their local track.¹³³ Attendance at the tracks fell to about eight million annually by 1973, with the numbers stabilising through the late 1970s.¹³⁴ In 1967, the Bookmakers’ Afternoon Greyhound Service (“BAGS”) was introduced, with bookmakers paying greyhound tracks to put on meetings – originally only in afternoons when horseracing was cancelled due to bad weather.¹³⁵

¹²⁵ DONOUGHUE REPORT, *supra* note 28, at 9.

¹²⁶ *Id.*, as read with THE MONOPOLIES & MERGERS COMM’N, GREYHOUND RACING: A REPORT ON THE SUPPLY IN GREAT BRITAIN OF THE SERVICES OF MANAGING GREYHOUND TRACKS 3 (1986), available at http://www.mmc.gov.uk/rep_pub/reports/1986/201greyhound_racing.htm (last visited Mar. 23, 2010) [hereinafter COMPETITION COMM’N REPORT]. For a detailed history, see Stainforth Online, A Concise History Greyhound Racing, http://www.stainforthonline.co.uk/2001/meadow_court_racing_history.htm (last visited Mar. 23, 2010).

¹²⁷ DONOUGHUE REPORT, *supra* note 28, at 9.

¹²⁸ This separation of track systems continues to this day with about two-thirds of the tracks remaining outside the NGRC system. COMPETITION COMM’N REPORT, *supra* note 126, at 4; see DONOUGHUE REPORT, *supra* note 28, at 9 (describing the number of independent tracks). These independent tracks are referred to as the “flapping tracks.” DEP’T FOR CULTURE, MEDIA AND SPORT, GAMBLING REV. REPORT 51 (2001), available at http://www.culture.gov.uk/reference_library/publications/4642.aspx (last visited Mar. 23, 2010) [hereinafter BUDD REPORT].

¹²⁹ COMPETITION COMM’N REPORT, *supra* note 126, at 6. Attendance was estimated at twenty-five million annually. *Id.* at 7.

¹³⁰ *Id.* at 6-7.

¹³¹ *Id.* at 7 (noting the enactment of the Dog Racing (Temporary Provisions) Act, 1947). In 1946, total track attendance was estimated to have been over forty million. *Id.*

¹³² *Id.* Attendance fell to an estimated thirty-two million annually in 1949 after the statutory restrictions were removed. *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ DONOUGHUE REPORT, *supra* note 28, at 19. In 2007, there were eighteen such tracks with daily transmission to the bookmakers – making it a key product in most betting shops.

The next related governmental commission, the Royal Commission on Gambling in 1978, did not alter the status of greyhound racing in Britain, notwithstanding hopes for a monetary incentive to improve the dire financial situation of the industry. In 1979, the British Greyhound Racing Board (“BGRB”) was created to focus on the commercial aspects of the industry.¹³⁶ During the 1980s, the BGRB and the NGRC were closely related, but in 1994, the BGRB proposed a radical reorganisation that elevated its powers and diminished the powers of the NGRC.¹³⁷ Although the NGRC rejected the proposal, the BGRB separated from the NGRC and took control over all the commercial and political aspects of the sport, including marketing, public relations, finance, and administration.¹³⁸ This split has led to uncertainty about the roles of each of these organisations, with perceptions of interference and a general distrust of each other still evident today.¹³⁹

The attendance at races continued to fall in the 1980s,¹⁴⁰ even after the Betting, Gaming and Lotteries (Amendment) Act of 1985 abolished some of the earlier legislative limitations, including the limitations on the permissible number of race meetings and the number of races held within those meetings in a year.¹⁴¹ Since 1985, there have been additional commission reports as well as two investigative reports.¹⁴²

Id. In 2006, 20,817 races were run on the BAGS fixture list. *Id.* The number of races has led to some welfare concerns. *Id.* at 20.

¹³⁶ *Id.* at 24.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See *id.* at 27 (describing criticisms of the BGRB).

