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REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

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COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, R.S.O. 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

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October 11, 2024

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PART I: OVERVIEW

1. By Order in Council 210/2024, the Lieutenant Governor-in-Council referred the following question to this Court under section 8 of the *Courts of Justice Act*:

Would legal online gaming and sports betting remain lawful under the *Criminal Code* if its users were permitted to participate in games and betting involving individuals outside of Canada as described in the attached Schedule? If not, to what extent?

2. The Attorney General of Ontario submits that the answer to this question is yes. When a provincial government conducts and manages a lottery scheme, it has the right, by virtue of its constitutional authority over gaming and the deference afforded to that authority by section 207(1)(a) of the *Criminal Code*, to determine the design of the scheme that is in the best interests of its citizens.

3. Properly interpreted, the words “in the province” in section 207(1)(a) only require a provincial lottery scheme to have a real and substantial connection to the province. Those words, read in context and in light of the objects of the *Code*’s gambling provisions, impose a territorial requirement on provincial lottery schemes, but not a territorial restriction.

4. Section 207(1)(a) recognizes that a province’s lottery scheme must be sufficiently connected to that province to be authorized by provincial jurisdiction over “Property and Civil Rights in the Province” and “Matters of a merely local or private Nature in the Province.” It does not go further and ban a province from including any international element in an otherwise valid scheme. On the contrary, so long as the provincially-conducted lottery is sufficiently connected to the province, section 207(1)(a) declares it to be lawful notwithstanding the *Code*’s other provisions.

5. The hypothetical lottery scheme described in the Schedule to OIC 210/2024 (the “**Proposed Model**”) would be lawful because it would have a real and substantial connection to the province: it would be established and carried out in accordance with provincial legislation; only individuals physically located in Ontario could access it; and it would be conducted and managed by Ontario, with the province dictating its fundamental elements. Permitting the scheme’s players to participate in games and betting that share liquidity with individuals located outside of Canada does not weaken this connection.

PART II: FACTS

A. What Ontario has and has not asked this Court

6. Ontario has asked this Court if the Proposed Model would comply with the requirement in section 207(1)(a) of the *Code* that a province’s lottery scheme be conducted and managed “in that province.”

OIC 210/2024, Record of the Attorney General of Ontario (“AGR”), Tab 1, p.3

7. The Proposed Model, which is based on the existing online lottery scheme (“**iGaming**”) conducted and managed by the province through its agent, iGaming Ontario (“**iGO**”), would allow Ontario players to participate in peer-to-peer games and betting involving individuals outside of Canada using other lottery schemes.¹

OIC 210/2024, Schedule, AGR, Tab 2 (“OIC Schedule”), p. 12

8. Ontario has not asked this Court to opine on the legality of the iGaming scheme currently operating in Ontario. OIC 210/2024 provides that iGaming’s legality, which was

¹ The terms “game,” “bet,” and “lottery scheme” are used as they are defined in sections [197\(1\)](#) and [207\(4\)](#) of the *Code*.

recently affirmed by the Superior Court, must be assumed for the purposes of answering the reference question.

OIC 210/2024, AGR, Tab 1, p. 3

9. Ontario has also not asked the Court whether it would be lawful for players located in other Canadian provinces to participate in the Proposed Model. Section 207(1)(a) of the *Code* is clear that this type of interprovincial play is only permissible pursuant to an agreement between provinces.

10. Ontario has not asked the Court whether companies affiliated with some of iGaming's current operators are conducting themselves appropriately in other provinces. The propriety of those distinct companies' conduct outside Ontario is not relevant to the reference question.

11. Lastly, Ontario has not asked the Court whether allowing individuals in Ontario to participate in online games and betting with individuals located outside of Canada is a good idea. The wisdom and feasibility of the proposed model is a question of policy that is for the elected branches of government to determine.

B. The *Code's* exemption for provincial lottery schemes

12. Part VII of the *Code* generally renders gambling and betting illegal in Canada. For example, section 201 makes it an offence to keep or be in a common gaming or betting house; section 202 renders it unlawful to engage in bookmaking; and section 206(1) prohibits an array of conduct relating to lottery schemes and games of chance, including advertising and marketing.

Criminal Code, R.S.C. 1985, c. C-46, [s. 201](#), [202](#), [206](#)

13. Section 207(1) of Part VII makes it clear, however, that these prohibitions do not apply to lottery schemes conducted and managed by a province, or to certain types of lottery schemes conducted and managed under provincial licence.

14. Section 207(1)(a) addresses provincial lottery schemes:

Permitted lotteries

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

(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme **in that province**, or in that and the other province, in accordance with any law enacted by the legislature of that province;

Criminal Code, R.S.C. 1985, c. C-46, [s. 207\(1\)\(a\)](#) [Emphasis added]

15. Thus, pursuant to section 207(1)(a), a province’s lottery scheme will be lawful so long as it is (1) conducted and managed under the law *of* the province; (2) conducted and managed *by* the province; and (3) conducted and managed *in* the province. Only the last of these requirements is at issue in this reference.

C. iGaming in Ontario

i. Ontario’s lottery schemes

16. Ontario’s internet gaming framework is governed by the *Alcohol and Gaming Commission Act, 2019* (“**AGCO Act**”); the *Gaming Control Act, 1992* (“**GCA**”); and the regulations made thereto. The Alcohol and Gaming Commission of Ontario (“**AGCO**”) regulates gaming actors and activities in the province.

Affidavit of Jesse Todres, sworn May 31, 2024, AGR, Tab 4, paras. 4 - 12

17. Ontario conducts and manages gaming in the province through Crown agents, in accordance with and pursuant to legislative authorization. Historically, Ontario did this solely through the Ontario Lottery and Gaming Corporation (“OLG”).

18. OLG operates ticket-based lotteries and contracts with private sector companies to operate land-based casinos in Ontario. More recently, OLG began operating a gaming website which offers games, betting, and lottery ticket sales to individuals in Ontario.

Todres Affidavit, paras 3, 21, 31

Transcript of the cross-examination of Jesse Todres, September 5, 2024, (“Todres Cross”), Joint Transcript Brief (“JTB”), Tab 1, p. 26, Q62

19. In 2019, the Government of Ontario announced that it would begin working on an internet gaming framework for the province. The government was concerned that individuals in the province were accessing online games and sports betting offered by private companies over the internet which were not subject to any meaningful control, oversight, or regulation.

Ontario, *Discussion paper: A model for internet gaming in Ontario* (online, 2022) (“Ontario Discussion Paper”), Exhibit 1 to the Todres Cross, JTB, Tab 1A-5, p. 221-224

20. There were concerns that these online gaming sites did not offer secure and reliable safeguards for users; appropriate age-gating; or responsible gambling resources. The province thus sought to introduce an internet gaming scheme that would provide adequate consumer protections while promoting consumer choice, create business opportunities in Ontario, and generate revenue for the province.

Ontario Discussion Paper, p. 224

21. Accordingly, iGO was established as a Crown corporation and agent in July 2021 by regulation, pursuant to legislation.² iGO’s legislative mandate is:

1. To develop, undertake and organize prescribed online lottery schemes.
2. To promote responsible gaming with respect to prescribed online lottery schemes.
3. To conduct and manage prescribed online lottery schemes in accordance with the *Criminal Code* (Canada) and the GCA and the regulations made under those Acts.

O.Reg 722/21, [s 4](#); *AGCO Act*, [s 6.1\(1\)\(a\)-\(b\)](#)

ii. iGO’s conduct and management of iGaming

22. On April 4, 2022, iGO began offering iGaming to the Ontario public. iGO conducts and manages iGaming by entering into Operating Agreements with private-sector operators.

Todres Affidavit, paras. 14-15

Ipsos, *Ontario iGaming Market Channelization* (Toronto, 2024), Exhibit “M” to the Todres Affidavit, AGR, Tab 4M, p. 356

23. These operators offer games and betting to individuals in Ontario through websites and mobile apps (“iGO Sites”) they operate as iGO’s agent, in accordance with their Operating Agreement. Only individuals who are physically located in Ontario and are of legal age may access games and betting on iGO Sites.

Todres Affidavit, paras. 25-27

24. The arrangement is not a joint venture; iGO and operators are not equal contracting parties. iGO, in its sole and absolute discretion, determines whether or not to enter into an Operating Agreement with an operator.

² iGO was established pursuant to [O. Reg. 517/21](#) to the now-repealed *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996* and continued under [O.Reg. 722/21](#) under [s. 6.1](#) of the AGCO Act.

Todres Affidavit, para. 25

25. The terms of the Operating Agreements are standardized, non-negotiable, and were designed to provide iGO with control over its operators. iGO will not enter into Operating Agreements with any operators unless they are registered by the AGCO. iGO transfers its net earnings from iGaming to the government to support provincial priorities.

Todres Affidavit, paras. 7, 15, 25, 26**O. Reg. [722/21, s. 19](#)**

26. Pursuant to the Operating Agreements, iGO maintains control over all the fundamental aspects of the operators' operations. The operators act as iGO's agents in carrying out these functions. Among other things, the Operating Agreements address the following:

- **Player management:** Operators must ensure the identity, legal age and eligibility of all players. Operators must ensure that players are physically located in Ontario.
- **Gaming funds:** Operators receive bets and pay out winnings to players as iGO's agents. All revenue is the sole and absolute property of iGO and must be kept separate from all other operating accounts. After a reconciliation, iGO pays the operators their contractually defined share.
- **Game Eligibility:** All games must be approved by iGO. iGO is entitled to require or prohibit any type or game or category of game. iGO may establish the maximum rake in peer-to-peer games.
- **Technology and Data:** iGO has unrestricted access to all game activity, player registration, and transaction data.
- **Branding and Marketing:** iGO may restrict advertising by operators, including the permitted audience, time, format, or nature of any advertising. iGaming sites must prominently display iGO's logo.
- **Audit and oversight:** iGO has the right to audit and inspect operators' books of accounts and other records, materials,

information, and data to ensure compliance with iGO’s requirements.

- **Customer Care:** iGO mandates customer care and dispute resolution programs. iGO’s resolution of a customer care issue is binding.
- **Anti-money laundering:** Operators are required to maintain robust anti-money laundering and terrorist financing programs.
- **Responsible Gambling:** Operators must implement specified responsible gambling initiatives, including problem gambling prevention, education and maintaining a self-exclusion registry.
- **Monitoring, Suspension and Termination:** iGO maintains sole and absolute discretion to monitor operators for compliance with its requirements and may suspend and/or terminate an Operating Agreement if an operator does not comply with iGO’s requirements.

