

APR 11 24 KA

Court File No. COA-24-0185

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

**FACTUM OF ATLANTIC LOTTERY CORPORATION,
BRITISH COLUMBIA LOTTERY CORPORATION, LOTTERIES AND GAMING
SASKATCHEWAN AND MANITOBA LIQUOR AND LOTTERIES CORPORATION
(Motion for Leave to Intervene)**

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Matthew Milne-Smith (LSO# 44266P)
Tel: 416.863.5595
Email: mmilne-smith@dwpv.com

Chanakya A. Sethi (LSO# 63492T)
Tel: 416.863.5516
Email: csethi@dwpv.com

Kristine Spence (LSO# 66099S)
Tel: 416.367.7573
Email: kspence@dwpv.com

Jacqueline Houston (LSO# 8599ON)
Tel: 416.367.7558
Email: jhouston@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

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

TO: **ATTORNEY GENERAL OF ONTARIO**
720 Bay Street
4th Floor
Toronto ON M7A 2S9

Joshua Hunter
Email: joshua.hunter@ontario.ca
Tel: 416.908.7465

Ananthan Sinnadurai
Email: ananthan.sinnadurai@ontario.ca
Tel: 416.910.8789

Hera Evans
Email: hera.evans@ontario.ca
Tel: 437.770.6626

Jennifer Boyczuk
Email: jennifer.boyczuk2@ontario.ca
Tel: 416.909.6673

Lawyers for the Respondent,
Attorney General of Ontario

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

**FACTUM OF ATLANTIC LOTTERY CORPORATION,
BRITISH COLUMBIA LOTTERY CORPORATION, LOTTERIES AND GAMING
SASKATCHEWAN AND MANITOBA LIQUOR AND LOTTERIES CORPORATION
(Motion for Leave to Intervene)**

TABLE OF CONTENTS

	Page No.
PART I – INTRODUCTION	1
PART II – SUMMARY OF FACTS	2
PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES	6
A. Issue: Should the Proposed Interveners be granted leave to intervene as added parties or, alternatively, as friends of the Court in this Reference?	6
B. The Test for Granting Leave to Intervene as an Added Party	6
C. The Proposed Interveners Should be Granted Leave to Intervene as Parties.....	8
(i) The Proposed Interveners Meet the Rule 13.01(1)(a) and (b) Criteria.....	8
(ii) There Will Be No Undue Delay or Prejudice From the Proposed Interveners’ Participation	9
(iii) This Court Should Exercise its Discretion to Grant Party Status.....	9
D. Alternatively, the Proposed Interveners Should be Granted Leave to Intervene as Friends of the Court.....	11
PART IV – ORDER REQUESTED	11
SCHEDULE “A” LIST OF AUTHORITIES.....	13
SCHEDULE “B” TEXT OF STATUTES, REGULATIONS & BY-LAWS	14

PART I – INTRODUCTION

1. The Proposed Interveners, Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and Gaming Saskatchewan and Manitoba Liquor and Lotteries Corporation are regional or provincial lottery corporations authorized by law to conduct and manage gambling and betting within their respective jurisdictions. They seek leave to intervene in this Reference as added parties or, alternatively, as friends of the Court.

2. The question presented in this Reference is whether online gambling conducted within Ontario in accordance with an exception to criminal liability in subsection 207(1)(a) of the *Criminal Code*¹ would remain legal if such gambling also involved players participating from outside of Canada.² Although Part VII of the *Criminal Code* broadly prohibits gambling and betting, subsection 207(1)(a) authorizes the provinces to conduct and manage gambling within a particular province.³ Each of the Proposed Interveners are corporations created by their respective provincial legislatures for that purpose. Thus, the Proposed Interveners derive their authority from the statutory provision at issue in this Reference.

3. This Court’s resolution of the question presented concerning the scope of subsection 207(1)(a) could have a significant impact on the Proposed Interveners’ operations in their own jurisdictions, for the reasons developed below. The Proposed Interveners will also afford the Court a distinct and helpful perspective on the issues in

¹ R.S.C., 1985, c. C-46 (the “*Criminal Code*”).

² AGO Notice of Reference, Exhibit 3 to Affidavit of William Hill affirmed April 8, 2024 (“**Hill Affidavit**”), Motion Record (“**MR**”), Tab 2(C), pp. 77-93.