¹⁴⁰ COMPETITION COMM’N REPORT, *supra* note 126, at 8-9. Attendance at NGRC racecourses in 1984 fell to just under four million, and attendance fell again in 1985 to 3.8 million. *Id.*

¹⁴¹ *Id.* at 13. By 1984, it was estimated that of the approximately four million in attendance at NGRC racecourses, approximately ninety percent of the attendance was at full-license tracks and approximately ten percent of it was at permit tracks. *Id.* at 8. Attendance at non-NGRC racecourses was approximately 900,000. *Id.*

¹⁴² Two further commission reports deserve mention: the 1986 Monopolies and Merger Commission’s *Greyhound Racing. A Report on the Supply in Great Britain of the Services of Managing Greyhound Tracks*, COMPETITION COMM’N REPORT, *supra* note 126, and the 2001 Gambling Review Report, BUDD REPORT, *supra* note 128. The Competition Commission Report concluded that certain monopolistic activities existed in the industry, while the Budd Report recommended off-course access to greyhound totalisators. BUDD REPORT, *supra* note 128, at 150. This decision has rejuvenated the betting aspect of the industry. See *id.* at 12.

The greyhound racing industry itself has steadily declined. In 1960, there were sixty-four licensed racecourses, but only thirty in 2007. DONOUGHUE REPORT, *supra* note 28, at 9. The number of independent tracks fell from eighty-seven in 1960, to fourteen in 2007, and it is anticipated that this number will fall further as a direct result of the new welfare legislation that demands increased welfare standards at considerable costs. *Id.* at 9. The statistics provided in the COMPETITION COMM’N REPORT, *supra* note 126, at 9, are slightly different, although the downward trend remains clear. Licensed meetings declined from 6,787 in 1960, to 5,999 in 2006, although the expansion in BAGS racing, from 21,000 fixtures in 2006, to over 26,000 in 2008, explains the resilience. DONOUGHUE REPORT, *supra* note 28, at 9; see also APGAW REPORT, *supra* note 27, at 16-17 (describing the number of dogs racing and retiring).

Two national greyhound welfare scandals resulted in two 2007 investigative reports. The Seaham and Hinckley incidents, which surrounded allegations of mass killings in Wales, revealed ethically unacceptable methods of greyhound disposals. DONOUGHUE REPORT,

B. British Greyhound Industry

1. Regulation of the Industry

Several institutions are responsible for the regulation of the British greyhound industry as a whole. The Department of Culture, Media and Sport is responsible for governmental policy in the area of racing.¹⁴³ The government also takes a close interest in the welfare of greyhounds through the Department for the Environment, Food and Rural Affairs.¹⁴⁴

Even though the greyhound tracks are licensed by the local authorities,¹⁴⁵ greyhound racing itself is self-regulated. Prior to January 2009, the BGRB and the NGRC self-regulated a section of the industry as there were no statutory bodies within the sport.¹⁴⁶ The BGRB aimed to promote the best interests of greyhound racing by including representatives from all sections of the sport, with their main focus being on commercial aspects.¹⁴⁷ The NGRC regulated and registered its own racing tracks in accordance with its rules.¹⁴⁸ On a recommendation by the Donoughue Report, the Greyhound Board of Great Britain ("GBGB") replaced the NGRC and the BGRB.¹⁴⁹ Racing in the independent sector¹⁵⁰ remains, however, it is less structured, and the rules are dependent on

supra note 28, at 13, 87; APGAW REPORT, *supra* note 27, at 10; *see also supra* note 27. The two reports were the Associated Parliamentary Group Report on Animal Welfare, *The Welfare of Greyhounds*, APGAW REPORT, *supra* note 27, and *The Independent Review of the Greyhound Industry in Great Britain. A Report by Lord Donoughue of Ashton for the British Greyhound Racing Board and the National Greyhound Racing Club*, DONOUGHUE REPORT, *supra* note 28. The Donoughue Report was commissioned by the BGRB and the NGRC to research and make recommendations concerning all aspects of greyhound regulation, including the welfare of the animals. DONOUGHUE REPORT, *supra* note 28; *see discussion infra*.

