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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

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

NOTICE OF MOTION

The Proposed Interveners, Atlantic Lottery Corporation (“**ALC**”), British Columbia Lottery Corporation (“**BCLC**”), Lotteries and Gaming Saskatchewan (“**LGS**”) and Manitoba Liquor and Lotteries Corporation (“**MBLL**”) will make a Motion to the Court on May 1, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard, at the courthouse, Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard in person.

THE MOTION IS FOR:

- (a) an order granting ALC, BCLC, LGS and MBLL leave to intervene in this matter as added parties or alternatively, as friends of the Court, pursuant to rule 13.03(2) of the *Rules of Civil Procedure* and in accordance with the Order of the Honourable Justice van Rensburg dated March 1, 2024 on the following terms:
 - (i) the Proposed Interveners may file a factum in the matter;

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- (ii) the Proposed Interveners shall have, collectively, one hour of oral submissions to argue the question in this Reference;
 - (iii) the Affidavit of William Hill filed in this Motion shall be included in the Court's record, which the Proposed Interveners may rely on for the merits hearing;
 - (iv) the Proposed Interveners may adduce further evidence and rely on it for the merits hearing, subject to any direction this Court may make in respect of scheduling;
 - (v) no costs shall be awarded either for or against the Proposed Interveners in respect of this Motion or this matter; and
- (b) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) 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. The Proposed Interveners 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.

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- (b) Although Part VII of the *Criminal Code*, R.S.C., 1985, c. C-46 broadly prohibits most forms of gaming and betting, provincial lottery corporations are permitted on behalf of the provinces to conduct and manage lottery schemes, including online gambling, within the relevant province pursuant to an exception under subsection 207(1)(a) of the *Criminal Code*.
- (c) ALC has the sole legal authority to conduct and manage, and/or operate online gambling, as agent for provincial governments or provincial crown corporations in Atlantic Canada. Similarly, each of BCLC, LGS and MBLL has the sole legal authority to conduct online gambling in British Columbia, Saskatchewan and Manitoba, respectively.
- (d) Each of ALC, BCLC, LGS and MBLL offers lawful online gambling platforms to residents of their respective jurisdictions.
- (e) ALC, BCLC, LGS and MBLL are members of the Canadian Lottery Coalition (the “**Coalition**”). The Coalition seeks to combat illegal online gambling being advertised and offered to residents in each member’s jurisdiction by private companies who lack any lawful basis to offer their services (“**Illegal Operators**”) and who do so contrary to various prohibitions on gambling in the *Code*.
- (f) In April 2022, the Government of Ontario opened its online gaming market to certain private companies, including foreign entities who market their gaming platforms in international markets (the “**iGO Operators**”). No other

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province in Canada has opened its online gaming market to private companies in this way.

- (g) iGO Operators can operate legally in Ontario if they register with the Alcohol and Gaming Commission of Ontario (“**AGCO**”) and enter into operating agreements with iGaming Ontario, a wholly-owned subsidiary of the AGCO charged with conducting and managing certain online gaming in Ontario. iGO Operators must abide by the AGCO’s standards and provincial regulations as well as any terms and conditions in their operating agreements. The actions of authorized iGO Operators in Ontario are thus regulated by the AGCO.
- (h) Significantly, iGO Operators, including their affiliates, have no lawful basis to market or offer their gaming platforms outside Ontario, including in the jurisdictions of ALC, BCLC, LGS and MBLL. AGCO’s regulatory standards for iGO Operators recognize as much. They admonish iGO Operators that “[g]ames on gaming sites *shall be provided only within Ontario*, unless they are conducted in conjunction with the government of another province” (emphasis added).
- (i) Notwithstanding the clear prohibitions in the *Criminal Code* and AGCO’s own regulatory standards, a number of iGO Operators or their affiliates are illegally advertising and offering online gambling to Canadians outside of Ontario. Some of these iGO Operators are also redirecting Canadians

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outside Ontario who visit the iGO Operator's Ontario website to illegal mirror websites that offer the same online gaming services but are not regulated by the AGCO or any other Canadian gaming regulatory authority.