³ Hill Affidavit, para. 6, MR Tab 2, p. 14.

this Reference. Finally, the Proposed Interveners' participation is timely and will not prejudice the proceedings. The Court should therefore grant the Proposed Interveners leave to intervene as parties or, in the alternative, friends of the Court.

PART II – SUMMARY OF FACTS

4. The Proposed Interveners are corporations invested by the governments of their respective jurisdictions with the exclusive authority to conduct and manage (among other things) online gambling.⁴ They each return 100% of their profits to the governments of their respective jurisdictions in order to fund health care, education, supports for First Nations and Indigenous groups, social services and other vital government programs.⁵

5. The Proposed Interveners' existence flows from the statutory provision at the heart of this Reference. Although the *Criminal Code* prohibits most forms of gambling and betting, subsection 207(1)(a) of the *Code* creates an exception whereby it is lawful 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

⁴ British Columbia Lottery Corporation, Lotteries and Gaming Saskatchewan and Manitoba Liquor and Lotteries Corporation conduct and manage online gambling within the respective jurisdictions of British Columbia, Saskatchewan and Manitoba. ALC was established pursuant to an agreement among provincial governments and provincial crown corporations in Atlantic Canada, and it provides government-regulated online gambling to Atlantic Canadians: see Hill Affidavit, paras. 7-10, 13, MR Tab 2, pp. 14-16.

⁵ Hill Affidavit, para. 30, MR Tab 2, p. 21.

province”.⁶ The Proposed Interveners operate pursuant to this statutory exception, and are the only lawful online gambling operators in their respective jurisdictions.⁷

6. The Proposed Interveners have been alarmed by the proliferation of illegal online gambling throughout Canada in recent years. Market data suggests that the illegal online gambling industry in Canada has grown from approximately \$1.34 billion in 2020 to over \$1.86 billion last year.⁸ At the same time, Canadians appear to be confused about their lawful online gambling options, particularly as many online gambling operators misrepresent themselves as providing lawful gambling services in Canada.⁹

7. Against that backdrop, the Proposed Interveners have created the Canadian Lottery Coalition. The Coalition is a consortium of provincial gambling corporations devoted to combatting the proliferation of illegal gambling websites in their respective jurisdictions.¹⁰ The Proposed Interveners’ membership in the Coalition, together with their substantial experience managing online gambling platforms, has equipped them with a detailed, evidence-based understanding of the scope of illegal gambling sites in Canada, and how this problem has affected the overall Canadian online gambling market.¹¹

8. The Government of Ontario’s recent decision to retain private operators to offer online gambling services has complicated the landscape for online gambling in Canada.

⁶ *Criminal Code*, s. 207(1)(a).

⁷ Hill Affidavit, paras. 1, 6-9, MR Tab 2, pp. 12-15.

⁸ Hill Affidavit, paras. 18, 24, MR Tab 2, pp. 17-19.

⁹ Hill Affidavit, para. 25, MR Tab 2, p. 19.

¹⁰ Hill Affidavit, para. 15, MR Tab 2, p. 16.

¹¹ Hill Affidavit, para. 17, MR Tab 2, pp. 16-17.

To become a registrant under Ontario's new regime, third party online gambling operators are required to enter into contracts with a new entity owned by the Alcohol and Gaming Commission of Ontario, known as iGaming Ontario. Existing operators who had been illegally marketing and offering online gambling services to Canadians prior to the introduction of the new regime were encouraged to become registrants. Since the launch of iGaming Ontario in April 2022, dozens of third-party operators have registered (the "**iGO Operators**").¹² Significantly, however, neither iGO Operators nor their affiliates can legally market or offer their gambling platforms outside Ontario, including in the jurisdictions where the Proposed Interveners operate.¹³

9. Despite the fact that it is illegal for iGO Operators to market or offer their services to Canadians outside Ontario, the Proposed Interveners have observed a marked proliferation of advertising and use of illegal online gambling in their jurisdictions since the launch of iGaming Ontario.¹⁴ And, alarmingly, data shows that the majority of illegal gambling revenues in Canada are generated by iGO Operators, who are authorized by iGaming Ontario to operate in Ontario, but lack any authorization whatsoever to operate outside Ontario, including in the jurisdictions of the Proposed Interveners.¹⁵

10. The Proposed Interveners have suffered direct harm as a result of illegal online gambling, including loss of significant revenues.¹⁶ In addition, the Proposed Interveners

¹² Hill Affidavit, paras. 20-21, MR Tab 2, pp. 17-18.

