Court File No.: 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*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

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FACTUM OF THE INTERVENER, MOHAWK COUNCIL OF KAHNAWÀ:KE

November 5, 2024

OLTHUIS KLEER TOWNSHEND LLP
250 University Avenue, 8th Floor
Toronto, ON M5H 3E5
Tel: 416-981-9943
Fax: 416-981-9350

Nick Kennedy LSO#: 65949Q
Email: nkennedy@oktlaw.com

Counsel for the Intervener,
Mohawk Council of Kahnawà:ke

TO: **THE REGISTRAR**
Court of Appeal for Ontario
130 Queen Street West
Toronto, Ontario M5H 2N5

AND TO: **ATTORNEY GENERAL OF ONTARIO**
Civil Law Division
720 Bay Street
Toronto ON M7A 2S9
Tel. 416-908-7465

Josh Hunter, LSO No. 49037M
joshua.hunter@ontario.ca

Ananthan Sinnadurai, LSO No. 60614G
ananthan.sinnadurai@ontario.ca

Hera Evans, LSO No. 66269Q
hera.evans@ontario.ca

Jennifer Boyczuk, LSO No. 70838L
jennifer.boyczuk2@ontario.ca

Lawyers for the Attorney General of Ontario

AND TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
155 Wellington Street West
Toronto ON M5V 3J7
Tel: 416.863.5595

Matthew Milne-Smith, LSO No. 44266P
mmilne-smith@dwpv.com

Chanakya A. Sethi, LSO No. 63492T
csethi@dwpv.com

Kristine Spence, LSO No. 66099S
kspence@dwpv.com

Jacqueline Houston, LSO No. 85990N
jhouston@dwpv.com

Lawyers for the Interveners,
Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and Gaming Saskatchewan and Manitoba Liquor & Lotteries Corporation

AND TO: **BORDEN LADNER GERVAIS LLP**
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3
Tel: 416.367.6000

Graeme Hamilton, LSO No. 56790A
ghamilton@blg.com

Teagan Markin, LSO No. 74337R
tmarkin@blg.com

Lawyers for the Interveners,
NSUS Group Inc. and NSUS Limited

AND TO: **HENEIN HUTCHISON ROBITAILLE LLP**
235 King Street East
Toronto, ON M5A 1J9
Tel: 416-368-5000

Scott C. Hutchison, LSO No. 29912J
shutchison@hhllp.ca

Kelsey Flanagan, LSO No. 74127U
kflanagan@hhllp.ca

Brandon Chung, LSO No. 83164E
bchung@hhllp.ca

Lawyers for the Intervener,
Flutter Entertainment plc

AND TO: **MCCARTHY TÉTRAULT LLP**
66 Wellington Street West
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

Tel: 416.601.4343

Danielle M. Bush, LSO No. 30586O
dbush@mccarthy.ca

Adam Goldenberg, LSO No. 69114R
agoldenberg@mccarthy.ca

Gregory Ringkamp, LSO No. 83479R
gringkamp@mccarthy.ca

Rachel Abrahams
rabrahams@mccarthy.ca

Lawyers for the Intervener,
the Canadian Gaming Association

INDEX

PART I - OVERVIEW

1. Mohawk Council of Kahnawà:ke ("MCK") submits that gambling within the model described in the Schedule to Order-in-Council 210/2024 (the "Proposed Model") would not be lawful under the *Criminal Code* because it would not be "in" Ontario. Section 207(1)(a) imposes a territorial limitation on provincially conducted and managed gaming. Gaming must be "in" the applicable province to be lawful under s. 207(1). The Supreme Court of Canada confirmed this in *Earth Future*. Because the Proposed Model includes extraterritorial elements, it would not comply with s. 207(1)(a).

