

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

FACTUM OF THE INTERVENOR, THE ATTORNEY GENERAL OF BRITISH COLUMBIA (MOTION FOR LEAVE TO FILE A RECORD)

RETURNABLE MAY 1, 2024

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PART I – OVERVIEW

1. The Attorney General of British Columbia (“AGBC”) seeks leave to supplement the record before the Court in these proceedings with an affidavit containing the following:

- (a) A description of British Columbia’s lottery scheme via the BC Lottery Corporation (under Part 2 of the [*Gaming Control Act, SBC 2002, c 14*](#)) including a description of the individual and social harms associated with gaming and the “responsible gaming” initiatives that have been implemented to mitigate those harms in British Columbia;

- (b) An identification of some of the challenges for British Columbia that have arisen since Ontario’s introduction of the iGaming model, including:
 - i. gambling advertising directed at British Columbia’s residents, which directs them to international gaming sites, including sites run by internationally based “Operators” licensed by Ontario;

 - ii. the proliferation of gambling advertising by Ontario-licensed Operators, which is viewed by British Columbia’s residents;

 - iii. British Columbia’s residents are often directed to international gaming sites by Ontario-licensed Operators directly from iGaming Ontario’s websites;

 - iv. Ontario-licensed Operators’ international affiliate sites do not exclude British Columbians, including those under the legal gambling age in British Columbia, from gambling on their sites;

 - v. Ontario-licensed Operators’ international affiliate sites are not regulated by Ontario or British Columbia; and

- vi. Ontario-licensed Operators' international affiliate sites often do not connect British Columbians with the supports offered by British Columbia to its residents, which potentially exacerbates the harms associated with gambling.

(the "Proposed Evidence")¹

2. The Proposed Evidence ought to be received by the Court and form part of the record as it is relevant to the reference question that has been posed by the Government of Ontario in these proceedings and its probative value outweighs any expense and delay that may result from calling it.

PART II - FACTS

A. Background to this Motion

3. On February 2, 2024, the Government of Ontario, by Order in Council 210/2024, referred to the Court of Appeal the following question: "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 [to the Order-in-Council]? If not, to what extent?" (the "Reference Question").

4. The Schedule to the Order-in-Council describes a scheme in which those physically located in Ontario would be able to (a) log on to a website or gaming application that is run by a private sector "Operator" authorized by certain Ontario regulatory bodies (an "iGO Site"); and then (b) "participate in peer-to-peer games, including games of

¹ Affidavit #1 of Rebecca Hill dated April 8, 2024, at para. 4.

chance and mixed chance and skill played for money, and sports betting, involving players outside of Canada.”

5. While the scheme described in the Schedule does not make this entirely clear, the “players outside of Canada” with which Ontarians would be permitted to gamble, would appear to be drawn from gaming applications or websites that are maintained by authorized Operators, but which would not be subject to Ontario’s regulatory oversight. Rather, “[t]hose sites, along with the players using them, would be subject to the relevant jurisdiction’s legal and regulatory regime.”

6. On March 1, 2024, Justice van Rensburg made a number of procedural orders regarding the instant proceedings, including ordering that (a) any Attorney General wishing to participate in this reference may intervene as of right by serving a notice of their intention to participate, including up to one page setting out their proposed position, on the Attorney General of Ontario and file the notice with the Court by March 15, 2024; and (b) any Attorney General wishing to lead evidence serve a motion for leave to lead evidence on the Attorney General of Ontario and file the motion with the Court by April 8, 2024.

7. In accordance with Justice van Rensburg’s order, on March 15, 2024, the AGBC served and filed a notice of intention to intervene and a statement of position. The AGBC’s statement of position in respect of the Reference Question was that “[t]he participation of international players on iGaming Ontario’s private Operators’ online gaming platforms, may, based on the limited information made available in the Schedule

to Order-in-Council 210/2024, be inconsistent with s. 207(1) of the [Criminal Code, R.S.C. 1985, c. C-46](#).²

8. The AGBC now seeks leave of the Court to lead affidavit evidence in the instant proceedings.

B. The AGBC's Proposed Evidence

9. If leave to do so is granted, the AGBC intends to introduce the Proposed Evidence (described above) into the record that will be before the division of the Court that will hear and decide the Reference.

