

*Indexed as:*  
**R. v. Stromberg**

**Between**  
**Regina, and**  
**Linda Stromberg, Blair Down, and World Project Management Inc.**

[1997] B.C.J. No. 2435

Vancouver Criminal Registry No. 04417DC

British Columbia Supreme Court  
Vancouver, British Columbia

**Baird Ellan Prov. Ct. J.**

Judgment: filed August 20, 1997.

(36 pp.)

*Constitutional law -- Determination of validity of statutes or acts -- Aim or purpose of statute -- Effect of statute -- Vagueness.*

This was an application by the accused in the course of a criminal trial to have certain sections of the Criminal Code declared unconstitutional for vagueness, and to have all of the counts in the information quashed for failure to disclose offences known to law. The accused were charged that they sold foreign lottery tickets, sent out sales literature, and printed or published activities related to such lotteries. They were charged under section 206(7) of the Code. The accused claimed that section 206(7) violated section 7 of the Canadian Charter of Rights and Freedoms, and was unconstitutional.

HELD: Application allowed. The information was quashed. Section 206(7) was unconstitutional for vagueness. As the provision dealt with criminal matters, a higher degree of precision was required. The offences created by section 206 were strictly indictable. The degree to which a citizen was entitled to fair notice of the unlawfulness of a certain activity was greater than where lesser potential penalties existed. Section 206(7) did not specify which offences created in section 206(1) applied to foreign lotteries. It purported to apply the whole section, which obscured its meaning, as there were parts of section 206 that did not apply to foreign lotteries. There were also a number of

interpretive obstacles in comparing the wording of section 206(7) to section 206(1). It was also unclear if section 206(7) created new offences that applied specifically to foreign lotteries. Problems also existed because there was no definition of foreign lottery. It was not clear if the focus of section 206(7) was on the perpetrators of foreign lotteries. The absence of a clear scope of applicability of the charging provision to dealers in foreign lottery tickets allowed for indiscriminate enforcement of the legislation. There was evidence that the vagueness of the legislation contributed to the wayward course of the investigation in this case. Section 206(7) could not be saved without a rewrite of the provision.

**Statutes, Regulations and Rules Cited:**

Canadian Charter of Rights and Freedoms, 1982, s. 7.

Criminal Code, ss. 197, 199, 205, 206, 206(1), 206(1)(a), 206(1)(b), 206(1)(c), 206(1)(d), 206(4), 206(7), 207, 207(1) (h).

Lottery Act, R.S.B.C. 1979, c. 249.

Lottery Corporation Act, S.B.C. 1985, c. 50, s. 10.1, 10.1(2).

**Counsel:**

D. Jardine, for the Crown.

P.M. Bolton Q.C., for the defendant, Linda Stromberg.

I. Donaldson, for the defendant, Blair Down.

D. Martin, for the defendant, World Project Management Inc.

**1 BAIRD ELLAN PROV. CT. J.:**-- The defendants in this case have brought a preliminary application to have the sections of the Criminal Code under which they are charged declared unconstitutional for vagueness, and to have the counts on the information quashed for failure to disclose offences known to law. The legislation involved, ss. 206 & 207, falls under the gaming sections of the Criminal Code. The issue which arises is the extent to which the activities of dealers in foreign lottery tickets are addressed by the legislation.

**2**

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A. THE INFORMATION	

**3** The applicants face the following charges:

Count 1

LINDA STROMBERG, BLAIR DOWN and WORLD PROJECT  
MANAGEMENT

INC., between the 1st day of January, 1994, and the 31st day of December, 1995, at or near the City of Vancouver and the City of Kelowna, in the Province of British Columbia, did sell or offer to sell any tickets or chances, or any share of any tickets or chances in a foreign lottery, for the giving or disposing of money by mode of chance, contrary to Section 206(1)(b) of the Criminal Code.

Count 2

LINDA STROMBERG, BLAIR DOWN and WORLD PROJECT MANAGEMENT

INC., between the 1st day of January, 1994, and the 31st day of December, 1995, at or near the City of Vancouver and the City of Kelowna, in the Province of British Columbia, did cause, or aid and assist in, the sale of any tickets or chances, or any share of any tickets or chances in a foreign lottery, for the giving or disposing of money by mode of chance, contrary to Section 206(1)(b) of the Criminal Code.

Count 3

LINDA STROMBERG, BLAIR DOWN and WORLD PROJECT MANAGEMENT

INC., between the 1st day of January, 1994, and the 31st day of December, 1995, at or near the City of Vancouver and the City of Kelowna, in the Province of British Columbia, did knowingly send, transmit or mail or knowingly allow to be sent, transmitted or mailed, articles, to wit: sales literature, that were used or intended for use in carrying out a scheme, proposal or plan, for the giving or disposing of money by mode of chance, contrary to Section 206(1)(c) of the Criminal Code.

Count 4

LINDA STROMBERG, BLAIR DOWN and WORLD PROJECT MANAGEMENT

INC., between the 1st day of January, 1994, and the 31st day of December, 1995, at or near the City of Vancouver, in the Province of British Columbia, did cause to be printed or published a scheme, proposal or plan for the giving or disposal of money by any ticket or chance in a foreign lottery, contrary to Section 206(1)(a) of the Criminal Code.

B. THE LEGISLATION

4

- s. 206(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who
- (a) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property by lots, cards, tickets of any mode of chance whatever;
  - (b) sells, barter, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter or exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property by lots, tickets, or any mode of chance whatever;
  - (c) knowingly sends, transmits, mails, ships, delivers, or allows to be sent, transmitted, shipped or delivered, or knowingly accepts for carriage or transport or conveys any article that is used or intended for use in carrying out any device, proposal, scheme or plan for advancing, lending giving, selling or otherwise disposing of any property by mode of chance whatever...
- (7) This section applies to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

...

- s. 207(1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

...

- (h) for any person to make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything related to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered

or to accept for carriage or transport or convey any such thing where the destination thereof is such a place.