Todres Affidavit, paras. 27-28

iGO Template Operating Agreement, March 25, 2022, Exhibit “J” to the Todres Affidavit (“Operating Agreement”), AGR, Tab 4J, p. 155

27. iGO also establishes policies which are binding on operators under the Operating Agreements. The policies relate to a variety of issues, including financial issues; customer care and dispute resolution; and marketing and advertising. iGO has sole and absolute discretion to update, modify, or create new policies as required to ensure that iGaming is conducted and managed responsibly and in the public interest.

Todres Affidavit, paras. 29-30

iGO Policies as of May 31, 2024, Exhibit “K” to the Todres Affidavit, AGR, Tab 4K, p. 243

28. Pursuant to the Operating Agreements, only individuals physically located in Ontario may play games or place bets on iGO Sites. Separately, the Operating Agreements require that betting pools for games only include funds received from players in Ontario. Operators comply with these requirements using technical measures referred to as “geo-fencing,” which block individuals with IP addresses from outside of Ontario from gambling in iGaming.

Todres Affidavit, paras. 32-33, 35-40

Operating Agreement, ss. 2.02(1)(f), 16.02, AGR, Tab 4J, pp. 165, 192

Affidavit of George Sweny, sworn May 31, 2024, AGR, Tab 5, para. 16

iii. AGCO's regulation of iGaming

29. The AGCO regulates all lottery schemes in Ontario, including iGaming, through the GCA and O. Reg. 78/12. All iGaming operators must be registered by the AGCO. In assessing an application for registration, the AGCO is empowered to carry out risk assessments and conduct due diligence investigations in relation to the applicant's character, financial history, and competence.

Todres Affidavit, paras. 4 - 12

Sweny Affidavit, para. 12

Gaming Control Act, 1992, S.O. 1992, c 24, [s. 4](#), [6](#), [9](#), [10](#)

30. The AGCO has established the Registrar's Standards for Internet Gaming that apply to OLG, iGO, operators, and their suppliers. Prior to registration, iGaming operators and suppliers must submit to an independently audited assessment of their process and controls to ensure that they meet the Registrar's Standards. The AGCO monitors registrants on an ongoing basis to ensure compliance with the GCA and the Registrar's Standards.

Todres Affidavit, paras. 8-10, 11

AGCO Internet Gaming Operator Application Guide as of May 30, 2024, Exhibit B to the Todres Affidavit, AGR, Tab 4B, p. 56

31. The Registrar's Standards impose a number of requirements, including standards aimed at: responsible gaming; minimizing unlawful activity such as money laundering; good governance; player eligibility; and game integrity. The Registrar's Standards restrict participation in iGaming to individuals located within Ontario.

Todres Affidavit, paras. 8-10, Exhibit C, s. 3.02

**AGCO Registrar's Standards for Internet Gaming, February 28, 2024,
Exhibit C to the Todres Affidavit, AGR Tab 4C, pp. 65, 71, 80, 82, and 99**

D. The meaning of liquidity

32. In the gaming context, liquidity refers to the funds provided by players participating in an online game. Liquidity is relevant to peer-to-peer games, like poker, and certain types of betting, like fantasy sports, where the players place bets that form the betting pool that is available to be won.

Todres Affidavit, paras. 36 - 38

Sweny Affidavit, para. 16

33. Liquidity is not a factor in games such as slots, blackjack, and roulette, where players' bets are against the house and are not pooled. Liquidity is also not relevant to certain types of sports betting for the same reason.

Todres Affidavit, para. 17

34. A closed liquidity lottery scheme limits its pool of potential players geographically. In contrast, a pooled liquidity scheme permits individuals from multiple jurisdictions to participate in peer-to-peer games and betting with one another.

Todres Affidavit, para. 41

Sweny Affidavit, para. 16

35. iGaming is a closed liquidity scheme: section 2.02(1)(f) of iGO's Operating Agreement and section 3.02 of the Registrar's Standards prohibit operators from letting players outside of Ontario play games or bet on iGO Sites. Section 16.02(1) of the Operating Agreement specifically prohibits pooled liquidity.

Todres Affidavit, paras. 39-41

Sweny Affidavit, para. 16

Operating Agreement, AGR, Tab 4J, pp. 165

i. The implications of pooled and closed liquidity

36. iGaming's closed liquidity model results in fewer and significantly less lucrative peer-to-peer games being available to individuals in Ontario through iGaming. The total number of potential players in any particular peer-to-peer game in iGaming is limited compared to the number of players available in a pooled liquidity model, which would permit liquidity to be shared with the populations of other jurisdictions.

Todres Affidavit, para 43

Sweny Affidavit, para. 29

37. This means that, at any given time, an individual seeking to play poker through iGaming is likely to have fewer tables available to play on; fewer participants at those tables; fewer varieties of poker to play; and smaller betting pools than they would on a gaming site using a pooled liquidity model. The player would not have access to the higher-value, larger-scale poker tournaments offered on gaming sites with pooled liquidity.

Todres Affidavit, para. 44

Sweny Affidavit, para. 29

38. This effectively makes unregulated alternative gaming sites which permit pooled liquidity more appealing to individuals in this province. Although iGO has successfully channeled 86.4% of players who used unregulated gaming sites into iGaming, those sites continue to be available to individuals in Ontario.

Todres Affidavit, paras. 46 - 48

39. Many of these sites offer pooled liquidity, giving players in the province more options to play peer-to-peer games and the opportunity to win larger prizes. The sites, which are not subject to any meaningful control, oversight, or regulation by the province, give rise to the serious risks the government of Ontario sought to mitigate in introducing iGaming, including problem gambling; fraud; cheating; and money laundering.

Todres Affidavit, paras. 48 - 51

40. The sites leave individuals in Ontario without the benefit of the consumer protections and rigorous responsible gaming measures iGO and the AGCO mandate. Further, the revenue generated by these sites is not remitted to the province and they do not collect or remit taxes to the federal or provincial governments.

Todres Affidavit, para. 52

41. Moving away from a closed liquidity model would ensure that iGaming remains an attractive option and would discourage Ontarians from using unregulated gaming sites. This approach would better protect the public by ensuring that the harms associated with online gambling are addressed and would provide for greater returns to the public purse.

Todres Affidavit, para. 53

E. Ontario's Proposed Model

42. The Proposed Model would permit individuals in Ontario using an online lottery scheme conducted and managed by the province to participate in peer-to-peer games and betting that share liquidity with individuals outside of Canada using international lottery schemes.

OIC Schedule, AGR, Tab 2, pp. 12 - 13

43. In effect, the model would allow individuals using the Ontario scheme and individuals using international schemes to pool their bets without extending the Ontario scheme outside of this province and without extending the international schemes into this province.

OIC Schedule, AGR, Tab 2, p. 12

i. Players in Ontario would use Ontario's scheme

44. Individuals in Ontario would continue to access games and betting using iGO Sites, which would be conducted and managed in Ontario by iGO in the same manner and to the same extent as iGaming, as described in paragraphs 22 to 26, above.

OIC Schedule, AGR, Tab 2, p. 13

45. The experience of these players would continue to be completely governed and dictated by the province, through iGO. Among other things, iGO would continue to ensure their identity, legal age, and eligibility to participate; iGO would continue to maintain control and oversight of their wagering and payouts; iGO operators would take players' bets and pay their winnings as iGO's agent; and iGO would continue to determine the games which players may be offered.

OIC Schedule, AGR, Tab 2, p. 13

46. iGO would also retain full access and control of Ontario players' gaming data; player registration data; and transaction data. Ontario's measures regarding customer care, anti-cheating, anti-money laundering, and responsible gambling, among others, would be maintained and required for Ontario players.

OIC Schedule, AGR, Tab 2, p. 13

47. Similarly, the province's regulatory framework would continue to apply to the actors and activities involved in the scheme in Ontario. The AGCO would continue to regulate iGO, its operators, and their suppliers.

OIC Schedule, AGR, Tab 2, pp. 12, 14

ii. Players outside of Canada would use the scheme in their jurisdiction

48. Individuals outside of Canada would not access games and betting through iGO Sites, which would continue to bar access to anyone located outside of Ontario. Instead, these players would participate by accessing the lottery scheme available in their jurisdictions (the "International Sites").

OIC Schedule, AGR, Tab 2, p. 12

49. Neither Ontario nor iGO would conduct, manage, or operate the International Sites, which would be subject to the laws of the jurisdictions in which they operate. Ontario would not be responsible for or to individuals participating in games and betting outside of Canada.

OIC Schedule, AGR, Tab 2, pp. 12-13

iii. Players elsewhere in Canada would be barred

50. Individuals outside of Ontario but within Canada would also continue to be barred from iGO Sites in the absence of an agreement between Ontario and their province. These individuals would also be prevented from accessing games and betting involving Ontario players through International Sites.

OIC Schedule, AGR, Tab 2, p. 13

iv. Pooled liquidity in the US and Europe

51. The exact details of the pooled liquidity scheme will be a policy matter for Ontario to develop should the reference question be answered in the affirmative. It should be noted, however, that pooled liquidity schemes akin to the Proposed Model have already been implemented elsewhere in the world.

52. These schemes permit operators to customize virtually every aspect of the gaming and betting offerings and, if adopted in Ontario, could be customized to ensure that Ontario's players could only participate in games and sports betting that comply with the requirements of iGO and the AGCO.

Sweny Affidavit, para. 27

53. For example, France, Portugal, and Spain have entered into an agreement which allows players in those jurisdictions to compete against each other in online poker games, pooling their liquidity. Similarly, Delaware, Michigan, New Jersey, Nevada and West Virginia have entered into the Multi-State Internet Gaming Agreement, which allows their players to pool their liquidity. In these pooled liquidity systems, each jurisdiction's specific requirements and rules continue to apply to players participating from that jurisdiction.

Sweny Affidavit, paras. 24 - 25

Multi-State Internet Gaming Agreement, May 23, 2022, Exhibit A to the Sweny Affidavit, AGR, Tab 5A

Agreement concerning online poker liquidity sharing, Exhibit B to the Sweny Affidavit, AGR, Tab 5B

PART III: ISSUES & LAW

54. Ontario has referred the following question to this Court:

Would legal online gaming and sports betting remain lawful under the *Criminal Code* if its users were permitted to participate in games and

betting involving individuals outside of Canada as described in the Schedule to Order-in-Council 210/2024? If not, to what extent?