10. The AGBC intends to introduce the Proposed Evidence through an affidavit sworn by Sam MacLeod, Assistant Deputy Minister and General Manager of the Ministry of Public Safety and Solicitor General's Gaming Policy and Enforcement Branch. In this position, to which he was appointed in 2018, Mr. MacLeod is responsible for the overall integrity of gambling in the province of British Columbia.³

PART III – ISSUES

11. The sole issue before the Court on this motion is whether the AGBC should be allowed to file the Proposed Evidence as part of the record in these proceedings. The AGBC submits that it should be granted leave to do so as the evidence is relevant to the

² Affidavit #1 of Rebecca Hill dated April 8, 2024, at para. 2.

³ Affidavit #1 of Rebecca Hill dated April 8, 2024, at para. 5.

Reference Question and its probative value outweighs any expense and delay that may result from calling it.

PART IV – LAW AND ARGUMENT

C. The Unusual Nature of Reference Proceedings

12. Of singular importance to this motion is the fact that it is brought in the context of a reference. A reference is a process by which a government is able to receive an advisory opinion from the Court on a question of law outside the framework of adversarial litigation: *Reference re Secession of Quebec*, [\[1998\] 2 S.C.R. 217](#), at para. 25.

13. A reference is neither a criminal proceeding in which the rights of an accused are paramount; nor is it a civil proceeding engaging the Court in a disposition of rights: *Reference re: Criminal Code, s. 293*, [2010 BCSC 1351](#) at paras. 63-64. As such, references are wider in scope than ordinary litigation. They generally do not rest on a precise factual base, and the legal issues are far more open-ended: *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ABCA 361](#) at para. 8.

14. As there are no immediate parties in a reference, the court is not generally tasked with determining any “adjudicative facts” (i.e. those that establish “who did what, where, when, how and with what motive or intent”). Rather, all the evidence at issue is in the nature of “legislative fact” evidence, which establishes the purpose and background of the legislation at issue, including its social, economic and cultural context. Such facts are of a more general nature and are subject to less stringent admissibility requirements:

Reference re: Section 293 of the Criminal Code of Canada, [2011 BCSC 1588](#) at para. 60.⁴

15. The questions that are posed by government in a reference approximate the role of a “pleading” in traditional adjudicative proceedings. Those questions invite the Court to consider any legal argument to which they logically relate: *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ABCA 361](#) at para. 8.

D. Establishing an Evidentiary Record in an Appellate-level Reference

16. The unusual nature of reference proceedings is reflected in the rules that govern the establishment of the evidentiary record before the court. Those rules differ markedly from the traditional rules governing the establishment of the record in an appellate proceeding.

17. It is well-established that, subject to the discretion of a panel to accept fresh evidence under very limited circumstances, proceedings in an appellate court generally involve the review of a trial judgment based on the record of evidence that was adduced at trial as well as the trial court’s reasons: see, e.g. *Wasylyk v. Simcoe (County)*, [2023 ONCA 473](#) at para. 8.

18. When a reference is launched directly in an appellate court, there has been no trial and thus no trial record from which to work. The record to be considered must be created

⁴ While the distinction between adjudicative and legislative fact evidence in reference proceedings has been articulated in constitutional references, it ought to apply also to the instant reference, which involves the interpretation and application of provisions in the *Criminal Code* to a proposed provincial lottery scheme.

at the appeal level. In considering what materials to include in the record, appellate courts take a liberal approach and refrain from limiting the scope of the legal arguments that may be made in relation to those questions by artificially curtailing the factual record: *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ABCA 361](#) at para. 8.

19. When an appellate court is considering the scope of the record that ought to be permitted in a reference, the basic principle to be applied is that the proposed evidence must be relevant and material to the issues raised by the reference questions. It must also meet the test of proportionality, in that the probative value of the evidence must outweigh any expense and delay that may result from calling it: *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ABCA 361](#) at para. 10.

E. The Proposed Evidence ought to be Received and included in the Record

20. The AGBC's Proposed Evidence ought to be included in the record for the instant proceedings as it is relevant to the Reference Question and its probative value outweighs any expense and delay that may result from calling it.

21. In answering the Reference Question, this Court must determine whether the provincial lottery scheme described in the Schedule to the Order-In-Council that initiated the proceedings is consistent with the *Criminal Code*.

22. Section 206 of the *Criminal Code* generally prohibits gaming and betting in Canada, while s. 207 allows some tightly circumscribed exceptions to that broad

prohibition: see *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#) at paras. 7, 12, aff'd [2003 SCC 10](#) ("*Earth Future*").