2. Recognizing this, Ontario asks this Court to play the role of legislator by expanding the words "in that province" in s. 207(1)(a) beyond their original, plain and ordinary meanings to mean a "real and substantial connection." But Parliament did not mean a "real and substantial connection" when it used those words, and there is no basis for reinterpreting those words in the way Ontario proposes. Unlike the Constitution, s. 207(1)(a) is not a "living tree." It cannot be reinterpreted to adapt to social or technological changes in a way that exceeds its ordinary meaning and/or Parliament's intent, as Ontario's proposed interpretation here does.

3. MCK submits that the answer to the reference question is "no." If Ontario wants to enact the Proposed Model, it needs to ask Parliament to amend the *Criminal Code*.

PART II - THE FACTS

4. MCK is the governing body for the Kanien:kehá'ka (Mohawks) of Kahnawà:ke within the Mohawk Territory of Kahnawà:ke. The Mohawks of Kahnawà:ke have inherent rights as Indigenous peoples and are Aboriginal and treaty rights holders within the

meaning of s. 35 of the *Constitution Act, 1982*. They also have the right to self-government and economic self-determination under the United Declaration on the Rights of Indigenous Peoples. Wagering has been a part of Mohawk culture since time immemorial. MCK has exercised that right in modern times by enacting the *Kahnawà:ke Gaming Law*, which it enacted in 1996, to regulate and license land-based and online gaming. Kahnawà:ke was one of the first jurisdictions in the world to recognize the economic benefits of online gaming.

5. MCK accepts and relies upon the description of the Proposed Model in the Schedule to Order-in-Council 210/2024.

PART III - ISSUES

6. The question in this Reference is whether the Proposed Model is legal under s. 207(1)(a) of the *Criminal Code*. MCK submits that the answer is "no." Ontario acknowledges that the Proposed Model includes extraterritorial elements. MCK's submissions therefore focus on why this is inconsistent with s. 207(1)(a), and why the words "in that province" do not mean a "real and substantial connection" to the province.

PART IV - ARGUMENT

A. The Proposed Model would not be "in" Ontario

7. The Proposed Model is inconsistent with s. 207(1)(a) because it includes extraterritorial elements and therefore does not meet the requirement of being "in" Ontario.

i. Statutory interpretation is a point in time exercise

8. To interpret s. 207(1)(a), we must read its words "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

9. This is a "point in time" exercise which "entails searching for *original* intent — a point in time inquiry that does not evolve or change based on a reviewing court's imputation to Parliament of an intent […]" [emphasis in original]. Statutory interpretation may therefore inquire into the "original meaning" of words used in legislation. This rule is "well established in our law." It requires that, "[a]s a general rule, the interpreter of a law should place himself at the time of enactment. […] It seems logical, therefore, to give the words their ordinary meaning at the time of the legislation's adoption." This rule is "rooted in the separation of powers doctrine and the idea that in a democracy certain kinds of decisions should be taken by an elected legislature rather than the courts."

R. v. Kirkpatrick, 2022 SCC 33, para. 164 [*Kirkpatrick*]

Ruth Sullivan, *The Construction of Statutes*, 7th ed, s. 6.02(1), 6.01(1) [Sullivan]

Hills v. Canada (Attorney General), 1988 CanLII 67 (SCC), paras. 82-89

R. v. Anand, 2020 NSCA 12, paras. 37-38 [*Anand*]

ii. Parliament intended a territorial limitation on provincial lotteries

10. The territorial limitation in s. 207(1)(a) is clear on the plain and ordinary meaning of its words. Section 207(1)(a) exempts provincial lotteries from the otherwise sweeping

prohibition against gambling in s. 206(1) of the *Criminal Code* if the provincial lotteries are (a) "conducted and managed" by the government of the province; (b) in accordance with provincial legislation; (c) "in that province." Parliament's intent in enacting what is now s. 207(1)(a) was to give provinces the "local option" of having lottery schemes "within prescribed limits set in the Code." One of those limits was that they must be "in" the applicable province.