- (j) Illegal online gambling gives rise to a number of pressing public policy concerns, including: (i) the diversion of significant amounts of money, which would otherwise be used to fund important government programs, from ALC, BCLC, LGS, MBLL and other provincial lottery corporations to private companies, including foreign entities; (ii) money laundering and other financial security risks; (iii) an increased risk of problem gambling, because Illegal Operators do not consistently implement protective measures to ensure players enjoy online gaming products and services responsibly; and (iv) a lack of regulation or oversight within the appropriate Canadian jurisdiction and associated enforcement difficulties.

- (k) ALC, BCLC, LGS and MBLL have observed a marked proliferation of advertising and use of illegal online gambling in provinces other than Ontario alongside the launch of the Ontario iGaming market. That proliferation has included the unlawful presence of iGO Operators or their affiliates in the jurisdictions of ALC, BCLC, LGS and MBLL, as noted above. The iGO Operators or their affiliates who operate illegally outside Ontario comprise the majority of illegal online gambling revenues in the provinces in which ALC, BCLC, LGS and MBLL operate.

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- (l) The AGCO has taken the position that it does not have the jurisdiction to regulate the illegal activities of iGO Operators or their affiliates outside of Ontario, even if those iGO Operators are licensed in Ontario. The AGCO has also stated that it will not be taking action against such offending iGO Operators.

- (m) Ontario now wishes to open the iGaming market further by permitting players participating in legal online gambling to participate in games involving players located outside of Canada. ALC, BCLC, LGS and MBLL have grave concerns that this expansion of the iGaming market will further enable iGO Operators or their affiliates to expand their illegal online gambling services to individuals outside of Ontario, resulting in harm to those individuals, to ALC, BCLC, LGS and MBLL, and to Canadians living in the Atlantic provinces, British Columbia, Saskatchewan, Manitoba and elsewhere in Canada.

- (n) This Reference raises issues of national importance: it concerns the legality of certain popular elements of online gambling, and whether online gambling within Canada can legally include international participants. The outcome of the Reference could have the effect of substantially increasing illegal gambling that is currently occurring in Canadian provinces outside of Ontario.

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- (o) These issues are of great public importance given the prevalence of illegal online gambling in Canada, and the actions that iGO Operators or their affiliates have had on Canadians both within Ontario and elsewhere in Canada. The public importance of the issues raised in this Reference militates in favour of granting leave to the Proposed Interveners to intervene in this matter.
- (p) The nature of this Reference and the issues to be resolved concern the operation of online gambling operators both within and outside Ontario, including jurisdictions in which the Proposed Interveners operate. ALC, BCLC, LGS and MBLL have real, substantial and demonstrated interests in the subject matter at issue in this Reference and the outcome this Reference will have in their respective jurisdictions, which could adversely affect them.
- (q) Given their experience as provincial lottery corporations, their expertise in administering legal online gambling platforms, and their research and efforts in combatting illegal online gambling throughout Canada as part of the Coalition, the Proposed Interveners will make useful and unique contributions to the Court in this matter.
- (r) The Proposed Interveners' submissions will be focused on opposing a broad interpretation of section 207 of the *Code* that expands a province's authority to conduct and manage "in that province". The Proposed

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Interveners have important and unique perspectives on the issues raised in this Reference that are distinct from those offered by the Attorney General of Ontario.

- (s) The proposed intervention will not cause injustice or prejudice to the parties. There is no prospect of delay as a timetable has already been set by the Court and the Proposed Intervention's motion adheres to that timetable. If granted leave, the Proposed Interveners will comply with whatever limits this Court deems appropriate regarding the materials to be submitted and the duration of oral submissions.
- (t) The Proposed Interveners bring this Motion in good faith.
- (u) The Order of the Honourable Justice van Rensburg dated March 1, 2024.
- (v) Rules 1.04, 13 and 37 of the *Rules of Civil Procedure*.
- (w) Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of William Hill, affirmed April 8, 2024;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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April 8, 2024

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PROCEEDING COMMENCED AT
TORONTO

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