23. One of those exceptions, under s. 207(a) of the *Criminal Code*, provides that 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 province."

24. The instant proceedings will thus require the Court to determine, among other issues, whether the proposed provincial lottery scheme described in the Schedule is one that would be "conduct[ed] and manag[ed]" by the government of Ontario "in that province."

25. In *Earth Future*, the Court of Appeal held (at para. 12) that "Parliament's purpose in enacting s. 207 was to create a narrow exception to s. 206 legalizing certain provincially run or licensed lottery schemes. It did not intend 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 [emphasis added]."

26. In *R v. Andriopoulos*, [1994 CanLII 147](#) (ONCA) this Court held that in carving out an exception for provincially conducted and managed lottery schemes, Parliament's "clear intent is not to condone gaming but to decriminalize it in circumstances where regulations will minimize the potential for public harm."

27. The AGBC's Proposed Evidence suggests that the scheme described by Ontario in the Schedule may run counter to Parliament's intent in enacting s. 207 of the *Criminal Code*. This is so as the proposed scheme would appear to operate *within* British Columbia's borders without British Columbia's consent, thereby evading the measures that British Columbia has put in place to minimize the potential for public harm associated with gambling.

28. More specifically, the Proposed Evidence suggests that (a) British Columbians are presently being invited (through extensive advertising) and allowed by Ontario's current Operators to gamble on their affiliated "international sites"; (b) these international sites often do not easily connect British Columbians with the supports offered by British Columbia to its residents to mitigate the harms associated with gambling (while it is possible to find the relevant information, accessing it often requires users to search through multiple pages and access third-party sites); and (c) some of the "players outside of Canada" with which Ontarians will be gambling under the proposed scheme, may in fact be British Columbians.

29. At this stage, the AGBC simply asks that this Court grant leave to file the Proposed Evidence, recognizing that the division hearing the merits will have broad discretion as to the admissibility and weight to be accorded to its evidence.

30. There is therefore no prejudice to the Attorney General of Ontario in granting the motion, while there would be considerable prejudice in denying it if the evidence would have been considered relevant based on the view of the division of the Court that hears the Reference on the merits.

31. In addition to being relevant and material to the legal issues raised by the Reference Question, the addition of the Proposed Evidence to the record before the Court ought not to result in any delay or additional expense to the Attorney General of Ontario (or any other party). As such, the Proposed Evidence meets the test of proportionality, in that its probative value outweighs any expense and delay that may result from calling it.

PART V – ANSWER REQUESTED

32. The AGBC therefore respectfully asks this Court for an order granting her leave to file the Proposed Evidence. The AGBC estimates that it will require 20 minutes of oral argument on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

April 24, 2024



Robert Danay/Keith Hogg
Counsel for the Attorney General of
British Columbia

SCHEDULE “A” - LIST OF AUTHORITIES

	Authority	Para(s)
1.	<i>Earth Future Lottery (P.E.I.) (Re)</i> , 2002 PESCAD 8 at paras. 7, 12, aff'd 2003 SCC 10	22
2.	<i>Reference re: Criminal Code</i> , s. 293, 2010 BCSC 1351	12, 14
3.	<i>Reference re Greenhouse Gas Pollution Pricing Act</i> , 2019 ABCA 361	13, 15, 18, 19
4.	<i>Reference re Secession of Quebec</i> , [1998] 2 S.C.R. 217	13
5.	<i>R v. Andriopoulos</i> , 1994 CanLII 147 (ONCA)	26
6.	<i>Wasylyk v. Simcoe (County)</i> , 2023 ONCA 473	17

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. Criminal Code, RSC, 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, 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.

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;

(g) for any person, for the purpose of a lottery scheme that is lawful in a province under any of paragraphs (a) to (f), to do anything in the province, in accordance with the applicable law or licence, that is required for the conduct, management or operation of the lottery scheme or for the person to participate in the scheme; and

(h) for any person to make or print anywhere in Canada or to cause to be made or printed anywhere in Canada anything relating to gaming and betting that is to be used in a place where it is or would, if certain conditions provided by law are met, be lawful to use such a thing, or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or to accept for carriage or transport or convey any such thing where the destination thereof is such a place.

2. Gaming Control Act, SBC 2002, c 14 – Part 2

Part 2 — British Columbia Lottery Corporation

Division 1 — Corporation Continued

Corporation continued

2 (1)The British Columbia Lottery Corporation is continued as a corporation consisting of not more than 11 directors, each appointed by the Lieutenant Governor in Council.