> *Criminal Code*, s. 206(1), s. 207(1)(a)
>
> "Bill C-150, Criminal Law Amendment Act," 2nd reading, HOC Debates, 28-1, vol. V, (23 January 1969), 4721 (Hon. John Turner), Ontario's Record, Tab 8, p. 440

11. The context of s. 207(1)(a)'s enactment—the "point in time" for determining Parliament's intent—also makes it clear that Parliament intended to impose a territorial limitation on provincially conducted and managed gaming. The relevant year for assessing Parliament's intent is 1969, which is when Parliament permitted provincially conducted and managed lottery schemes for the first time.[1] But even if Parliament's intent is assessed in 1985, when the relevant *Criminal Code* provisions in effect today came into force, the answer remains the same: Parliament's intent was that all aspects of a lottery scheme must be "in" the province where it is conducted and managed, consistent with it offering provinces a "local option."

[1] That is the relevant reference year because when Parliament amended the relevant *Criminal Code* provisions in 1985, it left the text and substance of the 1969 provisions largely unchanged. The only material change Parliament made in 1985 was to repeal provisions allowing the Government of Canada to conduct and manage lottery schemes. See Schedule "B".

12. Parliament was not contemplating international liquidity pools, or provincial lottery schemes with international elements, or anything like that, in 1969 or 1985. To the extent anyone in Parliament was talking about any specific lottery schemes at all in either period, it was charitable gaming or casinos. It is not credible to suggest that Parliament intended to permit provincial gaming with an international element, or anything like the Proposed Model, when it permitted provincial governments to conduct and manage lottery schemes.

> "Bill C-150, Criminal Law Amendment Act," 2nd reading, House, Ontario's Record, Tab 8, p. 441
>
> "Bill C-81, an Act to amend the Criminal Code (lotteries)," 2nd reading, Senate Debates, 33-1, vol. II, 1984-1985-1986 (26 November 1985), Ontario's Record, Tab 14, p. 562
>
> Standing Senate Committee on Legal and Constitutional Affairs, November 26, 1985, Ontario's Record, Tab 14, p. 568, 572-573

iii. Earth Future confirms territorial limitation in s. 207(1)(a)

13. The Supreme Court of Canada in *Earth Future* confirmed that s. 207(1) imposes a territorial limitation on gaming. That case was about the legality of a proposed ticket raffle conducted and managed by Earth Future—a charitable lottery operating under licence in PEI—under s. 207(1)(b). The proposed scheme involved the online promotion and sale of lottery tickets to persons inside and outside of PEI. All operations of the lottery would take place in PEI. The Court of Appeal described that arrangement as follows:

> Lottery Operations in P.E.I.: The running and coordination of all of the lottery operations, including staffing, administration, the location, management and operation of the Internet server, validation of the purchaser's credit card, recording and registration of the ticket holders identity in the books and records of the Lottery, acceptance of the offer to purchase a ticket, telemarketing and customer service operations, draws of

> the winning ticket numbers, deposit and maintenance of the prize funds and the payment of prizes will all take place in Prince Edward Island.
>
> *Earth Future Lottery (P.E.I.) (Re)*, 2002 PESCAD 8, para. 2, aff'd, 2003 SCC 10 [*Earth Future*]

14. But persons outside of PEI could access the website, purchase tickets, and potentially win prize money. Altogether, the scheme bore substantial similarities to Ontario's Proposed Model.

> *Earth Future*, para. 2

15. The PEI Court of Appeal (affirmed by the Supreme Court of Canada) found that this scheme exceeded the territorial limitations of s. 207(1)(b). The Court said that for a lottery scheme to be lawful under s. 207(1)(b), "it must, be conducted and managed **in** the province" [emphasis in original]. However, the proposal to conduct the Earth Future lottery "**from** Prince Edward Island is not the same as conducting it **in** Prince Edward Island" [emphasis in original]. The Earth Future scheme was offside this requirement because it was "outside the territorial limitation imposed by s-s. 207(1)(b)." Parliament, the Court concluded, "did not intend [that] s. 207 lottery schemes could be conducted, managed, or operated outside the borders of the province running or licensing them except with the consent of another province."