¹⁴³ *See e.g.*, DEP'T FOR CULTURE, MEDIA AND SPORT, RACIAL EQUALITY IN THE HORSERACING AND GREYHOUND RACING INDUSTRIES 3 (2004), *available at* <http://www.culture.gov.uk/images/publications/racialequalitystudy.pdf> (last visited Mar. 23, 2010). The Department of Culture, Media and Sport represents the horseracing and greyhound industries within government. *Id.* A discussion hereof falls outside the scope of this article.

¹⁴⁴ *See, e.g.*, News Release, Department for Environment Food and Rural Affairs, Proposals to Improve Welfare for Racing Greyhounds Launched (Apr. 30, 2009), <http://www.defra.gov.uk/news/2009/090430.htm>.

¹⁴⁵ BUDD REPORT, *supra* note 128, at 51.

¹⁴⁶ DONOUGHUE REPORT, *supra* note 28, at 24.

¹⁴⁷ *Id.* at 25.

¹⁴⁸ COMPETITION COMM'N REPORT, *supra* note 126, at 4, 13. The NGRC role includes: being custodians of its rules; being the judicial body for misconduct and disciplinary matters; monitoring and managing databases; licensing and monitoring racecourses, including control of track promoters, tracks, and kennelling procedures (veterinarian facilities, trainers and owners). DONOUGHUE REPORT, *supra* note 28, at 29; COMPETITION COMM'N REPORT, *supra* note 126, at 13-16. *See also* BUDD REPORT, *supra* note 128, at 51 ("Racing at the NGRC-registered tracks must be conducted in accordance with NGRC rules. . .").

¹⁴⁹ DEP'T FOR ENV'T FOOD & RURAL AFFAIRS, CONSULTATION ON THE WELFARE OF RACING GREYHOUNDS REGULATIONS 2010, at 5 (2009), *available at* <http://www.defra.gov.uk/corporate/consult/greyhound-welfare/index.htm> (last visited Mar. 23, 2010).

¹⁵⁰ A section of the racing industry, referred to as the independent sector, currently operates completely outside the auspices of the GBGB. Before 2009, this sector also operated outside the rules of both the GBRC and the BGRB.

the location of the track used for the dog racing.¹⁵¹ The independent tracks are unlicensed and are not regulated.¹⁵²

Furthermore, apart from the regulatory bodies, two other institutions form an integral part of the industry: the Greyhound Training Association¹⁵³ and the British Greyhound Racing Fund (“BGRF”). The BGRF is responsible for collecting the voluntary levies paid by some of the off-course bookmakers.¹⁵⁴ This conglomerate of interested parties formed the basis for the Donoughue Report recommendation for consolidation of the regulatory structure of the industry – especially since the relationship between the NGRC and the NGRB had deteriorated since 1994 with no clear delineation of duties and responsibilities between them.¹⁵⁵ This has culminated in the establishment of the Greyhound Board of Great Britain (“GBGB”), with all duties and responsibilities consolidated in it.¹⁵⁶

Only the gambling aspect of dog racing is regulated by statute in Britain, in the Gambling Act of 2005.¹⁵⁷ The objective of the statute is generally to “prevent[] gambling from being a source of crime and disorder . . . ensuring that gambling is conducted in a fair and open way, and protecting children and other vulnerable persons from being harmed or exploited by gambling.”¹⁵⁸ Betting on dog races falls under this statute as the Act defines betting, *inter alia*, as the making or accepting of a bet on the outcome of a race.¹⁵⁹

The Act is based on the premise that it is an offence to provide gambling facilities unless they are licensed.¹⁶⁰ The Act is implemented by the Gambling Commission with due regard given to the objectives of the Act, gambling principles, and codes.¹⁶¹ It is the duty of the Commission to issue licences, including a licence “to provide facilities for betting other than pool betting (a ‘general betting operating licence’)”¹⁶² and a “betting premises licence.”¹⁶³ The latter licence is required for “the provision of facilities for betting, whether by mak-

¹⁵¹ COMPETITION COMM’N REPORT, *supra* note 126, at 16-17.