¹³ Hill Affidavit, para. 21, MR Tab 2, p. 18; AGCO Standards, ss. 1.01, 3.02, Exhibit 1 to the Hill Affidavit, MR Tab 2(A), pp. 27-71.

¹⁴ Hill Affidavit, para. 24, MR Tab 2, pp. 18-19.

¹⁵ Hill Affidavit, paras. 23-26, MR Tab 2, pp. 18-19.

¹⁶ Hill affidavit, para. 28, MR Tab 2, p. 20.

have incurred significant expense to combat illegal gambling within their jurisdictions, including by funding player education about the risks of illegal online gambling.¹⁷

11. Beyond these direct harms, the proliferation of illegal online gambling has also given rise to a number of pressing public policy concerns, including but not limited to: (i) the diversion of the Proposed Interveners' profits to illegitimate entities (which would otherwise be returned to the government for various social programs); (ii) increased money-laundering and other financial security risks; (iii) increased problem gambling as unregulated sites cannot be required to implement socially responsible mechanisms to reduce harm; and (iv) poor regulation or oversight within the appropriate Canadian jurisdiction.¹⁸

12. Now, Ontario wishes to expand the online gambling market even further by permitting players in Ontario participating in legal online gambling to participate in games involving players located outside of Canada.¹⁹ The question presented in this Reference asks whether Ontario's proposal is permissible under subsection 207(1)(a). The Proposed Interveners oppose such an interpretation to the extent that it would broaden subsection 207(1)(a) beyond its proper scope by allowing the Province of Ontario to conduct and manage online gambling outside of Ontario's borders.²⁰ The Proposed Interveners have grave concerns that this Reference could lead to the further proliferation of illegal online gambling across Canada, as iGO Operators expand their offerings that

¹⁷ Hill Affidavit, para. 29, MR Tab 2, p. 20.

¹⁸ Hill Affidavit, paras. 28, 30, MR Tab 2, pp. 20-21.

¹⁹ Hill Affidavit, para. 34, MR Tab 2, p. 22.

²⁰ Hill Affidavit, para. 36, MR Tab 2, p. 23.

are currently unviable without expanding the player pool to include players outside Ontario as proposed in this Reference.²¹

PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES

A. Issue: Should the Proposed Interveners be granted leave to intervene as added parties or, alternatively, as friends of the Court in this Reference?

13. This Court may grant a person leave to intervene, either as an added party or friend of the Court, pursuant to Rule 13.03(2).²² The Proposed Interveners meet the required test in either case. The proposed intervention is necessary to safeguard the Proposed Interveners' direct interests. The Proposed Interveners will advance arguments regarding section 207(1)(a) of the *Criminal Code* that are distinct from those of the Attorney General of Ontario.²³ And granting leave to the Proposed Interveners would not unduly delay or prejudice the rights of the existing parties to this Reference.

B. The Test for Granting Leave to Intervene as an Added Party

14. Pursuant to Rule 13.01(1), a person who is not a party to a proceeding can move for leave to intervene as an added party if they demonstrate: (a) an interest in the subject matter of the proceeding; (b) that they may be adversely affected by a judgment in the proceeding; or (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in

²¹ Hill Affidavit, paras. 35, 37, MR Tab 2, pp. 23-24.

²² *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 ("**Rules**") at Rule 13.03(2).

²³ Hill Affidavit para. 32, MR Tab 2, p. 21.

issue in the proceeding.²⁴ These criteria are disjunctive.²⁵ Thus, once a proposed intervener meets any one of these three criteria, the Court has the discretion to grant added party status unless the proposed intervention would unduly delay or prejudice the determination of the rights of the parties to the proceeding.²⁶

15. In exercising this discretion, courts will consider: (i) the nature of the case, granting more leeway where a public interest or public policy is involved; (ii) the issues that arise in the case; and (iii) the likelihood that the proposed intervener will be able to make a useful contribution to the resolution of the proceeding without injustice to the immediate parties.²⁷ Courts will also consider whether the proposed intervener's anticipated submissions are useful and different from those of the parties.²⁸

16. If granted added party status, the intervener will have the same rights as the original parties to the proceeding, including to adduce evidence, subject to the Court's

²⁴ Rules 13.01(1)(a), 13.01(1)(b) and 13.01(c).