### C. FACTS

5 Counsel have agreed that the two motions may proceed in the absence of evidence and upon the assumptions that follow. The Crown alleges that between January 1, 1994 and December 31, 1995, in Vancouver and Kelowna, the Applicants were engaged in the marketing of foreign lottery related materials. In particular, the Crown alleges that the Applicants were involved in the sale of tickets or chances in foreign lotteries, sending out sales literature relating to foreign lotteries, and printing or publishing activities related to tickets or chances in foreign lotteries. The Crown's theory appears to be that the Applicants purchased tickets in legal lotteries run by governments in foreign countries, such as Australia and Spain. The Crown posits that the Applicants, who operated out of offices in Canada, aided in the purchase of tickets (or shares in these tickets) for foreigners, primarily Americans.

### D. VAGUENESS

6 The applicants assert that ss. 206 and 207 of the Criminal Code do not meet the standards of s. 7 of the Canadian Charter of Rights and Freedoms, and are therefore unconstitutional. Counsel provided a helpful summary of the relevant cases on the topic of constitutional vagueness, which I will not repeat here, except to set out the following passage from the reasons for judgment of Gonthier J. in *R. v. Canadian Pacific Ltd.* (1995), 99 C.C.C. (3d) 97 @ 125, which summarizes the applicable principles for this court to apply in considering the issue:

"In [*R. v. Nova Scotia Pharmaceutical Society* (1992), 74 C.C.C. (3d) 289 (S.C.C.)], I enunciated the appropriate interpretive approach to a s. 7 vagueness claim. As I observed there, the principles of fundamental justice in s. 7 require that laws provide the basis for coherent judicial interpretation, and sufficiently delineate an "area of risk". Thus, "a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate" (at p. 313 C.C.C., p. 59 D.L.R.). This requirement of legal precision is founded on two rationales: the need to provide fair notice to citizens of prohibited conduct, and the need to proscribe enforcement discretion.

In undertaking vagueness analysis, a court must first develop the full interpretive context surrounding an impugned provision. This is because the issue facing a court is whether the provision provides a sufficient basis for distinguishing between permissible and impermissible conduct, or for ascertaining an "area of risk". This does not necessitate an exercise in strict judicial line-drawing because, as noted above, the question to be resolved is whether the law provides sufficient guidance for legal debate as to the scope of prohibited conduct. In determining

whether legal debate is possible, a court must first engage in the interpretive process which is inherent to the "mediating role" of the judiciary: Nova Scotia Pharmaceutical Society, supra, at pp. 312-13 C.C.C, pp. 58-9 D.L.R. Vagueness must not be considered in abstracto, but instead must be assessed within a larger interpretive context developed through an analysis of considerations such as the purpose, subject-matter and nature of the impugned provision, societal values, related legislative provisions, and prior judicial interpretations of the provision. Only after exhausting its interpretive role will a court then be in a position to determine whether an impugned provision affords sufficient guidance for legal debate." (Underlining added.)

**7** Gonthier J. goes on to discuss the difficulties encountered by drafters of legislation in framing precise provisions that envision future developments, and the consequent reliance upon more general terms, with the expectation that courts will expand upon them in the interpretive process. He emphasizes that the standard of legal precision required by s. 7 varies with the nature of the legislation, with due deference to important social policy objectives that might not admit of precise codification, citing the following paragraph from his reasons for judgment in R. v. Nova Scotia Pharmaceutical Society (1992), 74 C.C.C. (3d) 289, at 302:

Factors to be considered in determining whether a law is too vague include (a) the need for flexibility and the interpretive role of the courts, (b) the impossibility of achieving absolute certainty, a standard of inintelligibility being more appropriate, and (c) the possibility that many varying judicial interpretations of a given disposition [provision?] may exist and co-exist.

**8** In Canadian Pacific, Gonthier J. performs an illustrative analysis of environmental legislation attacked as too open-ended, considering in turn each of the underlined factors in the first passage above. The applicants adopted this format in their written submissions, and I will do the same.

#### 1. The Purpose of the Impugned Provisions

**9** The broad purpose of Part VII of the Code, which is entitled, "Disorderly Houses, Gaming and Betting", is the regulation of activities alternately involving betting and gaming, or prostitution, activities in which the state has historically had an interest. With respect to betting and gaming, which provides the context for the provisions in question, the definitions of "bet" and "game" contained in s. 197 give further information as to the concerns addressed:

"bet" means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada.

"game" means a game of chance or mixed chance or skill."

**10** Ss. 199 to 205 contain a number of provisions relating directly to betting and gaming activities. S. 206 then follows, under the heading "Offence in Relation to Lotteries and Games of Chance". Section 207 falls under the heading "Permitted Lotteries," and in the paragraphs preceding the impugned 207(1)(h), provides for the lawfulness of lotteries run by provincial governments, charitable institutions, and fairs and amusement parks, under certain conditions.

**11** Mr. Donaldson in his written submission has provided a historical review of ss. 206(1) and (7) that is helpful to a consideration of the purpose of the legislation, and upon which I could not hope to improve. It follows.

Section 206(1) is derived from Act 10 & 11 Will. 3 c.17, "An act for suppressing lotteries", which was enacted in 1698 in response to "evil-disposed persons" who "set up mischievous and unlawful games" to the "utter ruin and impoverishment of many families". It decreed:

That all such lotteries, and all other lotteries, are common and publick nuisances, and that all grants, patents and licenses for such lotteries, or any other lotteries, are void and against law.

It seems that a short time later this law was circumvented by persons selling tickets in foreign lotteries. In 1722, the predecessor to s. 206(7) was enacted. 6 Geo. 2 c.35 stated,

And whereas in order to elude the many good laws made for suppressing unlawful lotteries, several evil-disposed persons have of late presumed to erect and carry on several lotteries, upon pretence and colour of some grant or authority given by foreign princes or states...:

The Act declared that it was an offence:

if any person or persons shall, by virtue or colour of any grant or authority from any foreign prince, state or government whatsoever, erect, set up, continue or keep, or shall cause or procure to be erected, set up or continued or kept, any lottery, or undertaking in the nature of a lottery, under any denomination whatsoever, or shall make print, publish, or cause to be made, printed or published, any proposal or scheme for any such

lottery or undertaking, or shall within this kingdom sell or dispose of any ticket or tickets in any foreign lottery.