> *Earth Future*, para. 10

16. The same restriction applies to lottery schemes under s. 207(1)(a), which must also be conducted and managed "in" the province. Because the Proposed Model will not be entirely "in" Ontario, it exceeds the territorial limitation in s. 207(1)(a).

iv. Earth Future is not distinguishable

17. Ontario attempts to distinguish *Earth Future* on the basis that it dealt with a charitable, and not provincial, lottery scheme. Ontario's argument is not persuasive. Parliament used the words "in that province" in s. 207(1)(a) (provincially conducted and managed lotteries) and 207(1)(b) (charitable lotteries). It must have meant the same thing in both instances. This is the principle that "within a statute, the same words and phrases have the same meaning." There is no suggestion Parliament meant anything different.

18. Certainly, courts have acknowledged that there may be differences between provincial and charitable lottery schemes, as Ontario argues. This is why courts have recognized, for example, that provinces may have more flexibility in meeting the "conduct and manage" standard found in both ss. 207(1)(a) and (b). That was the conclusion of the Superior Court in *Mohawk Council of Kahnawà:ke v. iGaming Ontario*. But the words "conduct and manage" ultimately mean the same thing—control—whether they apply to provincial or charitable lotteries. The same is true for the words "in that province."

> *R. v. Ali*, 2019 ONCA 1006, para. 68
>
> *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, 2024 ONSC 2726, para. 95 [*MCK v. Ontario*]

B. "In that province" does not mean "a real and substantial connection"

19. Recognizing that the Proposed Model would not be entirely "in" Ontario, Ontario argues that "in that province" means a "real and substantial connection." But Parliament would not have meant a "real and substantial connection" when it used the words "in that province" in 1969 (or in 1985 for that matter). First, that meaning would not be consistent with Parliament's intent, which was to give provinces a "local option" for gaming, or the

ordinary meaning of the words it used. But also, the "real and substantial connection" doctrine Ontario relies on did not then exist in Canadian law as it does today. The evolution of that doctrine into what exists today did not start in earnest until 1990, when the Supreme Court of Canada released its decision in *Morguard*. Parliament therefore would not have had that understanding of the extraterritorial reach of provincial legislation or regulation in its contemplation when it enacted these provisions, contrary to what Ontario argues.

> *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, para. 54 [*Unifund*]

20. In *Morguard*, the Supreme Court of Canada was confronted with modernizing the territorial limitation on provincial jurisdiction, i.e., that "a province has no legislative competence to legislate extraterritorially." The issue was whether a court in British Columbia should enforce the judgment of an Alberta court arising from a mortgage default in Alberta against the mortgagee, who was a resident of British Columbia. The common law rule at the time was that "recognition by the courts of one province of a personal judgment against a defendant given in another province is dependant on the defendant's presence at the time of the action in the province where the judgment was given."

> *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R 1077, p. 1092 [*Morguard*]

21. LaForest J. noted the obvious impracticality of this rule in 20th century Canada: no province, he said, could exist in "splendid isolation." LaForest J. therefore departed from the classical common law rule for the recognition of extraprovincial judgments to one focused on the connection between a province (and therefore its courts) and the cause of action: "[i]t seems to me that the approach of permitting suit where there is **a real and**

substantial connection with the action provides a reasonable balance between the rights of the parties" [emphasis added]. The Court developed those principles further in *Unifund*, which Ontario relies on in its factum.

Morguard, p. 1108

22. In *Unifund*, which the Supreme Court of Canada released in 2003, the Supreme Court considered whether the "real and substantial connection" principle should permit the extraprovincial application of provincial regulatory schemes. That is the principle Ontario relies on here. The Court noted that a real and substantial connection "sufficient to permit the court of a province to take jurisdiction over a dispute may not be sufficient for the law of that province to regulate the outcome." The question of whether a sufficient connection exists will depend on the relationship between the enacting province, the subject matter of the legislation, and the persons made subject to it. It found that the requisite connection did not exist in that case.