55. Ontario submits that a lottery scheme that is conducted and managed by a province will be “in that province” for the purposes of section 207(1)(a) of the *Code* if it has a real and substantial connection to the province.

56. Section 207(1)(a) recognizes each province’s authority to conduct and manage their lottery schemes in the manner they believe is in the best interests of their population. Properly interpreted, it does not preclude provinces from including pooled liquidity in those otherwise valid schemes.

57. The Proposed Model would be lawful under the *Code* because it would be sufficiently connected to the province: it would be conducted and managed by the province; it would be authorized by the provincial legislature; and it could only be accessed by individuals in the province. Permitting Ontario players to pool liquidity with players outside of Canada would not undermine this connection.

A. A provincial lottery will be conducted and managed in a province if it has a real and substantial connection to that province

i. Ontario has plenary authority over provincial lottery schemes

58. The provinces’ clear constitutional authority over gaming must be the starting point in the interpretation of section 207(1)(a). Ontario has broad, plenary jurisdiction over gaming by virtue of its authority over property and civil rights in the province under section 92(13) of the *Constitution Act* and matters of a local or private nature under section 92(16). This authority allows Ontario to establish, conduct and manage lottery schemes in the province as it sees fit.

Siemens v. Manitoba (Attorney General), 2003 SCC 3, [para. 22](#)

Mohawk Council of Kahnawà:ke v. iGaming Ontario, 2024 ONSC 2726, paras. [1](#), [95](#) [*Mohawk Council*]

59. Section 207(1)(a) of the *Code* promotes cooperative federalism by expressly recognizing the plenary provincial power over gaming. The *Code* recognizes that when provinces conduct and manage lottery schemes directly or through their agents, cooperative federalism requires respect for the provinces’ ability to determine the design and operation of those schemes based on their assessment of the public interest.

60. The history and evolution of the *Code*’s gaming provisions and the wording of the provisions themselves evidence Parliament’s intention to respect provincial legislatures’ decisions of how best to regulate gaming they and their agents conduct and manage within their own jurisdictions.

Canada, House of Commons, [Standing Committee on Justice and Legal Affairs, Proceedings, No 9](#), 28th Parl, 1st sess, vol 1 (11 Mar 1969) at [331](#); AGR, Tab 9, p. 457

Canada, Senate, [Standing Committee on Legal and Constitutional Affairs](#), “Appendix LEG-31-B: Letter from Ian Scott, Attorney General of Ontario to the Honourable John C. Crosbie Attorney General and his Reply” in *Proceedings*, 33-1, No. 31 (December 4, 1985), [31A:5](#), AGR, Tab 17, p. 617

61. Early Canadian criminal statutes broadly prohibited virtually all forms of public gambling and lotteries. Beginning in 1956, however, Parliament recognized that these prohibitions were not effectively controlling illegal gaming and required reform.

62. A joint committee of both Houses of Parliament was struck and recommended the liberalization of Canadian gaming legislation to permit some forms of legal gambling. It was believed this would: (a) prevent evasion of existing laws by achieving “workable control” of gaming in the public interest; and (b) prevent the growth of fraudulent lottery schemes.

The Criminal Code, SC 1892 (55-56 Vict), c 29, Part XIV, ss. 204-205, Book of Authorities of the Attorney General of Ontario (“AGBOA”), Tab 1, pp. 3-4

Joint Committee of the Senate and HOC on Capital Punishment, Corporal Punishment and Lotteries, [Final Report on Lotteries](#) (July 31, 1956), [para. 22](#), AGR, Tab 7, p. 420

63. In response to these recommendations, Parliament amended the *Code* in 1969 by enacting Bill C-150. The amendments permitted lotteries conducted by charitable or religious organizations as well as by provincial and federal governments.

Criminal Law Amendment Act, S.C. 1968-69 (17-18 Eliz II), c 38, s 13, AGBOA, Tab 2, pp. 7-8

64. As John Turner, then the Minister of Justice, explained, the amendments were intended to “incorporate a fundamentally new approach” and give effect to what “might be described as local option within prescribed limits set in the Code.” Minister Turner recognized that “the attitude towards lotteries in Canada varies in various parts of the country” and stated that “[t]he proposed amendments will provide, to an appreciable degree, for recognition of that fact.”

“Bill C-150, Criminal Law Amendment Act,” 2nd reading, [HOC Debates, 28-1, vol. V](#), (23 January 1969), [4721](#) (Hon. John Turner), AGR, Tab 8, p. 440

65. Minister Turner emphasized in Parliament that the proposed amendments were intended to recognize provinces’ broad authority and discretion over gaming:

What does this mean? It means that the criminal law is withdrawn. It means that the government of a province would have to go before its legislature and get the approval of public opinion in the province.

Through its criminal law the federal government says: “That is your business. We are withdrawing from the field. We are giving you the option. You decide in terms of the opinion of your own people in the province whether you want a lottery scheme. If you do, the conditions that you attach to such scheme [sic] are a

provincial matter.”

“Bill C-150, Criminal Law Amendment Act,” Report Stage, [HOC Debates, 28-1, vol. VII](#), (21 April 1969), [7781](#), AGR, Tab 10, p. 471

66. Federal policy became even more deferential in 1985, when Canada agreed to leave government-conducted gaming exclusively to the provinces. Canada and the provinces entered into an agreement where the provinces paid \$100 million to the federal government and discontinued litigation in exchange for Canada repealing its authority to conduct federal gaming schemes and promising “to refrain from re-entering the field of gaming and betting, and to ensure that the rights of the provinces in that area are not reduced or restricted.” The agreement was intended to “leave it up to each province to determine what types of gaming activities are to be permitted.”

Canada, Senate, [Standing Committee on Legal and Constitutional Affairs](#), 12th Report, in *Proceedings*, 33-1, No. 35 (16 December 1985), [35:10-11](#), AGR, Tab 21, p.717-718

Canada, Senate, [Standing Committee on Legal and Constitutional Affairs](#), “Appendix LEG-31-B: Letter from Ian Scott, Attorney General of Ontario to the Honourable John C. Crosbie Attorney General and his Reply” in *Proceedings*, 33-1, No. 31 (4 December 1985), [31A:5](#), AGR, Tab 17, p.617

Canada, Senate, [Standing Committee on Legal and Constitutional Affairs](#), “Appendix LEG-31-C: Federal/Provincial Agreement” in *Proceedings*, 33-1, No. 31 (4 December 1985), [31A:7](#), AGR, Tab 17, p.619

See also: Canada, Senate, [Standing Committee on Legal and Constitutional Affairs](#), in *Evidence*, 33-1, No. 32 (11 December 1985), [32:15](#), AGR Tab 18, p.639

67. Parliament’s recognition that provincially conducted lottery schemes “are lawful ... notwithstanding” the *Code*’s prohibitions on other lottery schemes demonstrates Parliament’s respect for provincial Legislatures’ ability to authorize the provincial Executive and its agents to operate lottery schemes in the manner that best fits each province’s needs.

68. Authorizing participants in a provincially-conducted lottery to reap the benefits of pooled liquidity with players outside Canada falls well within the broad authority sections 92(13) and (16) of the *Constitution Act, 1867* grant the provincial Legislatures.

ii. The words “in that province” in s. 207(1)(a) must be construed consistently with s. 92 of the *Constitution Act, 1867*

69. As the Supreme Court has confirmed on numerous occasions, the modern approach to statutory interpretation requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC), [para. 21](#)
Bell ExpressVu Limited Partnership v Rex, 2002 SCC 42, [para. 26](#).

70. Given that section 207(1)(a) and its predecessors were expressly intended to leave the proper design of provincially-conducted lottery schemes to the Legislature(s) of the province(s) in which the scheme takes place, a purposive interpretation of the words “in that province” should be consistent with the constitutional limitation of provincial legislative power to matters that arise “in each province” or “in the province.”

Constitution Act, 1867, [s. 92](#) opening words, (13), and (16)

71. To find otherwise would fail to respect Canada’s constitutional architecture with its two co-equal levels of government. It would also be inconsistent with Parliament’s express intention to withdraw from the field and permit the provinces to decide how best to meet the lottery needs of their own citizens: “That is your business. We are withdrawing from the field. We are giving you the option. You decide”

Bill C-150, Criminal Law Amendment Act, Report Stage, [HOC Debates, 28-1, vol. VII](#), (21 April 1969), [7781](#), AGR, Tab 10, p. 471

72. A lottery scheme conducted and managed by a province, in accordance with provincial law, will therefore meet section 207(1)(a)'s "in that province" requirement where the lottery scheme has a real and substantial, or sufficient, connection to the province.³

73. The sufficient connection test is a contextual one that examines the relationship between the enacting province, the subject matter of the legislation, and the persons made subject to it to determine whether the legislation has a meaningful connection to the enacting province and pays respect to the legislative sovereignty of other provinces.

***Sharp v Autorité des marchés financiers*, 2023 SCC 29, [para. 127](#)**

74. These factors were first articulated by Binnie J in *Unifund* in the context of a challenge to the applicability of provincial legislation to out-of-province defendants. In *Imperial Tobacco*, however, the Court clarified that the same factors are relevant when determining constitutional validity; specifically, whether the pith and substance of a provincial law relates to a matter that is within the province as section 92 requires.

***Unifund Assurance Co. v Insurance Corp. of British Columbia*, 2003 SCC 40, [paras. 63-66](#)**

***British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [paras. 31-36](#)**

75. The same test, whether phrased as a "real and substantial" or "sufficient" connection, should be applied in the statutory interpretation exercise this Court has been asked to undertake. The Supreme Court has recently referred to "the 'real and substantial connection test' as a family of tests to emphasize that the same formula of words — that is, 'real and

³ In describing the test in *Unifund*, Binnie J. uses the terms "real and substantial connection" and "sufficient connection" interchangeably. See e.g. paras. [55](#), [56](#), [58](#), [80](#); *Sharp*, para [104](#).

substantial connection’ — involves different considerations in each of the varying contexts in which the formula is employed.”