In 1733 6 Geo. 2 c.35 was enacted. It acknowledged the previous Act, and added that it was an offence to:

sell, procure or deliver any ticket, receipt, chance or number in or belonging to any foreign lottery or pretended lottery.

In 1836, Act 6 & 7 Will. 4 c.66, which was directed specifically to the advertising of foreign lotteries, was enacted. It stated:

Whereas the Laws in force are insufficient to prevent the advertising of Foreign and other illegal Lotteries in this Kingdom, and it is expedient to make further Provision for that Purpose.

It was an offence to:

print or publish, or cause to be printed or published, any Advertisement or other Notice of or relating to the drawing or intended drawing of any Foreign Lottery, or any Advertisement or Notice concerning or in any Manner relating to any such Lottery or Lotteries.

Provisions almost identical to the current s. 206(7), and similar to some of the offences in the current s. 206(1), were enacted in the first Canadian Criminal Code in 1892.

In 1907, in the case of Attorney-General of Victoria v. Moses, [1907] V.L.R. 130, the Supreme Court of Victoria commented on the mischief that the old Acts were to remedy:

We may look to see what were the evils against which the English Parliament was legislating....One of the objects sought by the Legislature by some of these Acts may have been to exclude competition with the

State lotteries, which were for some time used as means of obtaining revenue, but from the language of the preambles to some of the Acts, and from the wide prohibitions which the Acts contain, we must conclude that unauthorized lotteries were legislated against in England, not merely as rivals to State lotteries, but because they were considered injurious to the community on broad grounds, which would hold good in New South Wales as well as in England. (at 141)

**12** To this summary may be added the following observations by Mr. Bolton in his submission on the sufficiency of the information:

The present s. 206(1)(d), which prohibits activities relating to the "conducting or managing" of lotteries, was added in 1895 by An Act to further amend the Criminal Code. 1892 S.C. 1895, c. 40. This Act also amended s. 206(7) by adding "conducting or managing" to the end of s. 206(7).

In contrast, the present s. 206(1)(c), which prohibits activities relating to the conveyance of articles, was added in 1932 by An Act to amend the Criminal Code (Conveyance of prohibited articles), S.C. 1932, c. 8. Parliament chose not to add these prohibited activities to s. 206(7).

**13** It seems clear based upon this historical analysis and the context in which the provisions are found, that the original focus of the legislation was to prevent all lottery schemes. The provisions relating to foreign lotteries were then added to address attempts to circumvent the legislation by cloaking activities in authority from other jurisdictions. At some point, a separate section was added to exempt state-sanctioned lotteries from the blanket prohibition.

**14** The early prohibition provisions may be compared with s. 206 as currently worded, which focuses in s-s. (1) on the restriction of activities connected with the disposing of property or distribution of money by "mode of chance". "Mode of chance" appears to be a historical term of art, meaning luck as opposed to skill: See, for instance, *R. v. Young* (1978), 45 C.C.C. (2d) 565 (Alta S.C. App. Div.). While the older provisions contained only the general term, "lottery", the current s. 206(1) uses a list of activities presumably thought to encompass that term, or perhaps to expand upon it.

**15** The provision relating to foreign lotteries is now contained in s-s. (7), which retains the word, "lottery". Mr. Bolton observes that ss. 206(1) and (7) derived from separate legislation and were consolidated into what is now s. 206 in 1892 when the Criminal Code was enacted. The current s. 206(7) may be contrasted with the earlier offence-creating foreign lottery provisions, as it now appears as a gloss on or expansion of the charging provision. Section 207 uses the term, "lottery scheme" in describing certain activities that are deemed lawful despite s. 206.

**16** Broadly speaking, when considered in the context of its history and the way in which it is currently organized, the apparent purpose of the legislation has evolved from a blanket prohibition of lotteries and related activities, to acceptance and regulation of state-approved lottery schemes, with a residual prohibition on the unauthorized disposition of property by mode of chance and related activities.

## 2. The Subject-Matter of the Legislation

**17** Mr. Donaldson argues that prohibiting the sale of foreign lottery tickets, if that is what is intended by the section, is susceptible to precise codification, and that because of that and the general public acceptance of lotteries currently prevailing, a higher standard should be applied when considering the adequacy of notice afforded by the legislation:

If Parliament wished to prohibit the purchase, sale, or re-sale of tickets or shares of tickets in foreign lotteries to persons inside or outside of Canada unless, for instance, these activities are conducted pursuant to a government-issued licence, it could say simply "Everyone who purchases or sells tickets or shares of tickets in foreign lotteries to persons inside or outside of Canada, except pursuant to a licence issued by or under the authority of the Lieutenant Governor in Council of a province, is guilty of an offence punishable..."

Parliament's ability precisely to codify gaming and betting offences is seen in other parts of Part VII. For instance, s. 204(3) reads:

No person or association shall use a pari-mutuel system of betting in respect of a horse-race unless the system has been approved by and its operation is carried on under the supervision of an officer appointed by the Minister of Agriculture and Agri-Food.

There is no reason why Parliament cannot codify lottery-related offences in a manner that provides fair notice to the citizen.

In some legislative contexts, such as environmental regulation, drafting precision, even if possible, would undermine the regime. For instance, the law would not be able to keep pace with changes in the particular types of chemicals used in industry and released into the environment, or with the variety of methods, locations and consequences of emissions and pollutants. Obscenity is an area where for decades the courts have engaged the concept of the 'community standard of tolerance' to allow Parliament's expressed intention to keep pace with

contemporary social values.

...

There is a particularly pressing reason why the criminal law governing lottery-related offences must be clear. Unlike most activities which are the subject-matter of the offence provisions of the Criminal Code, lotteries are legal in a wide variety of circumstances. There is provincial legislation to enable the operation of lotteries. Lotteries run by religious and charitable organizations are widespread. Most importantly, the government itself runs lotteries and advertises them extensively.

Government-run lotteries depend upon and, through advertising, ensure that large numbers of tickets are purchased by a substantial percentage of the population. Tickets are purchased, exchanged and shared not only by individuals but also by groups of people in the workplace, in social groups, and in families. It is absolutely essential for the citizen to be able to identify the circumstances in which buying or selling a lottery ticket in a legitimate lottery is a criminal act. The criminal law must be clear enough to give the citizen notice of that criminal offence.