¹⁵² DONOUGHUE REPORT, *supra* note 28, at 49.

¹⁵³ This organisation specialises in representing the interests of the human participants in the sport. *Id.* at 36.

¹⁵⁴ The fund’s 2007 budget was £11.5 million. *Id.* at 46. This fund is used for the betterment of greyhound racing, and specifically, to improve the integrity of racing, the tracks, and welfare facilities. Monies derived from the NGRC licensing program are used to fund the administration costs of the NGRB and the NGRC. *Id.* at 73.

¹⁵⁵ *Id.* at 31.

¹⁵⁶ This is confirmed by the GBGB’s meeting minutes. See Greyhound Board of Great Britain Rules & Regulation, Minutes of the Greyhound Regulatory Board Jan. 19, 2009, <http://www.thedogs.co.uk/RulesandRegulation.aspx> (last visited Mar. 23, 2010) (“The overarching aim of the GRB will be to improve the trust and confidence in the independence and accountability of the regulation of licensed greyhound racing.”).

¹⁵⁷ The relevant exception is spread betting, which is regulated by the Financial Services and Markets Act 2000. Gambling Act, 2005, c. 19, § 10(1) (Eng.). See also Tony Coles, *The Regulation of Lotteries in Great Britain Following the Gambling Act of 2005*, 10 GAMING L. REV. 465, 465 (2006).

¹⁵⁸ Gambling Act 2005, c. 19, § 1 (Eng.).

¹⁵⁹ *Id.* § 9(1)(a).

¹⁶⁰ See *id.* § 33.

¹⁶¹ See *id.* §§ 20-24.

¹⁶² *Id.* §§ 65(2)(c), 92.

¹⁶³ *Id.* § 150(1)(e). The Act specifically provides that, until 2012,

ing or accepting bets, by acting as a betting intermediary or by providing other facilities for the making or accepting of bets.”¹⁶⁴ It is an offence if a person uses premises, or causes or permits premises to be used, *inter alia*, to provide betting facilities.¹⁶⁵

2. *The Changing Face of the Dog Racing Industry*

In 2007, greyhound racing still ranked as Britain’s third-largest spectator sport with an off-course betting turnover of £2.5 billion.¹⁶⁶ The support for greyhound racing has, however, shifted from attendance at the races to viewing it on screen in betting shops. With the expansion of television coverage in 2007 and with the advent of bookmakers extending their opening hours, the physical presence of spectators at the tracks has reduced. In the words of Donoghue: “[G]reyhound racing has become more of an off-course betting medium and less of a spectator sport.”¹⁶⁷

3. *Funding of and Employment in the Industry*

Funding for the industry comes from various sources. In 2007, bookmakers made a huge contribution to the industry by paying £18 million to the eighteen racecourses for the television rights of BAGS races to their shops. Bookmakers also contribute 0.6 percent of their turnover to the BGRF. “Without their contributions, British greyhound racing would be in a dire financial plight.”¹⁶⁸ Spread betting and off-course betting are also subject to taxation.¹⁶⁹

In Britain, greyhound racing employs about 9,500 persons in breeding, rearing, training, and other jobs on the track, not including on-course bookmakers and those employed by the totes.¹⁷⁰

4. *The Number and Welfare of the Dogs*

A striking number of greyhounds are registered in Britain, with over 10,000 new dogs registered in 2006 alone.¹⁷¹ The Donoghue Report argued that the main reason for this is the high bookmaker demand for betting product, coupled with an oversupply of young dogs from Ireland.¹⁷² With seventy per-

[a] betting premises licence in respect of premises other than a dog track shall by virtue of this section be subject to the condition that pool bets may not be accepted in reliance on the licence in respect of dog-racing other than in accordance with arrangements made with the occupier of the dog track on which the racing takes place.

Id. § 180(1), (4).

¹⁶⁴ *Id.* § 150(1)(e).