(2)The Lieutenant Governor in Council may appoint the directors of the lottery corporation and set the remuneration and other terms of appointment of each member.

(3)Despite its incorporation under the *Company Act*, the lottery corporation is a corporation without share capital.

(4)The *Business Corporations Act* does not apply to the lottery corporation but the Lieutenant Governor in Council may declare that all or part of the *Business Corporations Act* does apply.

(5)The Lieutenant Governor in Council may appoint one of the directors as chair of the lottery corporation.

(6)The directors of the lottery corporation must be paid for reasonable travelling and incidental expenses incurred by them in the performance of their duties and, in addition, may be paid remuneration set by the Lieutenant Governor in Council for services as a director or chair.

Corporation an agent of the government

3 (1)The lottery corporation is, for all purposes, an agent of the government.

(2)The Minister of Finance is the fiscal agent of the lottery corporation.

(3)The lottery corporation may acquire and dispose of real and personal property.

Management

4 (1)The directors must manage the affairs of the lottery corporation and may

- (a)exercise the powers conferred on them under this Act,
- (b)exercise the powers of the lottery corporation on behalf of the lottery corporation, and
- (c)delegate the exercise or performance of any power or duty conferred or imposed on them to a person employed by the lottery corporation.

(2)A resolution in writing, signed by all the directors, is as valid as if it had been passed at a meeting of directors properly called and constituted.

Officers and employees

5 (1)The [Public Service Act](#) does not apply to the officers and employees of the lottery corporation.

(2)The Lieutenant Governor in Council may declare that the [Public Sector Pension Plans Act](#) applies to the lottery corporation and its employees.

(3)The Lieutenant Governor in Council may declare that the [Public Service Benefit Plan Act](#) applies to the lottery corporation and its employees.

Minister's general policy directions to the lottery corporation

6 (1)The minister may issue written directives to the lottery corporation on matters of general policy.

(2)The lottery corporation must comply with the directives.

(3)The general manager must publish the directives of the minister in the prescribed manner and make them available for public inspection at the offices of the branch during normal office hours.

Division 2 — Provincial Gaming

Lottery corporation's mandate

7 (1)The lottery corporation is responsible for the conduct and management of gaming on behalf of the government and, without limiting the generality of the foregoing,

- (a)may develop, undertake, organize, conduct, manage and operate provincial gaming on behalf of the government, either alone or in conjunction with the government of another province,

(b)[Repealed 2010-21-90.]

- (c)subject to first receiving the written approval of the minister, may enter into agreements, on behalf of the government of British Columbia, with the government of Canada or the governments of other provinces regarding the conduct and management of provincial gaming in British Columbia and in those other provinces,

(d)subject to first receiving the written approval of the minister, may enter into the business of supplying any person with operational services, computer software, tickets or any other technology, equipment or supplies related to the conduct of

(i)gaming in or out of British Columbia, or

(ii)any other business related to gaming,

(e)may enter into agreements with persons, other than registered gaming services providers, respecting provincial gaming or any other business related to provincial gaming,

(f)subject to subsection (1.1), may enter into agreements with registered gaming services providers for services required in the conduct, management or operation of provincial gaming,

(g)may set rules of play for lottery schemes or any class of lottery schemes that the lottery corporation is authorized to conduct, manage or operate,

(h)may monitor the operation of provincial gaming and the premises and facilities in which provincial gaming is carried on,

(i)must monitor compliance by gaming services providers with this Act, the regulations and the rules of the lottery corporation, and

(j)must do other things the minister may require and may do other things the minister may authorize.

(1.1)An agreement described in subsection (1) (f) must require the gaming service provider to provide the services referred to in subsection (1) (f) under the control of the lottery corporation.

(2)However, the lottery corporation must not implement a new type of lottery scheme that was not in operation on the date this section comes into force without first receiving the written approval of the minister.