**18** The applicants argue that the impugned provisions do not employ even the minimum level of precision to which the subject-matter of lotteries is conducive, and in fact that the legislation as currently worded is convoluted and unintelligible.

**19** As already noted, considering the current wording of ss. 206 and 207 in the context of the history outlined above, the drafters appear to have started with the blanket prohibitions originally employed for domestic lottery operations, and added separately the foreign lottery provisions and the exceptions under s. 207 respecting certain types of activity considered lawful. Further, s. 206(7) does not itself create offences in respect of foreign lotteries, rather it deems s. 206 generally to "apply" to certain transactions relating to foreign lotteries. As a result, the foreign lottery provisions fit awkwardly into the domestic lottery prohibitions contained in s. 206(1), and as discussed below, it becomes difficult to trace through the legislation in order to determine whether or how a particular activity in relation to foreign lottery tickets is caught.

**20** It is difficult to disagree with the applicants' suggestion that the area is one that is susceptible to much more precision than has been employed, particularly when it appears that there is little justification for the degree of imprecision exhibited. This is not a case where the subject-matter dictates the imprecision of the legislation, as in case of pollution or environmental law, where the industry is in a constant state of flux, and future issues cannot be precisely anticipated. The issues addressed in the lottery provisions are fairly static. In any event, the challenge to the provisions is not on the same footing as those more often made under s. 7, which involve interpretation of

statutory terms that are complained of as too general to interpret. The complaint here is of unintelligibility, which, if made out, can hardly be said to be justified by the subject-matter of the legislation, and in fact appears to be engendered in part by an excess of detail, rather than a lack of it.

**21** As pointed out by Gonthier J. in *Canadian Pacific*, at p. 128, there are areas of the law in which "a strict requirement of drafting precision might well undermine the ability of the legislature to provide for a comprehensive and flexible regime". He goes on, "... a general enactment may be challenged ... for failing to provide adequate notice to citizens of prohibited conduct. Is a very detailed enactment preferable? In my view, in the field of environmental protection, detail is not necessarily the best means of notifying citizens of prohibited conduct. If a citizen requires a chemistry degree to figure out whether an activity releases a particular contaminant... then that prohibition provides no better fair notice than a more general enactment. The notice aspect of the vagueness requirement must be approached from an objective point of view: would the average citizen, with an average understanding of the subject-matter of the prohibition, receive adequate notice of prohibited conduct? If specialized knowledge is required to understand a legislative provision, then citizens may be baffled."

**22** This passage points out the problem of overly-detailed provisions and the confusion they may engender; perhaps the converse of the overbreadth complaint which is the subject of many vagueness attacks.

**23** An illustration of the way in which similar subject-matter is dealt with in a more easily-understood way may be found in the B.C. Lottery Act, R.S.B.C. 1979, c.249 and Lottery Corporation Act, S.B.C. 1985, c.50. Section 10.1 of the latter act is set out below under "Nature of the Legislation."

### 3. The Nature of the Legislation

**24** The provisions in question are criminal in nature, with a higher standard of precision being required than, for instance, purely regulatory legislation. The offences created by s. 206 are strictly indictable, though under absolute jurisdiction of the provincial court. They carry potential terms of imprisonment for a maximum period of two years upon conviction. The degree to which a citizen is entitled to fair notice of the unlawfulness of a certain activity is greater in these circumstances than where lesser potential penalties flow.

**25** The degree of imprecision of these indictable provisions may be contrasted with the precision contained in the summary conviction offences created by s. 10.1 of the B.C. Lottery Corporation Act, S.B.C. 1985, c.50:

10.1 (2) A person must not, directly or indirectly, do any of the following:

- (a) resell or offer to resell lottery tickets to a person outside British Columbia;
- (b) advertise to resell lottery tickets to a person outside British Columbia or advertise regarding the possibility of such sale;
- (c) distribute lottery tickets for the purpose of reselling referred to in paragraph (a);
- (d) have in the person's possession lottery tickets for the purpose of reselling referred to in paragraph (a);
- (e) conspire with another person to do anything referred to in paragraphs (a) to (d).

**26** The Lottery Corporation Act also contains definitions of "lottery" (which adopts the definition of "lottery scheme" contained in s. 207 of the Criminal Code), "lottery ticket", and "resell".

#### 4. Societal Values

**27** The applicants argue that the public interest in regulation of lotteries is not as apparent as is its interest in other areas addressed by legislation, for instance, pollution, or obviously harmful activities such as homicide. Mr. Donaldson points to the widespread publicity surrounding government-run lotteries as indicative of a standard of tolerance, within which the requirement for fair notice of similar activities that are prohibited becomes paramount.

**28** While some of the applicant's submissions in this area consist of evidence regarding their clients' activities, judicial notice would suffice to show that there is a widely-held acceptance of lotteries in Canada. It is also clear from the current structure of the legislation that the societal concerns it originally addressed, of impecunious purchasers being compelled to squander their savings on games of chance with little hope of winning, have yielded to a scheme of endorsement and in some cases, aggressive marketing, of lotteries that have the prior approval of the state. The governmental focus on limiting competition in these circumstances assumes a larger role. While I do not quarrel with Mr. Jardine's argument that the state's interest in regulation is also motivated by a desire to ensure that lotteries are fairly run and prizes are actually awarded, it must be acknowledged there are other sections of the Code that would address concerns about the unscrupulousness of private dealers.

**29** At very least, the view that lotteries per se are evil or a public nuisance no longer prevails. Given the level of public tolerance, and the proliferation of tickets now sold openly and marketed vigorously in the media, it is clearly important that specific notice be given to citizens as to what types of activity are not condoned.