Unifund, paras. 63-67

23. Ontario's reliance on the "real and substantial connection" doctrine as somehow reflective or indicative of Parliament's intent when it enacted s. 207(1) is therefore misguided. The legal developments Ontario relies on came long after Parliament enacted the relevant *Criminal Code* provisions. Even assuming the words "in that province" today mean a "real and substantial connection," as Ontario claims, that interpretation would not have been in Parliament's contemplation when it enacted s. 207(1)(a). Rather, Parliament meant exactly what it said: "in" the province.

C. There is no reason to depart from the original meaning of "in that province"

24. The words in a statute may lend themselves to a contemporary interpretation that differs from how the legislature might have understood those words at the time of enactment, but that is not the case here. On the one hand, courts have recognized that legislatures "cannot engage in continuous monitoring and adaptation of legislation." To give effect to legislative intent, it may be appropriate on a large, liberal, and purposive interpretation, to give words in a statute a contemporary interpretation that differs from their original meaning. On the other hand, if courts adopted a "living tree" approach to interpreting legislation, "they would step outside the scope of their constitutional responsibilities and usurp the function of Parliament."

Sullivan, s. 6.01(1)-(2)

R. v. Stucky, 2009 ONCA 151, paras. 35-37

25. In this case, MCK submits that this tension resolves in favour of applying the original meaning of the words "in that province" for at least four reasons.

i. Departing from original meaning offends s. 207(1)(a)'s plain language

26. First, Ontario's proposed interpretation of "in that province" is inconsistent with the ordinary meaning of those words. The ordinary meaning of "in that province" is "in" the province, as the courts found in *Earth Future*. Something with a "real and substantial connection" to the province is not necessarily "in" the province. Ontario asks this Court to assume the role of legislator by interpreting "in that province" in a way that expands those words beyond their ordinary meaning to respond to changing circumstances. But, as Laskin C.J. wrote in *Ontario v. Peel* as he applied the original meaning rule:

> Courts cannot turn their role of construction into one of naked legislating, however well-disposed they may be to solutions proposed for problems which arise under deficient legislation. The proper recourse in such situations is to the legislature to repair the deficiencies in its statute.
>
> *Ontario (Attorney General) v. Peel (Regional Municipality)*, 1979 CanLII 48 (SCC), p. 1139 [*Ontario v. Peel*]

27. The decision of the Nova Scotia Court of Appeal in *R. v. Anand* is instructive. The appellant was ticketed for using his GPS device while driving on the basis that he contravened the prohibition in the *Motor Vehicles Act* against "the use of a cellular telephone or engaging in text messaging on a communications device" while driving. That prohibition was enacted in 2007. The Court of Appeal considered whether the Legislative Assembly would have understood "use of a cellular telephone" or "engaging in text messaging on a communications device" in 2007 to include using a GPS device. It concluded that the answer was no. It also found that use of a GPS device did not fit within the plain language of the relevant prohibition. It therefore quashed the appellant's ticket. The same reasoning applies here to the interpretation of "in that province."

> *Anand*, paras. 34-40, 66-68

ii. Departing from original meaning ignores Parliament's use of narrow words

28. Second, Parliament did not use words which are "intentionally broad." Courts have interpreted legislative use of "intentionally broad" words as evidence that the legislature intended for such words to be interpreted dynamically, rather than based on a strict adherence to their original meaning. As Beetz J. explained in *Lumberland*, "[t]he law commands the more easily, when, as is the case here, the letter of the law allows it to adapt to changes resulting from later inventions and improved techniques." But the words "in

that province" are not broad. They are narrow and focused, in line with Parliament's intent of offering provinces a "local option." The ordinary meaning of those words is the same today as it was in 1969 or 1985.