***Sharp*, [para. 118](#)**

76. While the precise context of this reference is novel, the sufficient connection test that has been developed to determine the constitutional validity of a provincial law (as in *Imperial Tobacco*) or its constitutional applicability to out-of-province entities or activities (as in *Unifund*) should also be used to determine which provincially-conducted lottery schemes are lawful under section 207(1)(a).

77. The real and substantial/sufficient connection test should be applied for three reasons. First, the sufficient connection test functions as a principle of statutory interpretation. As described by the Supreme Court in *Sharp*:

the *Unifund* “sufficient connection” test limits, or reads down, the territorial reach of otherwise broadly framed provincial legislation, consistent with the territorial restrictions on provincial legislative power in [ss. 91](#) and [92](#) of the [Constitution Act, 1867](#). It does so by insisting on a “sufficient connection” between the legislation and the out-of-province defendant.

It is therefore appropriate for use in this reference, where the issue to be determined is the proper interpretation of section 207(1)(a) of the *Code*.

***Sharp*, [para. 114](#)**

78. Second, applying the sufficient connection test is consistent with Canada’s constitutional architecture. In enacting what is now section 207(1)(a) of the *Code* in 1969, Parliament was aware of the territorial limits on provincial jurisdiction and the meaning of the words “in the province” in sections 92(13) and 92(16) of the *Constitution Act, 1867* and intended its enactment to be consistent with that constitutional framework.

79. As Ruth Sullivan has noted, “legislation should be interpreted so as to harmonize with common law, international law, and entrenched constitutional law.” The principles governing provinces’ territorial jurisdiction are long-established constitutional law. Parliament must therefore have intended the meaning of “in that province” to be consistent with the language in the *Constitution Act, 1867* and with the constitutional principles governing the territorial jurisdiction of the provinces. Considering the language of ss. 92(13) and 92(16), any other interpretation would be inconsistent with Parliament’s intention to leave the regulation of provincially-conducted lottery schemes to the provincial Legislatures.

Ruth Sullivan, *The Construction of Statutes*, 7th ed, s. 16.02(3), AGBOA, Tab 3, p. 12

80. Third, the sufficient connection test is appropriate in these circumstances because of the intangible nature of online gaming. *Imperial Tobacco* itself involved the scope of intangible rights arising from a statute creating a civil cause of action. On the issue of whether the pith and substance of the legislation should be regarded as being within the province, the Supreme Court held that the *Unifund* analysis was applicable even when determining which province could regulate intangible subject matters.

81. The Court in *Imperial Tobacco* reviewed its previous decision in *Upper Churchill*. In *Upper Churchill*, the legislation, which also targeted an intangible subject, exceeded the territorial limits of provincial jurisdiction because the contractual rights it targeted were not meaningfully connected to Newfoundland. In contrast, in *Imperial Tobacco* the Court found that there were:

strong relationships among the enacting territory (British Columbia), the subject matter of the law (compensation for the government of British Columbia’s tobacco-related health care costs) and the persons made subject to it (the tobacco manufacturers ultimately responsible for those costs), such that the Act can easily be said to be meaningfully connected to the province.

Imperial Tobacco, [paras. 33-37](#)

Reference re Upper Churchill Water Rights Reversion Act 1980 (Nfld.), [1984] 1 S.C.R. 297, [1984 CanLII 17](#)

82. The relational focus of the real and substantial or sufficient connection test makes it well-suited for interpreting section 207(1)(a) of the *Code* in the context of online gaming. The intangible nature of online gaming requires that this Court's exercise of statutory interpretation be guided by a contextual and flexible analysis that is grounded in Canada's constitutional architecture. The sufficient connection test provides that foundation.

iii. The words “in that province” in s. 207(1)(a) must be construed harmoniously with the scheme and objects of the *Code*

83. The scheme and objects of Part VII of the *Code* support the use of the real and substantial connection test in determining whether a provincial lottery scheme is conducted and managed “in that province” in accordance with section 207(1)(a).

Part VII is intended to address the negative impact of gaming on society

84. The *Code*'s gaming provisions were largely adopted from English law in the 1800s. As now-Justice Monahan and A. Gerold Goldlist observed in an article about the section 207(1) exemptions, the criminalization of gambling in England was premised on its consequences for society, including “the corrupting of young people, the promotion of idleness, cheating and deceitfulness”; the “utter ruin” of estates and fortunes; and “immoderate and excessive gaming.”

P. Monahan & A. Goldlist, “Roll Again: New Developments concerning Gaming” (1999) 42:Issues 2 & 3 Crim LQ 182, p. 186, [Monahan & Goldlist] AGBOA, Tab 4, p. 18

85. Similarly, in a report assessing the *Code*'s gaming provisions, the 1956 Special Joint Committee of the Senate and HOC recognized that “unrestrained gambling would produce

grave moral, social and economic effects in the community.” As this Court observed in *R. v. Andriopoulos*, “[t]he business of organized gaming is the subject matter of the prohibitions, presumably because it invites cheating and attracts other forms of criminal activity.”

Joint Committee of the Senate and HOC on Capital Punishment, Corporal Punishment and Lotteries, [Final Report on Lotteries](#) (July 31, 1956), [para. 21](#), AGR, Tab 7, p. 420

***R. v. Andriopoulos*, [1994 CanLII 147](#) (ON CA)**

86. In enacting what is now section 207(1)(a), Parliament withdrew Part VII’s prohibitions from provincial lottery schemes because, as the Superior Court recently observed, it believed “the provincial legislature exerted a sufficient degree of management and control to maintain public safety, fairness, and integrity in gaming.” In permitting provinces to conduct and manage lottery schemes, Parliament, “... trusted the provinces to do so in a responsible manner with overriding concern for public safety.”

***Mohawk Council*, [para. 95](#)**

Part VII’s provisions support provincial autonomy

87. The provisions of Part VII demonstrate that Parliament intended to defer to provinces on the design of provincial lottery schemes, including the inclusion of international elements. Certainly, there is no provision in Part VII that suggests, expressly or implicitly, that Parliament intended to prohibit pooled liquidity.

88. Section 207(1)(a) itself does not expressly address international elements in a provincial lottery scheme. The requirement that provinces enter into agreements before conducting interprovincial lotteries is a recognition of the territorial limits of each province’s authority over gaming *within* Canada. It does not address pooled liquidity or other international elements.

89. The few provisions in Part VII which address international gaming suggest that Parliament intended to leave the design of provincial lottery schemes to provinces. Section 206(7), which prohibits the advertisement and sale of any tickets, chances or shares in foreign lotteries within Canada, reflects that Parliament was concerned about international lottery schemes, not those of domestic governments.

90. Indeed, one of the bases for the 1969 amendments which gave rise to section 207(1)(a) was the desire to divert Canadians away from foreign lotteries, which were not subject to domestic oversight. Minister Turner, discussing the reason for maintaining the ban on foreign lotteries in what is now section 206(7), emphasized that the issue was one of control:

The reason, of course, we can contemplate allowing provincial governments to legalize – if I may use that word – domestic lotteries is that they can set the terms of the conduct of those lotteries under provincial licence. They have absolute control as to the terms, the amount of money involved, and so on, whereas there is no way of controlling the operation of a foreign lottery.

HOC [Standing Committee on Justice and Legal Affairs](#), 1st Session, 28th Parliament, 1968-1969 (11 March 1969), pp. [329-334](#), AGR, Tab 9, pp. 455-460

91. Permitting Ontario players to access pooled liquidity through a gaming scheme the province and its agents control addresses these concerns. Notably, when a province conducts a domestic lottery under section 207(1)(a), it is lawful notwithstanding any provision in Part VII, including section 206(7).

92. Section 207.1 of the *Code* establishes an exemption from Part VII for lottery schemes on cruise ships, subject to a number of conditions. Among these, section 207.1(1)(b) expressly prohibits a ship's lottery scheme from being "linked, by any means of communication, with any lottery scheme, betting, pool selling or pool system of betting located off the ship".

93. Parliament's decision to expressly ringfence lottery schemes on cruise ships, while remaining silent on the issue in section 207(1)(a), suggests that it did not intend a similar restriction on provincial lottery schemes.

94. Section 204(1)(c) and (2) of the *Code* permit, among other things, individuals in Canada to bet on horse races held outside of Canada. Section 204(8.1) provides for the sanctioning by a federal Minister of foreign governing bodies conducting those races.

95. While betting on horse races is not permitted in any section 207(1) lottery scheme, pursuant to section 207(4), section 204 demonstrates again that Parliament can and has addressed international elements in gaming outside of the provincial lottery context. That it chose not to in section 207(1)(a) suggests it intended to leave the issue to the provinces.

96. It is in this statutory context that the reference to location in section 207(1)(a) must be considered. Nothing in the words of that provision, or any other provision in Part VII of the *Code*, suggests that a provincially-conducted lottery scheme cannot permit its players to share liquidity with individuals outside of Canada participating in international lotteries.

97. Nor do the objects or purposes of Part VII support such a prohibition. There is no nexus between the objective of safeguarding the Canadian public from the ills associated with unlawful gaming and barring provincial lottery schemes from permitting pooled liquidity with players outside Canada. Indeed, in hampering a province's effort to draw its public away from unlawful gaming sites with pooled liquidity, such a prohibition would undermine that objective.

98. The real and substantial connection test represents an appropriate means for giving effect to the words "in that province" in section 207(1)(a) while respecting provincial

authority over gaming; Parliament’s intentions in enacting the provision; the context of Part VII; and the objects of the *Code*.

B. *Earth Future* should not be followed

i. *Earth Future* addressed charitable lotteries, not provincial lotteries

99. This Court should decline to follow the PEI Supreme Court – Appeal Division’s 2002 opinion in *Earth Future Lottery (P.E.I.) (Re)*, (affirmed in a one-line decision by the Supreme Court) in determining the correct interpretation of the words “in that province” in section 207(1)(a).

100. *Earth Future* was a reference commenced by PEI seeking an opinion on the lawfulness of a proposed charitable lottery conducted pursuant to section 207(1)(b) of the *Code*. In PEI’s proposed scheme, a charity would have sold lottery tickets to individuals around the world from a website in PEI.