#### 5. Prior Judicial Interpretations of the Provisions

**30** Counsel agree that there has been no prior consideration of s. 206(7), or the issue of foreign lotteries. In the case of *R. v. Austin & Auen*, Unreported, July 8, 1977, Ont. Crim. Div., (affirmed, March 28, 1979, Ont. C.A.), Rice J. considered whether persons engaged in a business of lawfully

purchasing Loto Canada tickets and then re-selling shares of them, without creating a greater risk than that attributable to the tickets, were guilty of offences under s. 206(1). They were acquitted on the basis that the charges were not made out. The applicants take the view that the case is authority for s. 206 being inapplicable to the re-selling of lottery tickets, while the Crown submits that the result was dependent upon the wording of the charges in that case.

**31** Although Rice J. strictly dealt with whether or not the charges in the case, which included allegations that the defendants had created a mode of chance, were proven, the Austin & Auen case is also consistent with an interpretation of s. 206 as concerned with activities surrounding the creation of new elements of chance with the intent of disposing of property thereby, as opposed to dealing in vehicles for marketing modes of chance created by others.

**32** Other cases considering s. 206 are also consistent with the focus being on the scheme for disposition of property itself, rather than the proliferation of its vehicles: see cases cited following s. 206, Martin's Annual Criminal Code, for instance.

## 6. The Wording of the Legislation

### a. Section 206(7)

**33** I accept Mr. Donaldson's submission that the governing principles of statutory interpretation are those recently revisited in *R. v. McIntosh* (1995), 95 C.C.C. (3d) 481 (S.C.C.), specifically that a statute is to be given its plain meaning, but that it is not the task of the courts to read in meaning where none can be found, particularly where the legislation is criminal in nature.

**34** The applicants' argument regarding the difficulties in the wording of the provisions in question centres primarily around the opening words of s. 206(7), "This section applies". They argue that because of the enumeration in s. 206(7) of specific activities that differ from those in other subsections, and that because s. 206(7) is broader than s. 206(1) in respect of the types of activity that it includes, it is impossible to "apply" the section to the enumerated activities, and s. 206(7) therefore cannot be considered simply a gloss on the charging sections.

**35** Mr. Jardine argues that s. 206(7) merely specifies the prohibited activities in relation to foreign lotteries that may be committed in Canada by summarizing the types of activities set out in s. 206(1), in order to avoid extra-territorial application, for which there would be no jurisdiction. There are several reasons why that interpretation is difficult to accept. The first is that, as pointed out by Mr. Donaldson and discussed below, s. 206(7) refers not to the charging provisions, but to the "section". Secondly, as I will illustrate in a moment, if one compares the wording of s. 206(7) to the charging provisions, it is difficult to ascertain which of the paragraphs in s. 206(1) are meant to apply to foreign lotteries, and to what extent they might apply, if they do. Thirdly, as pointed out by the applicants, the transactions described in s. 206(7) do not contain a complete list of s. 206(1) activities that, assuming the doctrine of sovereignty prevents legislation in respect of foreign lotteries, could be committed in Canada in respect of foreign lotteries. Finally, it is far from clear

that s. 206(1) as worded would not apply to activities in respect of foreign lotteries conducted in Canada that otherwise met the descriptions it contains.

**36** Turning to the first of these issues, s. 206(7) does not specify that the offences created in s. 206(1) are intended to apply to foreign lotteries. Instead, it purports to apply the whole section, which at very least obscures its meaning. Clearly, there are parts of the section that cannot "apply" to the listed activities contained in s. 206(7), for instance, as argued, by the applicants, s. 206(4). One is drawn to conclude, as suggested by the Crown, that the activities set out in s. 206(4) are not prohibited in relation to foreign lottery tickets. Equally, none of the remaining subsections, other than subsection (1), appear to be incorporated by the wording of s. 206(7). It would of course have been preferable for the drafters to state only that s. 206(1) applies to the activities listed in s. 206(7), if that is in fact the intention.

**37** Considering the second issue, a comparison of the wording of s. 206(7) with s. 206(1), there are a number of interpretive obstacles. For example, Mr. Donaldson argues that because s. 206(7) includes activities in relation to a "chance or share" in a lottery, terms not mentioned at all in s. 206(1), s. 206(7) "looks less like an applicability provision than an inchoate offence provision." Mr. Jardine submits that the words "chance or share in a foreign lottery" in s. 206(7) are merely another way of describing what is referred to in s. 206(1)(b) as a "lot, card, ticket or other means or device for ...disposing of any property by lots, tickets or any mode of chance whatever".

**38** It is difficult to accept that proposition in view of the fact that the nature of the transactions in respect of chances or shares that are referred to in s. 206(7) include not only their sale or offer for sale, s. 206(1)(b) transactions, but also their "advertisement for sale," arguably a transaction addressed by s. 206(1)(a), if addressed at all in s. 206(1). However, since s. 206(1)(a) does not itself refer to tickets, or to lots or cards, for that matter, but rather to the advertisement of the proposal or scheme itself, it would appear that, instead of simply invoking s. 206(1) offences with respect to foreign lotteries, s. 206(7) does in fact purport to create new offences, that of selling shares or chances (which might encompass fractions of tickets) in already-existing lotteries, and that of advertising for sale not just the scheme itself, but tickets in an already-existing scheme. If this is the intent, it is far from clear.

**39** It is instructive also to take a closer look at s. 206(1)(a):

- s. 206(1) Everyone is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who
  - (a) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property by lots, cards, tickets or any mode of chance whatever;

**40** This wording is deemed by s. 206(7) to "apply", among other things, to "the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery". If one considers the emphasized wording of s. 206(1)(a), there are similarities to that in s. 206(7), but it is clearly not identical, for instance, the word "advertises" is used as a prohibited activity in the charging provision, as compared with the use of "advertisement" in s. 206(7) as the subject of an enumerated activity.

**41** A possible result of this difference is that, in relation to domestic lotteries, only printing a lottery "proposal, scheme or plan" is illegal, while in relation to foreign lotteries, the printing of an advertisement for such a scheme is also illegal. Another interpretation is that Parliament views "printing a proposal, scheme or plan" as the equivalent of "printing an advertisement." However, if one accepts that the concern addressed by s. 206 is activities involved in the creation of illicit lotteries, as opposed to simply the marketing of legitimate lotteries, s. 206(7) might be taken as creating a new offence of advertising a legitimate foreign lottery. At very least, it would catch the printer of an advertisement who was not actually the perpetrator of a scheme, something arguably one step removed from the s. 206(1)(a) offence of advertising a scheme for advancing a lottery. It is impossible to tell which interpretation ought to be employed. While arguably some of the activities prohibited by s. 206(1)(a) are incorporated by the wording of s. 206(7), certainly the scope of activities prohibited in relation to foreign lotteries is far from clear.