Rules of the lottery corporation

8 (1)The lottery corporation may make rules for the purposes of this Part, including but not limited to rules

(a)requiring and governing books, accounts and other records to be kept by registered gaming services providers, including but not limited to establishing time schedules for the retention of those books, accounts and other records,

(b)limiting and regulating the sale of lottery tickets of the lottery corporation by persons other than the lottery corporation and prescribing the fees, commissions and discounts in the sales,

(c)governing the manner of selecting prize winners under a lottery scheme or any class of lottery schemes conducted and managed by the lottery corporation,

(d)imposing conditions and establishing qualifications for entitlement to prizes in a lottery scheme or any class of lottery schemes conducted and managed by the lottery corporation,

(e) respecting the handling of money and money equivalents received from players of games of chance by the lottery corporation, licensees and gaming services providers,
 (f) governing the holding and disbursement of money received from players of games of chance by the lottery corporation, licensees and registered gaming services providers, and
 (g) respecting security and surveillance at gaming facilities or classes of gaming facilities.

(2) If a rule of the lottery corporation is inconsistent with or conflicts with this Act or a regulation made by the Lieutenant Governor in Council, this Act or the regulation prevails.

Division 3 — Lottery Corporation Finances

Definitions for this Division

9 In this Division:

"estimates" means estimates as defined in the *Financial Administration Act*;

"net income" does not include fees collected by the lottery corporation under [section 16](#).

Financial administration

10 (1) The lottery corporation must establish and maintain an accounting system satisfactory to the minister and, whenever required by the minister, must render detailed accounts of its revenues and expenditures for the period or to the day the minister designates.

(2) All books or records of account, documents and other financial records must at all times be open for inspection by the minister or a person the minister designates.

(3) Unless the Auditor General is appointed in accordance with the [Auditor General Act](#) as the auditor of the lottery corporation, the directors of the lottery corporation must appoint an auditor to audit the accounts of the lottery corporation at least once each year.

(3.1) The costs of the audit referred to in subsection (3) must be paid by the lottery corporation.

(4) The fiscal year end of the lottery corporation is March 31.

Corporation to report on its operations

11 (1) The lottery corporation must each year submit to the minister who, as soon as practicable, must lay before the Legislative Assembly

(a) a report of the lottery corporation on its operations for the preceding fiscal year, and

(b) an audited financial statement showing the assets and liabilities of the lottery corporation at the end of the preceding fiscal year and the operations of the lottery corporation for that year in the form required by the minister.

(2) In addition to the report referred to in subsection (1), the lottery corporation, at the request of the minister, must report on specific matters in the manner and at the times required by the minister.

(3) The audited financial statement referred to in subsection (1) must be prepared in accordance with generally accepted accounting principles.

Grants in place of taxes

12 (1) Subject to subsection (2), the lottery corporation, in any year, may pay to a municipality in which it has real property a grant not exceeding the amount that would be payable as taxes on the property in that year if the property were not exempt from taxation by the municipality.

(2) The Lieutenant Governor in Council may order that the lottery corporation's authority under subsection (1) to make a payment in any year or for any number of years is subject to the approval of the Lieutenant Governor in Council.

Application of revenue

13 The net income in each fiscal year, other than from casino gaming and from bingo, of the lottery corporation, after the lottery corporation makes provision in that fiscal year for any payments it is obliged to make under agreements entered into in respect of lotteries under section 7 (1) (c), must be paid into the consolidated revenue fund at the times and in the manner directed by the Lieutenant Governor in Council.

Application of the balance of revenue

14 (1) The balance of net income in each fiscal year of the lottery corporation, after the lottery corporation makes provision in that fiscal year for payment under [section 13](#), must be paid into the consolidated revenue fund at the times and in the manner directed by the Lieutenant Governor in Council.

(2) to (4) [Repealed 2010-21-91.]

Division 4 — First Nations Revenue Sharing

Definitions for this Division

14.1 (1) In this Division:

"actual net income of the lottery corporation", in relation to a fiscal year, means the net income of the lottery corporation as reported in the audited financial statement for the fiscal year submitted by the lottery corporation under [section 11](#)

(a) less the amount, as reported in the audited financial statement in which the net income of the lottery corporation is reported, that the lottery corporation makes provision for in that fiscal year for any payments it is obliged to make under agreements entered into in respect of lotteries under section 7 (1) (c), and

(b) as otherwise adjusted in accordance with the long-term agreement;

"annual revenue sharing entitlement" has the same meaning as in the interim agreement;

"estimated net income of the lottery corporation", in relation to a fiscal year, means the estimated net income of the lottery corporation for the fiscal year as presented to the Legislative Assembly in the main estimates under the [Budget Transparency and Accountability Act](#);

"interim agreement" means the Interim BC First Nations Gaming Revenue Sharing and Financial Agreement dated August 2, 2019, as amended from time to time, between the government, the partnership, the First Nations Summit, the British Columbia Assembly of First Nations and the Union of British Columbia Indian Chiefs;

"long-term agreement" means an agreement, as amended from time to time, respecting the sharing of annual provincial gaming revenue between the government, the partnership, the First Nations Summit, the British Columbia Assembly of First Nations and the Union of British Columbia Indian Chiefs, but does not include the interim agreement;

"partner" means a limited partner of the partnership;

"partnership" means the BC First Nations Gaming Revenue Sharing Limited Partnership or its successors or assigns.