101. The PEI Court opined that the scheme was unlawful because “extra-provincial and international lottery sales transactions are not permitted by section 207(1)(b) or by any other provision of section 207.” The ruling interpreted the words “in that province” in section 207(1)(b) narrowly:

However, conducting a lottery “**from**” Prince Edward Island is not the same as conducting it “**in**” Prince Edward Island. A lottery conducted **from** Prince Edward Island is not necessarily conducted **in** the province. Here the intent is to conduct a lottery throughout the world. Subsection 207(1)(b) requires that the lottery scheme be conducted and managed **in** the province, **not just from the province**. The global market extends far beyond the boundaries of this province and is therefore outside the territorial limitation imposed by s-s. 207(1)(b).

Earth Future Lottery (P.E.I.) (Re), [2002 PESCAD 8](#), para. 11 [*Earth Future*], *aff’d*, [2023 SCC 10](#)

102. The ruling does not assist this Court in properly interpreting section 207(1)(a) because it addressed a lottery scheme conducted and managed by a charity pursuant to section 207(1)(b).

103. While both section 207(1)(a) and section 207(1)(b) refer to lottery schemes conducted and managed “in that province,” section 207(1)(a) must be interpreted more broadly and applied with greater deference given the need to respect provincial sovereignty and the provinces’ primary constitutional authority over gaming.

104. Placing limits on a province’s exercise of its authority in this scenario raises cooperative federalism concerns and undermines the presumption of constitutionality in a manner that constraining a charity does not.

105. Further, a broader approach to interpreting section 207(1)(a) is warranted because provincial lottery schemes have legislative sanction and benefit from the greater resources and sophistication of government.

106. Considering the two provisions, Monahan and Goldlist noted the significance of the distinctions between charitable and provincial lottery schemes and urged “great caution” in the application of “doctrines and case law that have been developed in the context of section 207(1)(b) to gaming conducted under section 207(1)(a).”

Monahan & Goldlist, p. 215, AGBOA, Tab 4, p. 47

107. Observing that provincial lottery schemes are authorized and carried out pursuant to legislation and that the provincial government itself would decide the “nature, extent and location” of the gaming activities, they suggested that a province’s decisions regarding the elements of its lottery scheme should be respected:

... it is difficult to imagine that the courts ought to substitute their view for that of the province on any of these issues. Indeed, were a court to attempt to second-guess a provincial government respecting the manner in which gaming in that jurisdiction ought to be conducted, the judiciary would essentially be engaged in a political rather than a legal exercise and would be far removed from deciding whether a criminal offence was being committed.

Monahan & Goldlist, p. 213, AGBOA, Tab 4, p. 45

See also: *Mohawk Council*, [paras. 78](#) and [97](#)

108. The application of *Earth Future*'s narrow interpretation of "in that province" in section 207(1)(b) to section 207(1)(a) would effectively reduce provincial governments to the status of charities in the conduct and management of lottery schemes. Given the constitutional, legislative, and practical differences between them, there is no basis for this treatment.

109. For the same reason, any suggestion that the meaning of the words "in that province" in section 207(1)(a) should be informed by the interpretation of the same or similar words in section 207(1)(c), (d), or (f) should be dismissed.

110. Those provisions, which variously address lotteries conducted under provincial licence by fair boards; concession operators; and individuals in places of amusement, among others, involve different considerations.

111. Whatever the proper interpretation of those provisions, section 207(1)(a) must be given an expansive interpretation appropriate to the co-equal sovereignty of the provincial Crowns and Parliament's stated intention to defer to provincial assessments of their citizens' needs.

ii. *Earth Future* is distinguishable on the facts

112. The PEI Court characterized the intent of the venture in *Earth Future* as “to conduct a lottery throughout the world.” This cannot be said of the proposal to permit international play set out in the Schedule. The Schedule makes clear that iGO would not be conducting and managing the International Sites and that players outside of Canada would be subject to the legal and regulatory regimes in the relevant international jurisdiction.

***Earth Future*, [paras. 10 - 13](#)**

113. Ontario’s scheme would not solicit the participation of players outside of the province and would not make games or betting available to them. Ontario would not be transacting with international players in the manner the PEI Court held was unlawful in PEI’s scheme. Only players located in Ontario would participate in the provincially-conducted lottery.

iii. This matter involves a new legal issue and a new societal context

114. In the alternative, this Court may depart from the decision in *Earth Future* because (1) this case involves a new legal issue; and (2) the degree of technological change, particularly the growth of mobile technology, in the twenty years since *Earth Future* was decided “fundamentally shifts the parameters of the debate.”

***Canada (Attorney General) v Bedford*, 2013 SCC 27, [para. 42](#)**

***Carter v Canada (Attorney General)*, 2015 SCC 5, [para. 44](#)**

115. *Earth Future* did not involve the interpretation of a provision of the *Code* applicable to co-equal provincial Crowns. The Court of Appeal and Supreme Court of Canada decisions in *Earth Future* pre-date the decisions in *Unifund* and *Imperial Tobacco* and did not consider the relationship between the words “in that province” in section 207(1)(a) of the *Code* and the

caselaw concerning the territorial limits on provincial jurisdiction arising from the use of the similar language in section 92 of the *Constitution Act, 1867*.

116. Furthermore, the growth of mobile technologies and the resulting interconnectivity of today's world has created an entirely different social context than the one that existed in 2002-2003 when *Earth Future* was before the courts.

117. Accessing the internet using a smartphone in one's pocket is now ubiquitous. In 2022, 85% of Canadians over the age of 15 used a smartphone to access the internet and 80% had mobile data plans for their personal use. In contrast, at the end of 2003 only 41.8% of Canadians even had a cell phone.

Todres Affidavit, para 22.

Statistics Canada, "Telecommunications: Connecting Canadians" Exhibit "E" to the Todres Affidavit, AGR, Tab 4E

Statistics Canada, "Access to the Internet in Canada, 2020" May 31, 2021, Exhibit "F" to the Todres Affidavit, AGR, Tab 4F

Statistics Canada, "Innovation Analysis Bulletin" June 2005, Exhibit "G" to the Todres Affidavit, AGR, Tab 4G

118. The dramatic shift in the way Canadians use mobile technology to access the internet is also reflected in the way Ontarians access iGO Sites. The vast majority (74%) of wagers on iGO Sites are placed by individuals using a mobile or tablet device rather than a desktop computer or laptop.

Todres Affidavit, para. 24

119. As in *Carter*, the dramatically different "matrix of legislative and social facts" in this case undermines the earlier conclusions in *Earth Future*. The PEI Appellate Division's decision was largely based on concerns the Court had with a traditional sweepstakes lottery's

connection to the global market. That concern must take on less significance in today's world, in which Ontarians routinely access global markets for virtually anything at the click of a button on a device they carry in their pockets.

Earth Future, [paras. 10, 13](#)

120. Today's technology allows iGO operators to ensure that the Proposed Scheme will remain a domestic scheme available only to persons located in Ontario. There are no operational or technical barriers to the adoption of the Proposed Model which would permit Ontario players to reap the benefits of sharing liquidity with players in international lotteries while continuing to enjoy the protections of the highly-regulated iGaming scheme.

Sweny Affidavit, [paras. 17, 23](#)

C. The Proposed Model has a real and substantial connection to Ontario

121. The Proposed Model would satisfy the requirement in section 207(1)(a) that it be conducted and managed in the province because it has a real and substantial connection to Ontario. In fact, Ontario is the only jurisdiction to which the Proposed Model would have any material connection.

122. The scheme would only be used by individuals physically located in Ontario. While Ontarians would be permitted to share liquidity with players outside of Canada, those players would not be brought into Ontario's scheme. The scheme would also be established and conducted by Ontario, pursuant to provincial legislation.

123. The elements of the scheme establish a complete connection between the government; its lottery scheme; the people of Ontario; and the province's territorial limits. This connection

is sufficient to satisfy the requirement in section 207(1)(a) that the Proposed Model be conducted in this province.

i. The scheme would be conducted and managed by Ontario

124. The Proposed Model would be delivered pursuant to the framework enacted by Ontario's Legislature to govern internet gaming in the province. iGO would continue to conduct and manage the lottery scheme pursuant to section 6.1 of the AGCO Act and section 4 of O.Reg. 722/21.

125. iGO would continue to have comprehensive control over the operators' operations, including deciding who can participate in the scheme and what games they can participate in, as described in paragraph 26.

126. iGO, its operators, and their suppliers would be regulated by the AGCO, which would continue to register operators who meet its strict requirements, including for honesty and integrity, and enforce the Registrar's Standards. iGO would continue to transfer its net earnings to the government to support provincial priorities.

OIC Schedule, AGR, Tab 2, p. 13

ii. The scheme would only be available to people in Ontario

127. Only individuals physically located in Ontario would be permitted to access the iGO sites. Individuals outside of Ontario but still within Canada would be barred in the absence of an agreement between Ontario and their province or territory.

OIC Schedule, AGR, Tab 2, p. 13

128. Individuals outside of Canada would not have access to Ontario’s scheme: they would not be permitted to register for or play on iGO sites. Ontario’s scheme would not apply to them or govern their play. They would use the scheme available in their jurisdiction.

OIC Schedule, AGR, Tab 2, p. 13

iii. Pooled liquidity would not undermine the scheme’s connection to Ontario

129. Permitting individuals in Ontario to contribute to, and win prizes from, betting pools containing funds from players located outside of Canada would not extend the scheme outside of Canada or bring international players into it.

130. While a player in Ontario and a player outside of Canada would be able to play against each other in the virtual world, their respective experiences would be governed by the lottery scheme in place in their jurisdiction.

131. For Ontarians, this will mean that all of the fundamental aspects of their gaming experience – including whether they can play; what they can play; and how much they can play – will continue to be decided by the provincial government, properly exercising its constitutional authority over gaming in the province. The scheme would be conducted and managed exclusively in Ontario, by Ontario; and for Ontarians.

PART IV: ANSWER REQUESTED

132. Ontario requests that this Court answer the reference question as follows: “Legal online gaming and sports betting would remain lawful under the *Code* if its users were permitted to participate in games and betting involving individuals outside of Canada as described in the attached Schedule.”

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 11, 2024



ATTORNEY GENERAL OF ONTARIO


Per. Josh Hunter, Ananthan Sinnadurai, Hera
Evans and Jennifer Boyczuk

Lawyers for the Attorney General of Ontario

CERTIFICATE

1. An order under rule 61.09 (2) is not required.
2. The Attorney General of Ontario estimates that four hours will be required for Ontario's oral argument.
3. The Attorney General of Ontario's factum complies with rule 61.11 (3).
4. The number of words contained in Parts I to V of the Attorney General of Ontario's factum is 9,174.
5. I am satisfied as to the authenticity of every authority listed in Schedule A.