**42** Considering another of the s. 206(1) charging provisions, Mr. Jardine argues that s. 206(7) makes the offences set out in s. 206(1)(c) applicable to foreign lotteries on the basis that the words, "advertisement for sale of such a ticket," in s. 206(7) would include sending material to promote the sale of foreign lottery tickets, presumably coming under the words "sends...any article that is used...in carrying out...any ...scheme...for...disposing of any property by any mode of chance..." under s. 206(1)(c). While this interpretation is a possible one, it is in my view tenuous, and would again be inconsistent with the view that the activities addressed by s. 206(1) are primary ones relating to the creation of schemes for disposal of property as opposed to actions in furtherance of existing schemes. It is much more reasonable to assume that the absence from s. 206(7) of any of the wording contained in the description of activities in s. 206(1)(c) means that s. 206(1)(c) is simply not applicable to foreign lotteries. Again, the intent of the drafters is obscure.

**43** In addition to these problems, instead of employing either a definition of "foreign lottery" or tracking the wording of the relevant paragraphs of s. 206(1) regarding the schemes which are the focus of the enumerated activities, s. 206(7) instead only implies that "foreign lottery" encompasses the activities contained in the various provisions of s. 206(1).

**44** For instance, under s. 206(1)(a) the words "proposal, scheme or plan for advancing, lending, giving, selling or in any way disposing of any property by lots, cards, tickets or any mode of chance whatever" would have to include a lottery for the reference in s. 206(7) to "printing or publishing" to have any effect. Under s. 206(1)(b) "a ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property by lots, tickets or any mode of chance

whatever" would have to be taken as including a lottery ticket. Notably, these provisions themselves contain differences in their description of the schemes. One must assume that the words have been carefully chosen, and that these differences and the absence of a definition of foreign lottery have legal significance, but one is left guessing as to what it might be. This contributes to the difficulty of identifying the activities from which a dealer in foreign lotteries must refrain. Specifically, it is not clear if the focus of s. 206(7) is on perpetrators of foreign lotteries, i.e. those who seek to dispose of property by mode of chance, or on foreign lotteries themselves, including the sale and resale of their tickets.

**45** It would clearly have been preferable to simply employ either a general definition of "lottery", or a definition of "foreign lottery." Although neither term is defined anywhere in Part VII, as pointed out by Mr. Jardine, there is a definition of "lottery scheme" for the purposes of s. 207. Notably, this term is not used at all in s. 206(1), though the definition refers to it:

- (4) In this section "lottery scheme" means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than...

**46** (There follows a list of exceptions. The absence of a comma following the word betting makes it unclear whether these are exceptions to the definition, or exceptions to the listed types of betting, but the former is more likely.)

**47** The Crown argues that the definition of "lottery scheme" aids in interpretation of s. 206(7) as simply making s. 206(1) applicable to foreign, as opposed to domestic, lotteries, however, the existence of the definition arguably serves to highlight its absence in s. 206.

**48** Turning to the Crown's argument that the wording of s. 206(7) is explained by sovereignty, firstly, as stated above, the list of activities is not exhaustive of those which might arguably have been prohibited in respect of foreign lotteries. It would have been open to Parliament to specify that all of the activities set out in 206(1), if performed in Canada, were illegal. In fact, if one looks at historical versions of the foreign lottery provisions, they included some of the activities that the Crown argues are logically excluded in s. 206(7), for instance the reference to erecting or setting up of lotteries under colour of foreign authority in 6 Geo. 2 c.35, above.

**49** Finally, while Mr. Jardine argues that the intent of s. 206(7) is to extend the application of s. 206(1) to certain activities conducted in Canada in relation to foreign lotteries, that would by virtue of the doctrine of sovereignty not otherwise have been prohibited by s. 206(1), if one accepts that the purpose of s. 206(1) is to restrict the creation of lotteries by persons other than those approved by the state, the activities described in that section could all apply equally to foreign as to domestic enterprises, as long as the activities themselves took place in Canada, if that was in fact the intent of the legislation.

**50** For instance, the making in Canada of a plan for advancing the sale of a property by lots in another country might arguably already be an offence under s. 206(1). If one looks at the preamble to the first foreign lottery provision set out above, it was directed at persons who sought to circumvent the existing lottery provisions by hiding behind a grant of authority from a foreign state. It is arguable that similar issues of sovereignty do not arise in current times, and that s. 206(7) is in fact unnecessary if its intent is simply to address unauthorized lottery schemes emanating from or culminating outside the country.

(i). Does S. 206(7) Provide Fair Notice of Prohibited Conduct?

**51** The basic principles for determining the issue of vagueness of legislation are those set out by Gonthier J. above, specifically, does the legislation provide sufficient guidance for legal debate, and does it meet the standard of intelligibility, as opposed to certainty? These principles are to be considered in the context of their two rationales, that of providing notice to citizens of prohibited conduct, and that of proscribing law enforcement discretion.

**52** Taking into account the standard of notice dictated by the purpose, history, nature and subject-matter of the legislation as discussed above, and the interpretive difficulties I have enumerated herein, I must reluctantly conclude that s. 206(7) does not meet the basic requirements of s. 7 of the Charter. The section does not afford guidance for debate as to whether a defendant might be guilty under it, because it does not make clear the transactions in respect of foreign lotteries to which it applies.

(ii). Does s. 206(7) Adequately Limit Law Enforcement Discretion?

