

**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 permitting international play in an online provincial lottery scheme**

---

**STATEMENT OF PARTICULARS**

---

February 29, 2024

**THE ATTORNEY GENERAL OF ONTARIO**

Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9  
Tel.: (416) 908-7465

Josh Hunter, LSO No. 49037M

[joshua.hunter@ontario.ca](mailto:joshua.hunter@ontario.ca)

Ananthan Sinnadurai, LSO No. 60614G

[ananthan.sinnadurai@ontario.ca](mailto:ananthan.sinnadurai@ontario.ca)

Hera Evans, LSO No. 66269Q

[hera.evans@ontario.ca](mailto:hera.evans@ontario.ca) /

Jennifer Boyczuk, LSO No. 70838L

[jennifer.boyczuk2@ontario.ca](mailto:jennifer.boyczuk2@ontario.ca)

Counsel for the Attorney General of Ontario

## STATEMENT OF PARTICULARS

The Attorney General of Ontario submits that permitting players located in Ontario to participate in online gaming and sports betting involving players located outside Canada is permitted by section 207(1)(a) of the *Criminal Code* for the following reasons:

1. Section 207(1)(a) of the *Code* provides that:

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 legislation of that province.

2. The reference in section 207(1)(a) to a lottery scheme being conducted “in that province” should be construed as having the same meaning as the reference to “in the Province” in sections 92(13) and (16) of the *Constitution Act, 1867*.

3. Accordingly, if a lottery scheme conducted and managed by a province has a real and substantial connection to that province, it is being conducted and managed “in that province” for the purposes of section 207(1)(a).

4. Permitting players participating in Ontario’s electronic gaming scheme to bet against or participate in the same betting pool as players located outside Canada participating in foreign gaming schemes would not change the fact that Ontario’s electronic gaming scheme has a real and substantial connection with Ontario and that the players in Ontario are participating in a lottery scheme located “in that province.”

5. Section 207(1)(a) restricts a province from conducting and managing a lottery scheme involving individuals in another province without that province's permission. It does not place restrictions on persons outside Canada.

6. The decision of the Prince Edward Island Supreme Court – Appeal Division in *Reference re Earth Future Lottery*, 2002 PESCAD 8, aff'd 2003 SCC 10, is distinguishable. That decision concerned section 207(1)(b) of the *Criminal Code*, which governs lottery schemes conducted and managed by a charitable or religious organization pursuant to a provincial license.

7. Placing limits on charitable and religious organizations' ability to conduct and manage lottery schemes involving players outside Canada under section 207(1)(b) does not raise the same concerns with cooperative federalism and the presumption of constitutionality as does limiting provinces' own ability to conduct and manage such schemes under section 207(1)(a). Although both provisions use the words "in the province," the reference in section 207(1)(a) should be given a broader definition to respect provincial autonomy and jurisdiction over gaming.

8. In any event, *Earth Future* concerned the ability of persons outside P.E.I. to participate in a provincially-licensed lottery scheme directly by purchasing lottery tickets from the charity's website. Under Ontario's proposed scheme, persons outside Canada would not directly participate in the lottery scheme conducted and managed by Ontario, which would remain limited to persons physically located in Ontario. Persons outside of Canada would instead participate indirectly, through foreign lottery schemes, by placing bets in games involving Ontario players or participating in the same betting pools as Ontario players.

9. In the alternative, if the Supreme Court’s decision to affirm *Earth Future* means *Earth Future* is binding on this Court’s interpretation of a different statutory provision, this Court may depart from that decision under the criteria set out in *Bedford v. Canada (AG)*, 2013 SCC 72 and *Carter v. Canada (AG)*, 2015 SCC 5 as (1) this case involves a new legal issue; and (2) there has been a change in the circumstances or evidence that “fundamentally shifts the parameters of the debate.”

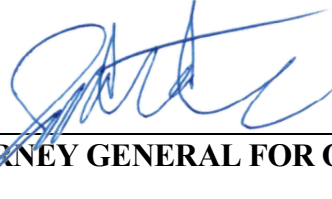
10. As discussed above, this case involves a legal issue – the proper interpretation of federal legislation which limits the actions of a provincial Crown – that was not at issue in *Earth Future*.

11. As well, the matrix of facts in this case will be fundamentally different than the facts that were at issue in *Earth Future*. Internet gaming was in its infancy when *Earth Future* was decided twenty-two years ago. The lottery scheme at issue involved selling lottery tickets through a charity’s website to persons located outside Canada.

12. Here, it is proposed that Ontario and its agents allow players located in Ontario to access online gaming platforms conducted and managed by Ontario and, through electronic means, to participate in peer to peer games and betting involving persons located outside Canada participating in foreign lottery schemes. For example, an Ontario player could play a late-night poker game with players in Asia who are just getting home from work or place a bet on the outcome of the Stanley Cup final as part of a betting pool that also includes hockey fans in the United States.

13. At all times, however, only persons located in Ontario would be directly participating in the lottery scheme conducted and managed by Ontario, even if the result is based in part on the actions of people located outside Canada participating in foreign lottery schemes.

DATED this 29<sup>th</sup> day of February, 2024



---

**ATTORNEY GENERAL FOR ONTARIO**

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

Lawyers for the Attorney General of 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 expanding iGaming to include players located outside Ontario**

**COURT OF APPEAL FOR ONTARIO**

Proceedings commenced at Toronto

**STATEMENT OF PARTICULARS**

**THE ATTORNEY GENERAL OF ONTARIO**

Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9  
Tel.: (416) 908-7465

Josh Hunter, LSO No. 49037M  
[joshua.hunter@ontario.ca](mailto:joshua.hunter@ontario.ca)

Ananthan Sinnadurai, LSO No. 60614G  
[ananthan.sinnadurai@ontario.ca](mailto:ananthan.sinnadurai@ontario.ca)

Hera Evans, LSO No. 66269Q  
[hera.evans@ontario.ca](mailto:hera.evans@ontario.ca) /

Jennifer Boyczuk, LSO No. 70838L  
[jennifer.boyczuk2@ontario.ca](mailto:jennifer.boyczuk2@ontario.ca)

Counsel for the Attorney General of Ontario