²⁵ *Bennett Estate v. Iran (Islamic Republic of)*, [2013 ONCA 623](#) at para. [15](#), 117 O.R. (3d) 716 [**Bennett Estate**], Book of Authorities of the Proposed Interveners ("BOA"), Tab 3; *Baffinland Iron Mines v. Tower-EBC*, [2021 ONSC 5639](#) at para. [18](#), 21 C.L.R. (5th) 61 (Comm List), BOA Tab 2.

²⁶ Rule 13.01(2); *Bennett Estate* at paras. [15-16](#), BOA Tab 3; *R v. Thomson Newspapers Ltd.*, [1994 CarswellOnt 2716](#) at paras. 2-3 (ON CA), BOA Tab 17.

²⁷ *Bennett Estate* at para. [16](#), BOA Tab 3; *Jones v. Tsige*, [\(2011\), 106 O.R. \(3d\) 721](#) at para. [23](#) (ON CA) [**Jones**], BOA Tab 11; *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, [1990 CarswellOnt 393](#) at para. 10 (ON CA) [**Peel**], BOA Tab 15; *Bloorview Children's Hospital Foundation v. Bloorview MacMillan Centre*, [2001 CarswellOnt 1542](#) at para. 26 (ON SC) [**Bloorview**], BOA Tab 4.

²⁸ *2505243 Ontario Limited (ByPeterandPaul.com) v. Princes Gates Hotel Limited Partnership*, [2022 ONCA 700](#) at para. [21](#), 2022 A.C.W.S. 4082 [**ByPeterandPaul**], BOA Tab 1; *Groia v. Law Society of Upper Canada*, [2014 ONSC 6026](#) at para. [4](#), 245 A.C.W.S. (3d) 805 (Div Ct) [**Groia**], BOA Tab 9.

discretion to impose limitations or conditions on the scope of the intervention.²⁹

C. The Proposed Interveners Should be Granted Leave to Intervene as Parties

(i) The Proposed Interveners Meet the Rule 13.01(1)(a) and (b) Criteria

17. The Rule 13.01(1)(a) criterion is satisfied because the Reference will have a direct effect on the legal rights and financial interests of the Proposed Interveners.³⁰ Indeed, the scope of section 207(1)(a) of the *Criminal Code*—the statutory provision at the heart of his Reference—is a foundational question for each of the Proposed Interveners, given that they are all creatures of that provision.³¹ The potential expansion of illegal online gambling activity in the Proposed Interveners' jurisdictions by virtue of a broader interpretation of section 207(1)(a) directly affects their financial affairs, both in terms of lost revenues and expenses that the Proposed Interveners have already incurred and continue to incur to combat illegal online gambling.³²

18. Although satisfying Rule 13.01(1)(a) is sufficient, the Proposed Interveners also satisfy Rule 13.01(1)(b) because there is more than a reasonable possibility that they will be adversely affected by the outcome of this Reference in a more significant manner than any member of the general public.³³ The Proposed Interveners are part of a very limited

²⁹ *Canada Post Corp. v. Key Mail Canada Inc.*, [2005 CanLII 10048](#) at para. 10 (ON CA) [**Canada Post**], BOA Tab 5; *Ontario (Attorney General) v. Ballard Estate*, [1994 CarswellOnt 587](#) at para. 19 (Comm List), BOA Tab 14; Rule 13.01(2).

³⁰ *Keewatin v. Ontario (Natural Resources)*, [2012 ONCA 472](#) at paras. 19-20, 217 A.C.W.S. (3d) 555 [**Keewatin**], BOA Tab 12; *United Parcel Service Canada Ltd. v. Ontario (Highway Transport Board)*, [1989 CarswellOnt 487](#) at paras. 4, 7 (Div. Ct.), BOA Tab 17; *Vachliotis v. Exodus Link Corp.*, [1987 CarswellOnt 522](#) at paras. 6-8 (ON SC), BOA Tab 19; Hill Affidavit, para. 10, MR Tab 2, p. 15.

³¹ Hill Affidavit, para. 32, MR Tab 2, p. 21.

³² Hill Affidavit, paras. 30-31, MR Tab 2, p. 21.

³³ [Bloorview](#) at para. 20, BOA Tab 4; *John Doe v. Ontario (Information & Privacy Commissioner)*, [1991 CanLII 8373](#) at para. 8 (On. Div. Ct.), BOA Tab 10.

group of provincial lottery corporations whose legal authorization and ability to operate their business is directly controlled by section 207 of the *Criminal Code*. As noted above, the potential expansion of section 207 sought by the Attorney General of Ontario is likely to result in increased illegal online gambling activity in the Proposed Interveners' jurisdictions, which will adversely affect each of the Proposed Interveners.