**53** With respect to the issue of proscription of law enforcement discretion, the absence of a clear scope of applicability of the charging provision to dealers in foreign lottery tickets would allow of indiscriminate enforcement of the legislation, and there is some evidence that the vagueness of the legislation has contributed to the wayward course of the investigation in this case. Further, it is a matter of public record that the information was changed late in the day, perhaps due in part to difficulties in interpretation. I refrain from commenting upon the allegation that the charges were laid as a "test case" or in order to achieve the personal predilections of the investigators, because I agree with Mr. Jardine that these allegations are not supported by evidence. However, there is support for the proposition that the provisions in question do not provide to the public the level of protection against abuse that would be afforded by more precise legislation.

(iii) Is s. 206(7) Unconstitutional?

**54** While I have considered the possibility of "reading down" the provisions to delete excess verbiage and somehow insert the provisions of s. 206(7) into s. 206(1) in a logical fashion, I am left with the conclusion that, while there are passages in s. 206(7) which arguably refer to offences under s. 206(1), to allow those to remain and strike the rest would be perilously close to rewriting the statute. Further, given the difficulties I have already expressed relating to determining the intent

of the section, it would be dangerous to speculate as to which of the potential offences were intended by Parliament to apply to foreign lotteries. Finally, this approach would not address the fundamental problem of whether s. 206(7) is intended to create new offences in respect of foreign lotteries beyond those that are included in s. 206(1).

**55** The result of the view I take can be conservative in its destruction of the legislative scheme, however. I am not of the view that the validity of s. 206(1) through (6) are affected by the unintelligibility of s. 206(7). The difficulty arises only in attempting to make meaning of s. 206(7). That subsection, however, must in my view be declared unconstitutional and struck down in entirety.

b. Section 207(1)(h)

**56** Although it may be academic, I will deal briefly with the arguments presented regarding s. 207(1)(h). That paragraph deems it lawful for a person to "make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything related to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing, or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or to accept for carriage or transport or convey any such thing where the destination thereof is such a place."

**57** The applicants argue that this provision applies to ss. 206(1) and 206(7), and because the words, "if certain conditions prescribed by law are met" is without definition and too vague to interpret, it is impossible to ascertain the extent to which activities otherwise caught by the charging provisions are deemed to be lawful. Mr. Donaldson characterizes the section as a limitation on the scope of the offences, as opposed to a defence, and argues that in any event, it is up to the Crown to show that an impugned activity is not authorized under s. 207(1)(h).

**58** I agree that there is nothing in the legislation to suggest there is an onus on the defendant to establish the elements of an exemption under s. 207. S. 207(1)(h), refers to making or printing (s. 206(1)(a) activities), "anything relating to gaming or betting" (arguably s. 206(1)(a) items), and exempts such activities in relation to items to be used in a place (presumably not the place where the making or printing takes place, or the section would be unnecessary), where it is or would be lawful to use them. An example of such an item in the context of foreign lotteries might be the printing of the tickets in Canada for shipment to a country where the lottery is sanctioned. I note however that Mr. Jardine takes the position that the section applies only to interprovincial exports.

**59** Whatever may be the intent of the provision, and whatever the onus on the Crown arising under the section, it clearly serves only to sanction a fairly limited scope of activities. It would not, for instance, make lawful the sale of foreign lottery tickets. It certainly might afford a limitation upon the unlawfulness of activities otherwise caught by ss. 206(1)(a) and (c), but only insofar as those activities related to materials intended for use outside the place where the activities took place.

**60** The term, "if certain conditions prescribed by law are met", while imprecise, arguably relates to the need to comply with regulations in the jurisdiction of use, which are readily ascertainable. Whether the onus falls on the Crown or the defendant, normally the issue of use in a jurisdiction where the material is or can become lawful will be easily resolved. I do not view this provision as substantially contributing to the overall vagueness of the lottery provisions. I am also not convinced it would apply except in a very limited way, to the foreign lottery provisions, and in any event, it would provide a sufficient basis for legal debate regarding its application to them.

#### E. APPLICATION TO QUASH THE INFORMATION

**61** Mr. Bolton in his written submissions suggests it is unnecessary for me to consider the application to quash the information in the event I am of the view, as I am, that s. 206(7) is unconstitutional. It was common ground among counsel that in the absence of s. 206(7), s. 206(1) would not apply to foreign lotteries. Certainly that is the view taken by Parliament, or s. 206(7) would not exist. Therefore, while I expressed the view above that s. 206(7) might be redundant in that the wording of s. 206(1) might in fact prohibit activities in Canada related to schemes that meet the description provided in the section, but are actually conducted outside Canada, principles of statutory interpretation dictate that s. 206(1) as currently enacted is not intended to apply to foreign lotteries. Further, the Crown has not advanced an argument that the wording of s. 206(1) would apply to activities in Canada performed in connection with lotteries conducted outside the country. Each of the counts of the information refers to a transaction involving a foreign lottery. Accordingly, the declaration of s. 206(7) as unconstitutional is fatal to the information. It may be prudent, however, for me to go on and consider the validity of the information on the assumption that s. 206(7) is not unconstitutional.

**62** Count 1 charges an offence "contrary to s. 206(1)(b) of the Criminal Code." The wording is "sell or offer to sell any tickets or chances, or any share of any tickets or chances in a foreign lottery, for the giving or disposing of money by mode of chance." S. 206(1)(b) uses the wording, "sells, ...offers for sale, ...any lot, card, ticket or other means or device for disposing of any property by lots, tickets or any mode of chance whatever." As stated, the charging section must be taken as not including foreign lotteries, and it is necessary to turn to s. 206(7) to consider whether the activities described in the count are prohibited in respect of them.

**63** Mr. Bolton argues that s. 206(7) is ineffective to create any offence in respect of foreign lottery tickets, since it does not itself prohibit behaviour, and it does not specifically import the charging provisions, rather, it does something in between by designating certain, different behaviours for foreign lotteries to which s. 206 is said simply to "apply."

**64** Short of unconstitutional vagueness, it is arguable that the intent and effect of s. 206(7) is to define the s. 206(1) behaviours which, in respect of foreign lotteries, are prohibited. The issue remains to what extent it achieves this in respect of s. 206(1)(b).

**65** The relevant wording of s. 206(7) is "sale or offer for sale of any ticket, chance or share, in

any [foreign] lottery," as compared with that in s. 206(1)(b) of "sells, ...offers for sale, ...any lot, card, ticket or other means or device for ...disposing of any property by lots, tickets or any mode of chance whatever." It is arguable that a foreign lottery ticket is a device for disposing of property by mode of chance, and that therefore its sale is prohibited by the combined effect of the sections.