(2)The minister must publish in the Gazette the interim agreement, the long-term agreement and any agreement amending the interim agreement or the long-term agreement.

Application

14.2 (1)Subject to subsection (2), this Division applies
 (a)if there is a long-term agreement in effect, and
 (b)during the period beginning on April 1, 2021 and ending on the earlier of the following dates:
 (i)March 31, 2045;
 (ii)the date on which the long-term agreement referred to in paragraph (a) is terminated.

(2)The obligations to make payments under [sections 14.3](#) and [14.4](#) do not apply during any period in which payments are suspended in accordance with the long-term agreement.

Partnership's entitlement to lottery corporation revenue

14.3 (1)For each fiscal year beginning on or after April 1, 2021, the lottery corporation must pay to the partnership, by paying to the government on behalf of the partnership, 7% of the actual net income of the lottery corporation for the fiscal year.

(2)The following payments for each fiscal year discharge the obligation of the lottery corporation to make payments to the partnership under subsection (1) in that fiscal year:

(a)the payments under [sections 13](#) and [14](#) into the consolidated revenue fund;

(b)the minister's payments under [section 14.4](#).

(3)For certainty, the government is not, under this Division, an agent of the partnership.

Annual payments to partnership

14.4 (1)On or before April 30 of each fiscal year beginning on or after April 1, 2021, the minister must pay from the consolidated revenue fund to the partnership 7% of the amount that is equal to the estimated net income of the lottery corporation for the fiscal year less any adjustment under subsection (4) for the second preceding fiscal year.

(2)For each fiscal year beginning on or after April 1, 2021, if the actual net income of the lottery corporation for the fiscal year exceeds the estimated net income of the lottery corporation for that fiscal year, the minister must pay from the consolidated revenue fund to the partnership the amount that is equal to 7% of the difference between the actual net income of the lottery corporation for that fiscal year and the estimated net income of the lottery corporation for that fiscal year.

(3)A payment under subsection (2) for a fiscal year must be made on or before the earlier of the following dates:

(a)the date that is 60 days after the public accounts for the fiscal year are made public under the [Budget Transparency and Accountability Act](#);

(b)the date specified in the long-term agreement.

(4)For each fiscal year beginning on or after April 1, 2023, if the actual net income of the lottery corporation for the second preceding fiscal year is less than the estimated net income of the lottery corporation for the second preceding fiscal year, the amount payable under subsection (1) for the fiscal year must be reduced by the amount that is equal to 7% of the difference between the actual net income of the lottery corporation for the second preceding fiscal year and the estimated net income of the lottery corporation for the second preceding fiscal year.

(5)At the partnership's written request in relation to a payment for a fiscal year, the minister must pay from the consolidated revenue fund directly to a partner that partner's share determined in accordance with the long-term agreement, in which case the payment to the partnership under subsection (1) or (2) must be reduced by an amount equal to the minister's payment to the partner.

One-time adjustment for interim agreement overpayment

14.5 (1)This section applies if the amount of \$196 840 000 exceeds the total of the partnership's annual revenue sharing entitlements for the fiscal years beginning on April 1, 2019 and April 1, 2020.

(2)For the fiscal year beginning on April 1, 2022, the amount otherwise payable under section 14.4 (1) for that fiscal year is reduced by the amount of the excess referred to in subsection (1) of this section.

Application of Financial Administration Act

14.6 Despite the *Financial Administration Act*, sections 21 (3), 27 (1) (a) and 45 (1) of the *Financial Administration Act* do not apply to an appropriation under [section 14.4](#) of this Act.

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 INTERVENOR

THE ATTORNEY GENERAL OF
BRITISH COLUMBIA
(Motion for Leave to File a Record, Returnable
May 1, 2024)

**ATTORNEY GENERAL OF BRITISH
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