(ii) There Will Be No Undue Delay or Prejudice From the Proposed Interveners' Participation

19. There will be no undue delay as the Reference is in its infancy, and this Court has already ordered a timetable that specifically contemplates intervener participation. The Proposed Interveners have adhered to that schedule. Nor will there be any prejudice from granting the Proposed Interveners party status. In particular, the Proposed Interveners do not seek to expand the issues beyond those already raised in the Reference.³⁴

(iii) This Court Should Exercise its Discretion to Grant Party Status

20. The courts benefit from considerable latitude in granting added party status in matters concerning public policy.³⁵ That discretion should be exercised in favour of granting leave.

21. This Reference implicates profound questions of public policy. The Court's resolution of the question presented is likely to have wide-reaching implications for the

³⁴ *Keewatin* at para. 19, BOA Tab 12; *Pickering (Town) v. Metropolitan Toronto (Municipality)*, [1995 CarswellOnt 972](#) at paras. 13-16 (On. Ct. Gen. Div.), BOA Tab 16.

³⁵ *ByPeterandPaul* at para. 19, BOA Tab 1; *Foxgate* at paras. 7, 39, BOA Tab 8; *Foster v. West*, [2021 ONCA 263](#) at para. 11, 332 A.C.W.S. (3d) 532, BOA Tab 7; *Jones* at para. 23, BOA Tab 11; *Peel* at para. 6, BOA Tab 15; *Childs v. Desormeaux*, 2003 CanLII 47870 at paras. 3, [10 \(ON CA\)](#), BOA Tab 6; [Bloorview](#) at para. 26, BOA Tab 4.

online gambling market across Canada, regardless of how the Court answers the question. Indeed, the Order in Council attached to the Notice of Reference expressly acknowledged the public interest in resolving the question presented, and Justice van Rensburg's Order directing the briefing schedule acknowledged the need for different perspectives by inviting applications for leave to intervene.³⁶

22. The Proposed Interveners will make distinct and useful contributions in this Reference, as demonstrated by their unique experience and expertise.³⁷ The Proposed Interveners are repeat participants in other important judicial decisions affecting the delivery of provincial lottery schemes across Canada.³⁸ Their submissions here will also be different from those of the Attorney General of Ontario, both because the Attorney General's position appears to be in conflict with the position of the Proposed Interveners³⁹ and because the Proposed Interveners will make distinct submissions on how the interpretation of section 207 must consider the context of Ontario-registered iGO Operators' illegal conduct in the Proposed Interveners' jurisdictions.

³⁶ Executive Council of Ontario Order in Council dated February 2, 2024, enclosure to Notice of Reference of the Attorney General of Ontario, Exhibit 3 to the Hill Affidavit, MR Tab 2(C), pp. 85-87; Order of the Honourable Justice van Rensburg dated March 1, 2024, Exhibit 4 to the Hill Affidavit, MR Tab 2(D), pp. 96-98.

³⁷ *Jones* at para. 25, BOA Tab 11.

³⁸ Hill Affidavit, para. 32, MR Tab 2, p. 21.

³⁹ The fact that the Proposed Interveners are not indifferent to the outcome of this Reference is not a reason to deny participation rights. To the contrary, courts in this province have recognized that parties who may advocate a particular interpretation of the law can make an important contributions that are of assistance to the court. See, e.g., *Oakwell Engineering Ltd. v. EnerNorth Industries Inc.*, [2006 CanLII 60327 \(ON CA\)](#) at para. 9, BOA Tab 13; *Groia* at para. 4, BOA Tab 9.

D. Alternatively, the Proposed Interveners Should be Granted Leave to Intervene as Friends of the Court

23. If the Court concludes that the Proposed Interveners do not satisfy Rule 13.01, they respectfully request leave to intervene as friends of the Court under Rule 13.02 in the alternative. In evaluating this request, the Court should consider the same factors canvassed above.⁴⁰ Although Rule 13.02 contemplates that a friend-of-the-court intervention will be conducted by way of argument, the Court may impose terms and enhance these rights beyond argument, including by allowing the intervener to adduce evidence.⁴¹ The Proposed Interveners submit that the Court should do so here.