**66** It is perhaps also arguable that the sections create an offence of selling "chances" in a foreign lottery, which could conceivably come under the wording of s. 206(1)(b) as an "other means or device." However, I do not see it as sustainable that the combined effect of the sections is to create an offence of selling "a share of any tickets or chances." As discussed above, the concern of the legislation appears to centre around the primary disposition of the items which themselves carry the mode of chance. The applicants have referred to the case of *R. v. Austin & Auen*, above, as authority for the proposition that s. 206 does not prohibit the re-sale of lottery tickets.

**67** While the *Austin & Auen* case may not be strictly binding upon me, and may be taken as dealing primarily with whether the charge as laid in that case was made out, it supports what I view to be the only logical interpretation of the legislation, that is, it does not prohibit the sharing of an interest in an item which is the vehicle for a legitimate game of chance, where that sharing does not itself create an additional risk or chance. Such a transaction would not be for the purpose of disposing of property by mode of chance, as required by the charging provisions. I would accordingly be of the view that the wording in Count 1, or any share of any tickets or chances in a foreign lottery," since it outlines activities that are not included in the section as offences, should be deleted from the count.

**68** Mr. Bolton in his argument has suggested that the words, "did sell or offer to sell any tickets or chances" do not refer to the words "in a foreign lottery," and must therefore be taken as referring only to transactions in domestic vehicles. While I agree that the absence of a comma following the words, "or any share of any tickets or chances," makes the count grammatically ambiguous, it is clear from the position taken by the Crown that the focus of the charges has from the outset been only transactions in respect of foreign lotteries. Any ambiguity would appear to be a matter of semantics, and could in any event be cured by the addition of a comma. This argument applies equally to the wording of Count 2.

**69** Count 2 alleges that the defendants did "cause, or aid and assist in, the sale of any tickets or chances, or any share of any tickets or chances in a foreign lottery," contrary to s. 206(1)(b). S. 206(7) does not include causing, aiding or assisting as behaviours in relation to the sale of foreign lottery tickets, while it does specify those behaviours in relation to printing or publishing. I agree with the applicants that the inclusion in the one case entails the exclusion in the other, and therefore those behaviours are not specifically the subject of an offence in relation to foreign lotteries, that is, that part of s. 206(1)(b) is not invoked by s. 206(7).

**70** While it might be arguable that one could by causing, aiding or assisting be a party to the offence of selling, that situation would be covered by the wording of Count 1, and might entail

different considerations than those that would apply to an interpretation of the words as contained in s. 206(1)(b). Count 2 details means of committing a selling offence that are not specifically contained in the provisions relating to foreign lottery tickets, and I am accordingly of the view that it should be quashed.

**71** Count 3 refers to the offence of sending, transmitting, or mailing, and so on, created by s. 206(1)(c). None of the outlined behaviours in that paragraph are included in s. 206(7).

**72** While the Crown has argued that the words "advertisement for sale" would encompass the s. 206(1)(c) behaviours, I am more inclined to the view that if Parliament had intended to prohibit them in respect of foreign lotteries, it would have said so. Accordingly, there is no offence as described in Count 3, and it will be struck.

**73** That leaves Count 4. It alleges that the defendants did "cause to be printed or published a scheme, proposal or plan for the giving or disposal of money by any ticket or chance in a foreign lottery, or any share of any ticket or chance in a foreign lottery," contrary to s. 206(1)(a) of the Code. The relevant wording of s. 206(7) is "causing to be printed or published, of any...scheme, proposal or plan of any foreign lottery." S. 206(1)(a) reads, causes to be ... printed, or published, any ... proposal, scheme or plan for giving,... or in any way disposing of any property by lots, cards, tickets or any mode of chance whatever."

**74** The combination of the sections arguably creates an offence of printing a scheme or plan of a foreign lottery, which by implication is itself a "scheme or plan for the disposing of property by... mode of chance." The focus of the section appears to be the primary activity of creating and publishing the actual "plan" of, for instance, a lottery, and not necessarily the publicizing of a plan created by others. The wording of s. 206(7) supports this view, as it refers directly to the publishing of a plan of a foreign lottery. This may be contrasted with Count 4, which refers to a plan for the disposal of money by any ticket or chance in a foreign lottery. At very least, the words between "plan" and "foreign lottery" are unnecessary, and at worst, they purport to catch the publicizing (as opposed to publishing) of a lottery plan already printed or published elsewhere. I do not view this latter interpretation as consistent with the apparent intent of the legislation, as discussed. The remedy is simply to delete those words, leaving the count framed in the wording of s. 206(7): "a scheme, plan or proposal of a foreign lottery." Perhaps that is not what the Crown had in mind, but in my view the excess words potentially create an offence unknown to law.

**75** The other complaint of the applicants is that it is not clear from the wording of the counts what types of transactions in respect of foreign lotteries are being addressed. While I have upheld the wording of some of the counts on the basis that the words "foreign lottery" can be taken as describing schemes in the nature of those prohibited by s. 206(1), I agree that it is not clear from the use of that wording whether the focus is primary activities in relation to the creation or marketing of foreign lotteries entailing the disposition of property by a mode of chance, or the marketing of vehicles in existing, legitimate lotteries, which in my view would not be covered by the legislation.

**76** The difficulty regarding whether or not the term "foreign lottery" in the information is intended to address resale of tickets in existing foreign lotteries is not fatal to the counts and could be rectified by the provision of particulars regarding the nature of the transactions involved, if the particulars are consistent with the facts set out above and therefore disclose a focus on resale of foreign lottery tickets without creation of a new mode of chance or without the intent of disposing of property on the part of the defendants, I should say in advance that I would be of the view that they did not disclose offences known to law.

F. ORDER

**77** In the result, the application for a declaration that s. 206(7) is unconstitutional for vagueness is granted, and accordingly, the information is quashed in entirety.

BAIRD ELLAN PROV. CT. J.

qp/s/kjm/DRS/DRS