¹⁶⁵ *Id.* § 37(1)(e). This is the case whether by making or accepting bets, by acting as a betting intermediary, or by providing other facilities for the making or accepting of bets.

¹⁶⁶ DONOUGHUE REPORT, *supra* note 28, at 5. 99% of the turnover is generated by BAGS racing. *Id.* at 21.

¹⁶⁷ *Id.* at 10. The Donoghue Report pondered the question whether the sport can revive and progress as a major spectator sport given the current social and economic trends, but left that question unanswered. *Id.* at 15.

¹⁶⁸ *Id.* at 11.

¹⁶⁹ BUDD REPORT, *supra* note 128, at 54.

¹⁷⁰ *Id.* at 54-55.

¹⁷¹ DONOUGHUE REPORT, *supra* note 28, at 11.

¹⁷² *Id.* at 12.

cent of dogs trainer-owned and the high number of dogs being bred and raced to meet bookmakers' demands for betting product, this can create welfare concerns.¹⁷³

The high volume of racing may mean that there is insufficient time between meetings and races to prepare and repair track surfaces or to diagnose injuries to hounds. Above all it has raised questions about how the dogs are treated or disposed once their racing careers end The 'wastage' rate is high. It is estimated that over 10,000 greyhounds leave British licensed racing each year, together with others from independent tracks. In addition are the dogs which from the beginning prove unsuited to racing. Together this constitutes a massive exodus of greyhounds, often with up to 10 years of their prospective lives remaining. Not all can be tended by their racing owners, trainer-owners or can currently be re-homed. . . . A significant number – so far not reliably quantified – are put down, not always humanely.¹⁷⁴

The welfare of retired dogs are funded through the Retired Greyhound Trust, currently funded from the Greyhound Board of Great Britain, which in 2008, spent £1.7 million to support the trust.¹⁷⁵

It has been noted that the welfare issues regarding the dogs are increasingly important in the eyes of the British public, the media, Parliament, and the government in general, resulting in many of the stakeholders expressing a willingness to spend more money on the issue.¹⁷⁶ This change of attitude, whether voluntary or forced, will be tested in the future in light of the new welfare legislation.

The British government instituted the Animal Welfare Act in 2006. This Act imposes a "duty of care" on the person in charge of the animal at any given time.¹⁷⁷ This "duty of care" requires a suitable environment, diet, and housing for the animal, as well as the ability for the animal to express normal behaviour and be protected from pain and suffering, injury, and disease.¹⁷⁸ In the greyhound industry, the responsible person can be any number of persons: the breeder, owner, trainer, or track veterinarian.¹⁷⁹

C. *The Donoghue Report*

The Donoghue Report made certain recommendations regarding the regulatory structure of dog racing, namely that there should be a united and independent governing and regulatory authority, the GBGB, without any sectional interest having majority control.¹⁸⁰ The Report recommended that the func-

¹⁷³ *Id.*; see also APGAW REPORT, *supra* note 27, at 15-20 (describing the number of dogs bred, raced, and retired, and the number of unwanted dogs and what happens to them).

¹⁷⁴ DONOUGHUE REPORT, *supra* note 28, at 12.

¹⁷⁵ Greyhound Board of Great Britain, *Welfare*, <http://www.thedogs.co.uk/Welfare.aspx> (last visited Mar. 23, 2010).

¹⁷⁶ DONOUGHUE REPORT, *supra* note 28, at 13. Although the history of the welfare issue is less than perfect, there has been recent progress in this regard. *Id.* at 14.

¹⁷⁷ Animal Welfare Act, 2006, c. 45, §9(1) (Eng.). This Act came into operation on April 6, 2007.

¹⁷⁸ *Id.* § 9(2)(a-e). There has been some fear expressed that this legislation will lead to the closure of some of the independent tracks as a direct result of the costs of implementation.

¹⁷⁹ DONOUGHUE REPORT, *supra* note 28, at 14.