> *Her Majesty the Queen v. Walsh*, 2021 ONCA 43, para. 65
>
> *Lumberland Inc. v. Nineteen Hundred Tower Ltd.*, 1975 CanLII 196 (SCC) at p. 593

29. Those words can be contrasted with other words Parliament used in s. 207(1)(a) which may be "intentionally broad," such as "conduct and manage." Courts have found those words to be broad enough to capture means of controlling lottery schemes that may not have existed in 1969 or 1985, such as the online lottery scheme at issue in this case. That was the conclusion of the Superior Court in *MCK v. iGaming Ontario*. But the same is not true of "in that province." The meaning of those words are clear on their face (and confirmed by judicial interpretation). If Ontario wishes to expand the scope of s. 207(1)(a) to permit the Proposed Model, it needs to ask Parliament to amend the *Criminal Code*. It cannot turn to the courts to achieve its legislative objective.

> *MCK v. iGaming Ontario*, para. 95

iii. Departing from original meaning ignores Parliament's decision to not amend s. 207(1)(a)

30. Third, Parliament has never broadened the "in that province" language despite having multiple opportunities for doing so. Those include:

(a) In 1985, when Parliament amended the *Criminal Code* to authorize provincially conducted and managed lottery schemes through computers.

(b) In 2003, after the *Earth Future* decision was released (Canada participated as an intervener). It was up to Parliament to "repudiate" the *Earth Future* decision by amending the *Criminal Code* if it thought the courts were wrong. It did not.

(c) In 2020, after Parliament legalized single-sports betting.

Criminal Code, s. 207(4)(c)

R v Veen, 2022 ABCA 350, para. 63 [*Veen*]

Bill C-218, *An Act to amend the Criminal Code (sports betting)* (royal assent June 29, 2021)

31. If Parliament intended for "in that province" to mean a real and substantial connection, or to permit international liquidity pools, it would have made the requisite amendments at any one of the points in time above. The only conclusion to be drawn from Parliament's inaction is that it meant "in" the province when it wrote "in that province."

iv. Departing from original meaning produces interpretive absurdities

32. Fourth, interpreting "in that province" to mean a real and substantial connection would make those words redundant. If provincial laws apply to matters outside their boundaries so long as there is a real and substantial connection, there would have been no reason for Parliament to put words in s. 207(1)(a) to achieve that outcome. Those words would be redundant. Parliament cannot have meant to insert redundant words into s. 207(1)(a). If anything, Parliament's use of those words suggest it set out to derogate from the real and substantial connection principle by limiting provincial authority to "in the province" (assuming for the sake of argument Parliament contemplated the idea of a "real and substantial connection" when it enacted those words).

D. Section 207(1)(a) is not a living tree

33. Ontario's argument improperly treats s. 207(1)(a) as though it were a constitutional provision that should be interpreted as a "living tree." This is reflected in Ontario's arguments that "in that province" means a real and substantial connection and that this Court should disregard *Earth Future* because circumstances have changed since Parliament enacted s. 207(1)(a).

34. The living tree doctrine is a longstanding principle of constitutional interpretation. It "permits the interpretation of Canada's Constitution to change and evolve over time while still acknowledging its original intention" so that the Constitution can adapt to changing circumstances in Canadian society. There are countless examples of courts having done so. Put simply, "[u]nlike statutes, the meaning of a constitutional provision is 'capable of growth' and may be revisited on the basis of societal change."

> *Kirkpatrick*, para. 265
>
> *Grassroots v. His Majesty the King*, 2023 ONSC 3722, para. 33
>
> *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, paras. 73-75

35. But s. 207(1)(a) is ordinary legislation. And "statutes are not living trees." As Justice Brown explained in *Kirkpatrick*:

> In interpreting a statutory provision, the judicial role is to give effect to the intent of the legislature. It is a fundamental error to apply the "living tree" methodology to the interpretation of statutes. And it is no less an error to confuse statutory interpretation with development of the common law, which is judge-made and applies in the absence of legislative enactment.
>
> *Kirkpatrick*, para. 131
>
> *R. v. Jarvis*, 2019 SCC 10, paras. 94-96