October 11, 2024



Josh Hunter
Lawyer for the Attorney General of Ontario

SCHEDULE “A”: LIST OF AUTHORITIES

JURISPRUDENCE

1. *Bell ExpressVu Limited Partnership v. Rex*, [2002 SCC 42](#)
2. *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#)
3. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)
4. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#)
5. *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#), aff'd [2003 SCC 10](#)
6. *R. v. Andriopoulos*, [1994 CanLII 147 \(ON CA\)](#)
7. *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, [2024 ONSC 2726](#)
8. *Reference re Upper Churchill Water Rights Reversion Act*, [\[1984\] 1 SCR 297](#)
9. *Rizzo & Rizzo Shoes Ltd. (Re)*, [\[1998\] 1 SCR 27](#)
10. *Sharp v. Autorité des marchés financiers*, [2023 SCC 29](#)
11. *Siemens v. Manitoba (Attorney General)*, [2003 SCC 3](#)
12. *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, [2003 SCC 40](#)

SECONDARY RESOURCES

1. Patrick J. Monahan & A. Gerold Goldlist, *Roll Again: New Developments concerning Gaming* (1999) 42:Issues 2 & 3 Crim LQ 182
2. Sullivan, Ruth, *The Construction of Statutes*, 7th ed (Ottawa: LexisNexis Canada, 2022)

SCHEDULE “B”: STATUTES AND REGULATIONS

The Constitution Act, 1867, 30 & 31 Vict, c 3, ss. 92(13) and (16)

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed. End note(48)
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:
 - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

[Alcohol and Gaming Commission of Ontario Act, 2019](#), S.O. 2019, c 15, ss 6.1

Lottery subsidiary

6.1 (1) The Lieutenant Governor in Council may, by regulation, establish or continue a corporation without share capital that is a subsidiary of the Commission that has as its objects and duties,

- (a) conducting and managing prescribed online lottery schemes; and
- (b) any other prescribed objects or duties. 2020, c. 36, Sched. 1, s. 6 (1).

Operations, etc.

(2) The lottery subsidiary shall comply with this Act, the regulations and any Ministerial directives in conducting and managing the prescribed online lottery schemes. 2020, c. 36, Sched. 1, s. 6 (1).

Powers of a natural person subject to prescribed limitations

(3) The lottery subsidiary has the capacity, rights and powers of a natural person, subject to such limitations as may be prescribed. 2020, c. 36, Sched. 1, s. 6 (1).

Revenues and investments

(4) Despite Part I of the Financial Administration Act, the revenues and investments of the lottery subsidiary do not form part of the Consolidated Revenue Fund. 2020, c. 36, Sched. 1, s. 6 (1).

Application of Business Corporations Act

(5) The regulations may specify provisions of the Business Corporations Act that apply to the lottery subsidiary and its directors and officers, with or without any prescribed modifications. 2020, c. 36, Sched. 1, s. 6 (1).

Non-application of Corporations Act

(6) The Not-for-Profit Corporations Act, 2010 does not apply to the lottery subsidiary, except as may be prescribed. 2020, c. 36, Sched. 1, s. 6.

Non-application of Corporations Information Act

(7) The Corporations Information Act does not apply to the lottery subsidiary. 2020, c. 36, Sched. 1, s. 6 (1).

Courts of Justice Act, R.S.O. 1990, c C43, ss 8

References to Court of Appeal

8 (1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration. R.S.O. 1990, c. C.43, s. 8 (1).

Opinion of court

(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons for it, and any judge who differs from the opinion may certify his or her opinion and reasons in the same manner. R.S.O. 1990, c. C.43, s. 8 (2).

Submissions by Attorney General

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (3).

Same

(4) The Attorney General of Canada shall be notified and is entitled to make submissions to the court if the question relates to the constitutional validity or constitutional applicability of an Act, or of a regulation or by-law made under an Act, of the Parliament of Canada or the Legislature. R.S.O. 1990, c. C.43, s. 8 (4).

Notice

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (5).

Appointment of counsel

(6) If an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest and the reasonable expenses of counsel shall be paid by the Minister of Finance. R.S.O. 1990, c. C.43, s. 8 (6); 2006, c. 21, Sched. A, s. 2.

Appeal

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies from it as from a judgment in an action. R.S.O. 1990, c. C.43, s. 8 (7).

* * *

Criminal Code, R.S.C. 1985, c C-46, ss 197(1), 201(1), 202(1), 204, 206(1) and (7), 207(1) and (4), 207.1

Definitions

197 (1) In this Part,

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; (*pari*)

common bawdy-house [Repealed, 2019, c. 25, s. 69.1]

common betting house means a place that is opened, kept or used for the purpose of

- (a) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or
- (b) enabling any person to receive, record, register, transmit or pay bets or to announce the results of betting; (*maison de pari*)

common gaming house means a place that is

- (a) kept for gain to which persons resort for the purpose of playing games, or
- (b) kept or used for the purpose of playing games
 - (i) in which a bank is kept by one or more but not all of the players,
 - (ii) in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,
 - (iii) in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or
 - (iv) in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game; (*maison de jeu*)

disorderly house means a common betting house or a common gaming house; (*maison de désordre*)

game means a game of chance or mixed chance and skill; (*jeu*)

gaming equipment means anything that is or may be used for the purpose of playing games or for betting; (*matériel de jeu*)

keeper includes a person who

- (a) is an owner or occupier of a place,
- (b) assists or acts on behalf of an owner or occupier of a place,
- (c) appears to be, or to assist or act on behalf of an owner or occupier of a place,
- (d) has the care or management of a place, or
- (e) uses a place permanently or temporarily, with or without the consent of the owner or occupier thereof; (*tenancier*)

place includes any place, whether or not

- (a) it is covered or enclosed,
- (b) it is used permanently or temporarily, or
- (c) any person has an exclusive right of user with respect to it; (*local ou endroit*)

prostitute[Repealed, 2014, c. 25, s. 12]

public place includes any place to which the public have access as of right or by invitation, express or implied. (*endroit public*)

[...]

Keeping gaming or betting house

201 (1) Every person who keeps a common gaming house or common betting house is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) an offence punishable on summary conviction.

[...]

Betting, pool-selling, book-making, etc.

202 (1) Every one commits an offence who

- (a) uses or knowingly allows a place under his control to be used for the purpose of recording or registering bets or selling a pool;
- (b) imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting;

(c) has under his control any money or other property relating to a transaction that is an offence under this section;

(d) records or registers bets or sells a pool;

(e) engages in book-making or pool-selling, or in the business or occupation of betting, or makes any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or betting;

(f) prints, provides or offers to print or provide information intended for use in connection with book-making, pool-selling or betting on any horse-race, fight, game or sport, whether or not it takes place in or outside Canada or has or has not taken place;

(g) imports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, book-making, pool-selling or betting on a horse-race, fight, game or sport, and where this paragraph applies it is immaterial

(i) whether the information is published before, during or after the race, fight game or sport, or

(ii) whether the race, fight, game or sport takes place in Canada or elsewhere,

but this paragraph does not apply to a newspaper, magazine or other periodical published in good faith primarily for a purpose other than the publication of such information;

(h) advertises, prints, publishes, exhibits, posts up, or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest;

(i) wilfully and knowingly sends, transmits, delivers or receives any message that conveys any information relating to book-making, pool-selling, betting or wagering, or that is intended to assist in book-making, pool-selling, betting or wagering; or

(j) aids or assists in any manner in anything that is an offence under this section.

[...]

204 (1) [Sections 201](#) and [202](#) do not apply to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked, to be paid to

(i) the winner of a lawful race, sport, game or exercise,

(ii) the owner of a horse engaged in a lawful race, or

(iii) the winner of any bets between not more than ten individuals;

(b) a private bet between individuals not engaged in any way in the business of betting;

(c) bets made or records of bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races if

(i) the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race-course in or out of Canada, and, in the case of a race conducted on a race-course situated outside Canada, the governing body that regulates the race has been certified as acceptable by the Minister of Agriculture and Agri-Food or a person designated by that Minister pursuant to subsection (8.1) and that Minister or person has permitted pari-mutuel betting in Canada on the race pursuant to that subsection, and

(ii) the provisions of this section and the regulations are complied with.

Exception

(1.1) For greater certainty, a person may, in accordance with the regulations, do anything described in [section 201](#) or [202](#), if the person does it for the purposes of legal pari-mutuel betting.

Presumption

(2) For the purposes of paragraph (1)(c), bets made, in accordance with the regulations, in a betting theatre referred to in paragraph (8)(e), or by any means of telecommunication to the race-course of an association or to such a betting theatre, are deemed to be made on the race-course of the association.

Operation of pari-mutuel system

(3) 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.

Supervision of pari-mutuel system

(4) Every person or association operating a pari-mutuel system of betting in accordance with this section in respect of a horse-race, whether or not the person or association is conducting the race-meeting at which the race is run, shall pay to the Receiver General in respect of each individual pool of the race and each individual feature pool one-half of one per cent, or such greater fraction not exceeding one per cent as may be fixed by the

Governor in Council, of the total amount of money that is bet through the agency of the pari-mutuel system of betting.

Percentage that may be deducted and retained

(5) Where any person or association becomes a custodian or depository of any money, bet or stakes under a pari-mutuel system in respect of a horse-race, that person or association shall not deduct or retain any amount from the total amount of money, bets or stakes unless it does so pursuant to subsection (6).

Percentage that may be deducted and retained

(6) An association operating a pari-mutuel system of betting in accordance with this section in respect of a horse-race, or any other association or person acting on its behalf, may deduct and retain from the total amount of money that is bet through the agency of the pari-mutuel system, in respect of each individual pool of each race or each individual feature pool, a percentage not exceeding the percentage prescribed by the regulations plus any odd cents over any multiple of five cents in the amount calculated in accordance with the regulations to be payable in respect of each dollar bet.

Stopping of betting

(7) Where an officer appointed by the Minister of Agriculture and Agri-Food is not satisfied that the provisions of this section and the regulations are being carried out in good faith by any person or association in relation to a race meeting, he may, at any time, order any betting in relation to the race meeting to be stopped for any period that he considers proper.