¹⁸⁰ *Id.* at 142.

tions of the BGRB and the NGRC be incorporated within the board.¹⁸¹ The aim of this recommendation was to balance the commercial and regulatory priorities within the industry.¹⁸² As mentioned *supra*, this was achieved in 2009. This new Board has maximum regulatory independence, but also has the required transparency and accountability to the industry that finances it and which it serves.¹⁸³ The Donoughue Report expressed hope that this Board would “function constructively in the interests of the whole sport and without the mutual hostilities and recriminations which have . . . characterised and often damaged the governance and regulation of British greyhound racing.”¹⁸⁴ The Report included other recommendations that deal with amendments to the funding structure to ensure a broader-based compulsory system¹⁸⁵ and a suggestion of a re-organisation of priorities.¹⁸⁶

The Donoughue Report also made recommendations (echoed in the APGAW Report)¹⁸⁷ regarding the welfare of the animals, including specific aspects that should be included in the proposed secondary legislation to the Animal Welfare Act. It addressed such aspects as: provisions for re-homing of retired greyhounds; licensing of breeders; registration of all greyhounds at birth or ear-marking with improved identification and tracking; minimum track veterinarian facilities; and improved independent inspection by licensed and qualified veterinarians of trainers’ kennels.¹⁸⁸ The Report specifically noted that there would be no compromise on the welfare issues and independent tracks would be included in the implementation thereof.¹⁸⁹

A direct consequence of the Report was the Animal Welfare Minister’s 2009 consultation document that sought to improve the welfare of racing greyhounds in the UK.¹⁹⁰ The proposals aim to ensure that minimum welfare standards are met and that the standards are enforced either by a local authority, or alternatively, by a body that has secured accreditation through the United Kingdom Accreditation Service (“UKAS”).¹⁹¹ Specifically,

¹⁸¹ *Id.* at 3.

¹⁸² *Id.* at 41.

¹⁸³ *Id.* at 69. This aspect has not been achieved in total as the independent sector still operates outside the auspices of the GBGB.

¹⁸⁴ *Id.* at 6.

¹⁸⁵ See APGAW REPORT, *supra* note 27, at 9.

¹⁸⁶ DONOUGHUE REPORT, *supra* note 28, at 74, 85.

¹⁸⁷ APGAW REPORT, *supra* note 27, at 11.

¹⁸⁸ DONOUGHUE REPORT, *supra* note 28, at 143-44; see also APGAW REPORT, *supra* note 27, at 7-8 (making recommendations for the racing life of a greyhound, including inspections, qualifications for trainers/staff, veterinarians at race-courses, and identification of dogs).

¹⁸⁹ DONOUGHUE REPORT, *supra* note 28, at 110.

¹⁹⁰ DEP’T FOR ENV’T FOOD & RURAL AFFAIRS, CONSULTATION ON THE WELFARE OF RACING GREYHOUNDS REGULATIONS 2010 (2009), available at <http://www.defra.gov.uk/corporate/consult/greyhound-welfare/racing-greyhounds-consultation.pdf> (last visited Mar. 23, 2010) [hereinafter CONSULTATION ON WELFARE].

¹⁹¹ At the time of the writing of this article, it was unclear whether GBGB had received the UKAS accreditation that it sought. See Greyhound Board of Great Britain Rules & Regulation, Minutes of the Greyhound Regulatory Board May 6, 2009, <http://www.thedogs.co.uk/RulesandRegulation.aspx> (last visited Mar. 23, 2010) (describing the implications of UKAS accreditation).

[a]ll tracks must have a veterinarian present at all race meetings and trials; ensure that the veterinarian has suitable veterinary facilities; ensure the veterinarian is able to examine each greyhound prior to racing or trialling; ensure that no greyhound participates in a race or trial if the veterinarian deems it is unfit to race for any reason; provide an adequate number of suitably ventilated kennels; keep records of all greyhounds who race or trial at the track; keep records of any greyhounds injured at the track; and only allow greyhounds which are micro-chipped and tattooed (with details on an appropriate national database) to race or trial at the track.¹⁹²

In addition, all tracks must be licensed by the local authority because operating without a license constitutes a criminal offence.¹⁹³ Whether the proposed Animal Welfare Act in England will become law remains to be seen.