PART IV – ORDER REQUESTED

24. The Proposed Interveners respectfully request that they be granted full party status in the Reference with all of the rights and obligations of a party. Alternatively, the Proposed Interveners request that they be granted leave to intervene as friends of the Court with enhanced rights to file a factum, adduce evidence and make oral submissions in respect of the Reference. The Proposed Interveners request that any order provide that no costs shall be ordered for or against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April, 2024.



Davies Ward Phillips & Vineberg LLP

⁴⁰ See paras. 15, 20-22, *supra*.

⁴¹ *Canada Post* at para. [12](#), BOA Tab 5.

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Matthew Milne-Smith (LSO# 44266P)
Tel: 416.863.5595
Email: mmilne-smith@dwpv.com

Chanakya A. Sethi (LSO# 63492T)
Tel: 416.863.5516
Email: csethi@dwpv.com

Kristine Spence (LSO# 66099S)
Tel: 416.367.7573
Email: kspence@dwpv.com

Jacqueline Houston (LSO# 8599ON)
Tel: 416.367.7558
Email: jhouston@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

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

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *2505243 Ontario Limited (ByPeterandPaul.com) v. Princes Gates Hotel Limited Partnership*, [2022 ONCA 700](#), 2022 A.C.W.S. 4082
2. *Baffinland Iron Mines v. Tower-EBC*, [2021 ONSC 5639](#), 21 C.L.R. (5th) 61
3. *Bennett Estate v. Iran (Islamic Republic of)*, [2013 ONCA 623](#), 117 O.R. (3d) 716
4. *Bloorview Children's Hospital Foundation v. Bloorview MacMillan Centre*, [2001 CarswellOnt 1542](#)
5. *Canada Post Corp. v. Key Mail Canada Inc.*, [2005 CanLII 10048 \(ON CA\)](#)
6. *Childs v. Desormeaux*, [2003 CanLII 47870 \(ON CA\)](#)
7. *Foster v. West*, [2021 ONCA 263](#), 332 A.C.W.S. (3d) 532
8. *Foxgate Developments Inc. v. Jane Doe*, [2021 ONCA 745](#), 159 O.R. (3d) 274
9. *Groia v. Law Society of Upper Canada*, [2014 ONSC 6026](#), 245 A.C.W.S. (3d) 805
10. *John Doe v. Ontario (Information & Privacy Commissioner)*, [1991 CanLII 8373 \(On. Div. Ct.\)](#)
11. *Jones v. Tsige*, [2011 CanLII 99894 \(ON CA\)](#)
12. *Keewatin v. Ontario (Natural Resources)*, [2012 ONCA 472](#), 217 A.C.W.S. (3d) 555
13. *Oakwell Engineering Ltd. v. EnerNorth Industries Inc.*, [2006 CanLII 60327 \(ON CA\)](#)
14. *Ontario (Attorney General) v. Ballard Estate*, [1994 CarswellOnt 587 \(Comm. List\)](#)
15. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, [1990 CarswellOnt 393 \(ON CA\)](#)
16. *Pickering (Town) v. Metropolitan Toronto (Municipality)*, [1995 CarswellOnt 972 \(On. Ct. Gen. Div.\)](#)
17. *R v. Thomson Newspapers Ltd.*, [1994 CarswellOnt 2716 \(ON CA\)](#)
18. *United Parcel Service Canada Ltd. v. Ontario (Highway Transport Board)*, [1989 CarswellOnt 487 \(On. Div. Ct.\)](#)
19. *Vachliotis v. Exodus Link Corp.*, [1987 CarswellOnt 522 \(ON SC\)](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. ***Criminal Code, RSC, 1985, c C-46***

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; ...

2. **Rules of Civil Procedure, RRO 1990, Reg 194**

RULE 13 INTERVENTION

Leave to Intervene as Added Party

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

Leave to Intervene in Divisional Court or Court of Appeal

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2; O. Reg. 82/17, s. 16.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

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-24-0185

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

MOVING PARTY'S FACTUM

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Matthew Milne-Smith (LSO# 44266P)

Email: mmilne-smith@dwpv.com

Tel: 416.863.5595

Chanakya A. Sethi (LSO# 63492T)

Email: csethi@dwpv.com

Tel: 416.863.5516

Kristine Spence (LSO# 66099S)

Email: kspence@dwpv.com

Tel: 416.367.7573

Jacqueline Houston (LSO# 8599ON)

Email: jhouston@dwpv.com

Tel: 416.367.7558

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