Regulations

(8) The Minister of Agriculture and Agri-Food may make regulations

(a) prescribing the maximum number of races for each race-course on which a race meeting is conducted, in respect of which a pari-mutuel system of betting may be used for the race meeting or on any one calendar day during the race meeting, and the circumstances in which the Minister of Agriculture and Agri-Food or a person designated by him for that purpose may approve of the use of that system in respect of additional races on any race-course for a particular race meeting or on a particular day during the race meeting;

(b) prohibiting any person or association from using a pari-mutuel system of betting for any race-course on which a race meeting is conducted in respect of more than the maximum number of races prescribed pursuant to paragraph (a) and the additional races, if any, in respect of which the use of a pari-mutuel system of betting has been approved pursuant to that paragraph;

(c) prescribing the maximum percentage that may be deducted and retained pursuant to subsection (6) by or on behalf of a person or association operating a pari-mutuel system of betting in respect of a horse-race in accordance with this section and providing for the determination of the percentage that each such person or association may deduct and retain;

(d) respecting pari-mutuel betting in Canada on horse-races conducted on a race-course situated outside Canada; and

(e) authorizing pari-mutuel betting and governing the conditions for pari-mutuel betting, including the granting of licences therefor, that is conducted by an association in a betting theatre owned or leased by the association in a province in which the Lieutenant Governor in Council, or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, has issued a licence to that association for the betting theatre.

Approvals

(8.1) The Minister of Agriculture and Agri-Food or a person designated by that Minister may, with respect to a horse-race conducted on a race-course situated outside Canada,

(a) certify as acceptable, for the purposes of this section, the governing body that regulates the race; and

(b) permit pari-mutuel betting in Canada on the race.

Idem

(9) The Minister of Agriculture and Agri-Food may make regulations respecting

(a) the supervision and operation of pari-mutuel systems related to race meetings, and the fixing of the dates on which and the places at which an association may conduct those meetings;

(b) the method of calculating the amount payable in respect of each dollar bet;

(c) the conduct of race-meetings in relation to the supervision and operation of pari-mutuel systems, including photo-finishes, video patrol and the testing of bodily substances taken from horses entered in a race at such meetings, including, in the case of a horse that dies while engaged in racing or immediately before or after the race, the testing of any tissue taken from its body;

(d) the prohibition, restriction or regulation of

(i) the possession of drugs or medicaments or of equipment used in the administering of drugs or medicaments at or near race-courses, or

(ii) the administering of drugs or medicaments to horses participating in races run at a race meeting during which a pari-mutuel system of betting is used; and

(e) the provision, equipment and maintenance of accommodation, services or other facilities for the proper supervision and operation of pari-mutuel systems related to race meetings, by associations conducting those meetings or by other associations.

900 metre zone

(9.1) For the purposes of this section, the Minister of Agriculture and Agri-Food may designate, with respect to any race-course, a zone that shall be deemed to be part of the race-course, if

(a) the zone is immediately adjacent to the race-course;

(b) the farthest point of that zone is not more than 900 metres from the nearest point on the race track of the race-course; and

(c) all real property situated in that zone is owned or leased by the person or association that owns or leases the race-course.

Contravention

(10) Every person who contravenes or fails to comply with any of the provisions of this section or of any regulations made under this section is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Definition of *association*

(11) For the purposes of this section, *association* means an association incorporated by or pursuant to an Act of Parliament or of the legislature of a province that owns or leases a race-course and conducts horse-races in the ordinary course of its business and, to the extent that the applicable legislation requires that the purposes of the association be expressly stated in its constating instrument, having as one of its purposes the conduct of horse-races.

[...]

Offence in relation to lotteries and games of chance

206 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction 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;

(b) sells, barter, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, 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, mailed, 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 any mode of chance whatever;

(d) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, lent, given, sold or disposed of;

(e) conducts, manages or is a party to any scheme, contrivance or operation of any kind by which any person, on payment of any sum of money, or the giving of any valuable security, or by obligating himself to pay any sum of money or give any valuable security, shall become entitled under the scheme, contrivance or operation to receive from the person conducting or managing the scheme, contrivance or operation, or any other person, a larger sum of money or amount of valuable security than the sum or amount paid or given, or to be paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum of money or valuable security under the scheme, contrivance or operation;

(f) disposes of any goods, wares or merchandise by any game of chance or any game of mixed chance and skill in which the contestant or competitor pays money or other valuable consideration;

(g) induces any person to stake or hazard any money or other valuable property or thing on the result of any dice game, three-card monte, punch board, coin table or on the operation of a wheel of fortune;

(h) for valuable consideration carries on or plays or offers to carry on or to play, or employs any person to carry on or play in a public place or a place to which the public have access, the game of three-card monte;

- (i) receives bets of any kind on the outcome of a game of three-card monte; or
- (j) being the owner of a place, permits any person to play the game of three-card monte therein.

Foreign lottery included

206 (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.

[...]

Permitted lotteries

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

- (a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;
- (b) for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;
- (c) for the board of a fair or of an exhibition, or an operator of a concession leased by that board, to conduct and manage a lottery scheme in a province where the Lieutenant Governor in Council of the province or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof has
 - (i) designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and
 - (ii) issued a licence for the conduct and management of a lottery scheme to that board or operator;

- (d) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if
- (i) the amount or value of each prize awarded does not exceed five hundred dollars, and
 - (ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed two dollars;
- (e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation to a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province;
- (f) for any person, pursuant to a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;

[...]

Definition of *lottery scheme*

207 (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

- (a) three-card monte, punch board or coin table;
- (b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any horse-race; or
- (c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device, slot machine or a dice game.

[...]

Exemption — lottery scheme on an international cruise ship

207.1 (1) Despite any of the provisions of this Part relating to gaming and betting, it is lawful for the owner or operator of an international cruise ship, or their agent, to conduct, manage or operate and for any person to participate in a lottery scheme during a voyage on an international cruise ship when all of the following conditions are satisfied:

- (a) all the people participating in the lottery scheme are located on the ship;
- (b) the lottery scheme is not linked, by any means of communication, with any lottery scheme, betting, pool selling or pool system of betting located off the ship;
- (c) the lottery scheme is not operated within five nautical miles of a Canadian port at which the ship calls or is scheduled to call; and
- (d) the ship is registered
 - (i) in Canada and its entire voyage is scheduled to be outside Canada, or
 - (ii) anywhere, including Canada, and its voyage includes some scheduled voyaging within Canada and the voyage
 - (A) is of at least forty-eight hours duration and includes some voyaging in international waters and at least one non-Canadian port of call including the port at which the voyage begins or ends, and
 - (B) is not scheduled to disembark any passengers at a Canadian port who have embarked at another Canadian port, without calling on at least one non-Canadian port between the two Canadian ports.

Paragraph 207(1)(h) and subsection 207(5) apply

(2) For greater certainty, paragraph 207(1)(h) and subsection 207(5) apply for the purposes of this section.

Offence

(3) Every one who, for the purpose of a lottery scheme, does anything that is not authorized by this section

- (a) in the case of the conduct, management or operation of the lottery scheme,
 - (i) is guilty of an indictable offence and liable to imprisonment for a term of not more than two years, or
 - (ii) is guilty of an offence punishable on summary conviction; and
- (b) in the case of participating in the lottery scheme, is guilty of an offence punishable on summary conviction.

Definitions

(4) The definitions in this subsection apply in this section.

international cruise ship means a passenger ship that is suitable for continuous ocean voyages of at least forty-eight hours duration, but does not include such a ship that is used or fitted for the primary purpose of transporting cargo or vehicles. (navire de croisière internationale)

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. It does not include

(a) three-card monte, punch board or coin table; or

(b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any race or fight, or on a single sporting event or athletic contest. (loterie)

* * *

The Criminal Code, SC 1892 (55-56 Vict), c 29, Part XIV, ss 204, 205

Betting and pool-selling

204. Every one is guilty of an indictable offence, and Betting and liable to one year's imprisonment, and to a fine not exceeding pool-selling. one thousand dollars, who-

- (a.) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or
- (b.) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager or selling any pool ; or
- (c.) becomes the custodian or depositary of any money, property or valuable thing staked, wagered or pledged; or
- (d.) records or registers any bet or wager, or sells any pool, upon the result-
 - (i.) of any political or municipal election
 - (ii.) of any race;
 - (iii.) of any contest or trial of skill or endurance of man or beast.

2. The provisions of this section shall not extend to any person by reason of his becoming the custodian or depositary of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game, or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting.

Lotteries

205. Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, 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 whatsoever ; or
- (b.) sells, barter, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, 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 whatsoever.

2. Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as foresaid.

3. Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card or other mode of chance depending upon or to be determined by chance or lot, is void, and all such property so sold, lent, given, bartered or exchanged, is liable to be forfeited to any person who sues for the same by action or information in any court of competent jurisdiction.
4. No such forfeiture shall affect any right or title to such property acquired by any *bond fide* purchaser for valuable consideration, without notice.
5. This section includes 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.
6. This section does not apply to-
- (a.) the division by lot or chance of any property by joint tenants or tenants in common. or persons having joint interests (*droits indivis*) in any such property; or
 - (b.) raffles for prizes of small value at any bazaar held for any charitable object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars ;
or
 - (c.) any distribution by lot among the members or ticket holders of any incorporated society established for the encouragement of art, of any paintings, drawings or other work of art produced by the labour of the members of, or published by or under the direction of, such incorporated society;
 - (d.) the Credit Foncier di Bas-Canada, or to the Credit Foncier Franco-Canadien.

* * *

Criminal Law Amendment Act, S.C. 1968-69 (17-18 Eliz II), c 38, s 13.