D. Conclusion

Notwithstanding the fact that greyhound racing in Britain has been well-established for decades, the Donoughue Report identified certain changes and problem areas within the industry. It identified the main change within the industry, namely the move away from physical attendance at the races to the viewing of races on television in betting shops. Two aspects were regarded as particularly problematic: firstly, the lack of a single regulatory body that could oversee the industry as a whole and ensure proper regulation of the interests of the industry; and secondly, the continued problems relating to the welfare of the dogs, specifically after retirement, in light of the number of registered dogs necessitated by BAGS. The report made very specific recommendations in this regard, some of which have been implemented such as the combined regulatory body.¹⁹⁴ It remains to be seen, however, whether all the other recommendations will materialise in practice.

IV. EVALUATION AND RECOMMENDATIONS

The gambling industry in both South Africa and Britain is well established and accepted as a pastime by the general population notwithstanding the predictable socio-economic consequences that arise from problem gamblers. The gambling regulatory policies are also similar in the two countries: both allow limited, licensed gambling that is strictly regulated and aimed at crime prevention, and both contain an open and fair system that protects vulnerable persons.

Although betting on dog racing is legalised and available in Britain, the South African industry remains illegal and unregulated in spite of evidence of some illegal activity. With the shift in the British industry away from race attendance, it is difficult to predict whether South Africa would be able to have a viable and sustained industry, although this uncertainty should not be the sole reason for *not* legalising the industry.

Clearly, certain pitfalls of the British system should be avoided if the legislature decides to legalise dog racing and wagering in South Africa. South Africa should resist the complex regulatory system of races that has developed in Britain. A single independent regulatory body should either be provided for

¹⁹² CONSULTATION ON WELFARE, *supra* note 190, at 6.

¹⁹³ *Id.*

¹⁹⁴ The independent sector, however, still operates outside the authority of the GBGB.

de novo, or the sport should continue to be controlled through a partnership between the United Greyhound Racing and Breeders Society (“UGRABS”) and the South African Renhond Unie (“SARU”¹⁹⁵), although the division of responsibilities should be clear. The regulation could be similar to the National Horseracing Authority of Southern Africa (previously the Jockey Club of South Africa) (“NHA”).¹⁹⁶

This article suggests that gambling on dog races should fall within the existing gambling and horse racing framework and be regulated by the provincial gambling boards. There is no reason to allocate the regulating to the National Gambling Board as was done with interactive gambling regulation. Unlike in Britain, the regulation should be applicable to all tracks and funding should be broad-based and not limited to a voluntary tax by some bookmakers. The aim should be to create a sustainable industry that adds value to the economy of a province through employment and revenue, as well as entertainment for the punters and the public.

The one aspect that should be considered in detail if legalisation is to continue is the welfare of the animals. Although the existing animal welfare legislation would remain applicable, this article suggests that specific legislative provisions be drafted, as are proposed in Britain, to ensure the integrity of the industry vis-à-vis the animals. Provisions should be made for: the limitation of breeding numbers; the registration and electronic tracking of the animals; and the handling of the dogs at the tracks including independent veterinarian supervision as well as a post-racing pension scheme for the rehoming of the dogs. If these aspects cannot be protected through regulation, it is submitted that non-legalisation of the industry is preferable.

To conclude, whatever the legal framework and whoever the regulator of the industry is, the most important aspect is confidence in the integrity of the actual racing and betting, which depends on superior regulation and high welfare standards.¹⁹⁷

¹⁹⁵ See *supra* note 112.

¹⁹⁶ See *supra* Part II.D.3. The core function of the NHA is to ensure that thoroughbred racing is provided with a competent and efficient racehorse and jockey control and monitoring service. See generally National Horseracing Authority of Southern Africa, <http://www.horseracingauthority.co.za/pubs/> (last visited Mar. 23, 2010).

¹⁹⁷ DONOUGHUE REPORT, *supra* note 28, at 17.