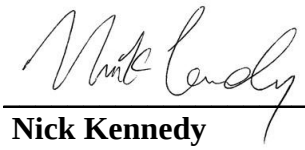
36. It is not open to courts to reinterpret legislation to adapt to changing times if the reinterpretation is inconsistent with Parliament's original intent or the plain meaning of the statutory provision, as is the case with Ontario's interpretation here. Again, if Ontario's view is that s. 207(1)(a) is deficient for addressing the policy challenges of internet gaming, "[t]he proper recourse in such situations is to the legislature to repair the deficiencies in its statute."

Ontario v. Peel, p. 1139

PART V - ANSWER REQUESTED

37. For the foregoing reasons, MCK respectfully submits that the answer to the question in this Reference is "no."

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of November, 2024.



Nick Kennedy
Olthuis Kleer Townshend LLP
Counsel for Mohawk Council of
Kahnawà:ke

CERTIFICATE

1. An order under Rule 61.09(2) is not required

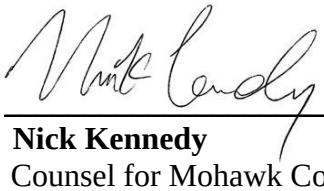
2. Mohawk Council of Kahnawà:ke estimates that 30 minutes will be required for Mohawk Council of Kahnawà:ke's argument.

3. Mohawk Council of Kahnawà:ke's factum complies with Rule 61.12(5.1) and the order of van Rensburg J.A. dated October 1, 2024.

4. The number of words contained in Parts I to V of Mohawk Council of Kahnawà:ke's factum is 3,883, including all footnotes.

5. I am satisfied as to the authenticity of every authority listed in Schedule A.

November 5, 2024



Nick Kennedy
Counsel for Mohawk Council of Kahnawà:ke

SCHEDULE "A"
LIST OF AUTHORITIES

JURISPRUDENCE

1. *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42
2. *Earth Future Lottery (P.E.I.) (Re)*, 2002 PESCAD 8, aff'd 2003 SCC 10
3. *Hills v. Canada (Attorney General)*, 1988 CanLII 67 (SCC)
4. *Grassroots v. His Majesty the King*, 2023 ONSC 3722
5. *Lumberland Inc. v. Nineteen Hundred Tower Ltd.*, 1975 CanLII 196 (SCC)
6. *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, 2024 ONSC 2726
7. *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R 1077
8. *Ontario (Attorney General) v. Peel (Regional Municipality)*, 1979 CanLII 48
9. *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32
10. *R. v. Ali*, 2019 ONCA 1006
11. *R. v. Anand*, 2020 NSCA 12
12. *R. v. Jarvis*, 2019 SCC 10
13. *R. v. Kirkpatrick*, 2022 SCC 33
14. *R. v. Stucky*, 2009 ONCA 151
15. *R. v Veen*, 2022 ABCA 350
16. *R. v. Walsh*, 2021 ONCA 43
17. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27
18. *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40

SECONDARY SOURCES

1. Ruth Sullivan, *The Construction of Statutes*, 7th ed (Ottawa: LexisNexis Canada, 2022)

SCHEDULE "B"
RELEVANT STATUTES

Criminal Code **(R.S.C., 1985, c. C-46)**

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, barters, 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.

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;

[...]

(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.

Criminal Law Amendment Act, 1968-1969

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

[....]

(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 (j) of subsection (1) or subsection (4) of section 179;

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

Court File No.: COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

FACTUM OF THE INTERVENER, MOHAWK COUNCIL OF KAHNAWÀ:KE

Olthuis, Kleer, Townshend LLP
250 University Avenue, 8th Floor
Toronto ON M5H 3E5

Nick Kennedy LSO No. 65949Q
Tel: (416) 981-9351 / Fax: (416) 981-9350
Email: nkennedy@oktlaw.com

Lawyers for the Intervener,
Mohawk Council of Kahnawà:ke