13. The said Act is further amended by adding thereto, immediately after section 179 thereof, the following section:

Permitted lotteries

“179A. (1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it shall be lawful

Government of Canada

(a) for the Government of Canada to conduct and manage a lottery scheme in accordance with regulations made by the Governor in Council and for that purpose for any person in accordance with such regulations to do any thing described in any of paragraphs (a) to (f) of subsection (1) or subsection (4) of section 179;

Provincial Government

(b) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and such other province, in accordance with any law enacted by the legislature of that province and for that purpose for any person in accordance with such law to do any thing described in any of paragraphs (a) to (f) of subsection (1) or subsection (4) of subsection 179;

Charitable or religious organizations

(c) for a charitable or religious organization, under the authority of a licence issued by the Lieutenant-Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant-Governor in Council thereof, to conduct and manage a lottery scheme in that province and for that purpose for any person under the authority of such licence to do any thing described in any of paragraphs (a) to (g) of subsection (1) or subsection (4) of section 179, otherwise than in relation to a dice game, threecard monte, punch board or coin table, if

(i) the proceeds from the lottery scheme are used for a charitable or religious object or purpose, and

(ii) in the case of a lottery scheme conducted by the charitable or religious organization at a bazaar,

(A) the amount or value of each prize awarded does not exceed one hundred dollars, and

(B) the money or other valuable consideration paid to secure a

chance to win a prize does not exceed fifty cents;

Agricultural fairs or exhibitions

(d) for an agricultural fair or exhibition or an operator of a concession leased by an agricultural fair or exhibition board, under the authority of a licence issued by the Lieutenant- Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant-Governor in Council thereof, to conduct and manage a lottery scheme in that province and for that purpose for any person under the authority of such licence to do any thing described in any of paragraphs to (f) of subsection (1) or subsection (4) of section 179; and

Other Persons

(e) for any person, under the authority of a licence issued by the Lieutenant-Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant-Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province and for that purpose for any person under the authority of such licence to do any thing described in any of paragraphs (a) to (g) of subsection (1) or subsection (4) of section 179, otherwise than in relation to a dice game, three-card monte, punch board or coin table, if

- (i) the amount or value of each prize awarded does not exceed one hundred dollars, and
- (ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents.

Terms and conditions of licence

(2) Subject to this Act a licence issued by or under the authority of the Lieutenant-Governor in Council of a province as described in paragraph (c), (d) or (e) of subsection (1) may contain such terms and conditions relating to the management and conduct of the lottery scheme to which the licence relates as the Lieutenant-Governor in Council of that province or the person or authority in the province specified by him may prescribe.

Conducting lottery in province other than province where authorized

(3) Every one who, in any province other than a province in which a lottery scheme is by any paragraphs (b) to (e) of subsection (1) authorized to be managed and conducted, does any thing described in any of paragraphs (a) to (f) of subsection (1) of section 179 for the purpose of that lottery scheme is guilty of an indictable offence and liable to imprisonment for two years.

Receiving lottery tickets in province other than province where authorized

(4) Every one who, in any province other than a province in which a lottery scheme is by any of paragraphs (b) to (e) of subsection (1) authorized to be managed and conducted, does any thing authorized described in subsection (4) of section 179 for the purpose of that lottery scheme is guilty of an offence punishable on summary conviction.

“Lottery scheme”

(5) In this section, "lottery scheme" includes a game.

Exception re pari-mutuel betting

(6) Nothing in this section shall be construed as authorizing the making or recording of bets made through the agency of a pari-mutuel system, other than in accordance with section 178."

* * *

Gaming Control Act, 1992, S.O. 1992, c 24, ss 4, 6, 9, 10

Restrictions on suppliers

4 (1) Except as provided in this Act and the regulations, no person shall provide goods or services with respect to the playing of a lottery scheme for which a licence is required or hold himself, herself or itself out as providing those goods or services, unless,

- (a) the person is registered as a supplier; and
- (b) the person is providing those goods or services to a licensee or a registered supplier. 1992, c. 24, s. 4 (1); 1993, c. 25, s. 31 (1).

(1.01) Repealed: 1999, c. 12, Sched. L, s. 19 (7).

Same, lottery schemes

(1.1) Except as provided in this Act and the regulations, no person shall provide goods or services for a lottery scheme conducted and managed by the Ontario Lottery and Gaming Corporation or the lottery subsidiary or for any other business operated by, on behalf of, or under contract with the Corporation or the lottery subsidiary in conjunction with such a lottery scheme, unless,

- (a) the person is registered as a supplier; and
- (b) the person is providing those goods or services to the Corporation, the lottery subsidiary or a registered supplier. 2020, c. 36, Sched. 18, s. 4.

Trade union

(1.2) In addition to any provision of the Labour Relations Act, 1995, no trade union within the meaning of that Act shall represent persons employed in or with respect to a gaming site or in the operation of a lottery scheme unless the trade union and those of its officers, officials and agents prescribed by the regulations are registered as suppliers. 2011, c. 9, Sched. 17, s. 6 (2).

Services

(2) For the purposes of subsections (1) and (1.1), services include,

- (a) providing or operating a gaming site;
- (b) providing management or consulting services, including technical and analytical services, with respect to the operation of a gaming site or the playing of a lottery scheme;

(c) supplying the services of a person who, for consideration, participates in or facilitates in any manner the playing of a lottery scheme; or

(d) making, fabricating, printing, distributing or otherwise supplying materials or equipment for the operation of a gaming site or the playing of a lottery scheme. 2011, c. 9, Sched. 17, s. 6 (2).

Change in officers, directors, or partners

(3) The registration of a corporation or a partnership as a supplier shall be deemed to expire immediately upon any change in the officers or directors of the corporation or any change in the membership of the partnership, unless the Registrar has consented in writing to the change. 1992, c. 24, s. 4 (3).

Name of registered supplier

(4) No registered supplier shall provide goods or services under a name other than the name under which the supplier is registered. 1992, c. 24, s. 4 (4); 1993, c. 25, s. 31 (4).

Location of site

(5) No registered supplier shall provide a gaming site except at premises or on a channel that is named in the supplier's registration. 2011, c. 9, Sched. 17, s. 6 (3).

(6) Repealed: 2011, c. 9, Sched. 17, s. 6 (3).

Application for registration

6 (1) A person who has attained the age of eighteen years may apply to the Registrar to be registered as a supplier or as a gaming assistant or to have a registration renewed. 1992, c. 24, s. 6 (1).

Form of application

(2) An applicant shall supply to the Registrar such information with respect to the application, including information relating to personal identification, and in such form as the Registrar determines or the regulations prescribe. 1992, c. 24, s. 6 (2).

Registrar's authority

(3) The Registrar may make such other decisions as he or she considers necessary with respect to the making of applications. 1992, c. 24, s. 6 (3).

Inquiries

9 (1) The Registrar may make such inquiries and conduct such investigations into the character, financial history and competence of an applicant for registration or renewal of

registration, a registrant or persons interested in the applicant or registrant, as are necessary to determine whether the applicant meets the requirements of this Act and the regulations. 1992, c. 24, s. 9 (1); 2020, c. 36, Sched. 18, s. 7 (1).

Same

(1.1) The Registrar may make such inquiries and conduct such investigations into the character, financial history and competence of,

(a) persons proposed to be members of the Board of the Ontario Lottery and Gaming Corporation or of the board of the lottery subsidiary; and

(b) such employees of the Corporation or of the lottery subsidiary as the Registrar determines exercise significant decision-making authority with respect to the conduct, management or operation of lottery schemes. 2020, c. 36, Sched. 18, s. 7 (2).

Rights

(1.2) A person who is the subject of an inquiry or investigation under subsection (1.1) has such rights as may be prescribed by regulation, in addition to the person's other rights at law. 1999, c. 12, Sched. L, s. 19 (12).

Corporations, partnerships

(2) If the applicant or registrant is a corporation or partnership, the Registrar may make the inquiries into or conduct the investigations of the officers, directors or partners of the applicant or registrant. 1992, c. 24, s. 9 (2).

Costs

(3) The applicant or registrant shall pay the reasonable costs of the inquiries or investigations or provide security to the Registrar in a form acceptable to him or her for the payment. 1992, c. 24, s. 9 (3).

Collection of information

(4) The Registrar may require information or material from any person who is the subject of the inquiries or investigations and may request information or material from any person who the Registrar has reason to believe can provide information or material relevant to the inquiries or investigations. 1993, c. 25, s. 32 (1).

Verification of information

(5) The Registrar may require that any information provided under subsection (4) be verified by statutory declaration. 1992, c. 24, s. 9 (5).

Disclosure

(6) Despite section 17 of the Freedom of Information and Protection of Privacy Act and section 10 of the Municipal Freedom of Information and Protection of Privacy Act, the head of an institution within the meaning of those Acts shall disclose to the Registrar the information or material that the Registrar requires under subsection (4). 1993, c. 25, s. 32 (2).

Registration of suppliers

10 The Registrar shall refuse to register an applicant as a supplier or to renew the registration of an applicant as a supplier if,

(a) there are reasonable grounds to believe that the applicant will not be financially responsible in the conduct of the business, having regard to the financial history of,

(i) the applicant or persons interested in the applicant, or

(ii) the officers, directors or partners of the applicant, or persons interested in those officers, directors or partners, in the case of an applicant that is a corporation or partnership;

(b) there are reasonable grounds to believe that the applicant will not act as a supplier in accordance with law, or with integrity, honesty, or in the public interest, having regard to the past conduct of,

(i) the applicant or persons interested in the applicant,

(ii) the officers, directors or partners of the applicant, or persons interested in those officers, directors or partners, in the case of an applicant that is a corporation or partnership, or

(iii) officers, officials or agents of the applicant, or such other persons as are prescribed by the regulations, in the case of an applicant that is a trade union within the meaning of the Labour Relations Act, 1995; or

(c) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act, the regulations, the standards and requirements established by the Registrar under section 3.8 or the terms of the registration. 1992, c. 24, s. 10; 1993, c. 25, s. 33; 1996, c. 26, s. 4 (11); 2011, c. 9, Sched. 17, s. 9; 2020, c. 36, Sched. 18, s. 8.

O. Reg. 722/21: Lottery Subsidiary - iGaming Ontario, s. 1, 2, 4

Interpretation

1. In this Regulation,

“Corporation” means iGaming Ontario continued under section 2. (“Société”)

Corporation continued

2. For the purposes of subsection 6.1 (1) of the Act, iGaming Ontario is continued as a corporation without share capital under the name iGaming Ontario in English and Jeux en ligne Ontario in French.

[...]

Prescribed objects and duties

4. For the purposes of clause 6.1 (1) (b) of the Act, the following are prescribed as objects and duties of the Corporation:

1. To develop, undertake and organize prescribed online lottery schemes.
2. To promote responsible gaming with respect to prescribed online lottery schemes.
3. To conduct and manage prescribed online lottery schemes in accordance with the Criminal Code (Canada) and the Gaming Control Act, 1992 and the regulations made under those Acts.

* * *

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, R.S.O. 1990, c. C.34, by Order-in-Council 210/2024 permitting international play in an online provincial lottery scheme

COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

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