

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

**MOTION RECORD
TO ADDUCE EVIDENCE**

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NOTICE OF MOTION

The Attorney General of British Columbia will make a motion to the court on Wednesday, May 1, 2024, at 10:00 a.m., or as soon after that time as the motion can be heard, at 130 Queen Street West, Toronto, pursuant to the Order of The Honourable Justice van Rensburg dated March 1, 2024.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by video conference and has been made returnable on May 1, 2024, by Order of Van Rensburg J.A.

THE MOTION IS FOR leave to supplement the record before the Court with affidavit evidence 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")

THE GROUNDS FOR THE MOTION ARE:

1. The Proposed Evidence is relevant and material to the reference question that has been posed by the Government of Ontario in these proceedings.
2. 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.

JURISDICTION: The Honourable Justice van Rensburg has jurisdiction to hear this motion, which is returnable May 1, 2024, pursuant to the March 1, 2024 Order of the Honourable Justice van Rensburg

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

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

2. Any additional evidence that the Court may permit.

April 8, 2024



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Counsel 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 File No.:
COA-24-CV-0185**

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

**NOTICE OF MOTION TO ADDUCE
EVIDENCE**

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AFFIDAVIT #1 OF REBECCA HILL

I, Rebecca Hill, of the city of Vancouver in the Province of British Columbia, AFFIRM:

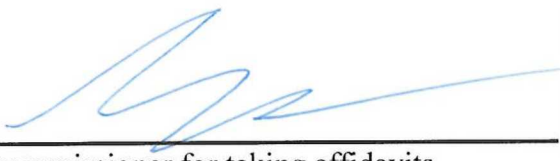
1. I am a paralegal with the British Columbia Ministry of Attorney General, Legal Services Branch, and am assisting counsel for the Attorney General of British Columbia (“AGBC”) in this proceeding. As such, I have personal knowledge of the matters deposed to except where such are stated to be based on information and belief, in which case, I verily believe them to be true.
2. On March 15, 2024, the AGBC served and filed a notice of intention to intervene in these proceedings as well as 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.”
3. I am advised by Robert Danay, counsel for AGBC, and believe it to be true, that if leave to do so is granted by the Court, the AGBC intends 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;

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- 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")

4. I am further advised by Mr. Danay, and verily believe, that 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.

AFFIRMED BEFORE ME
at Vancouver, British Columbia
on April 8, 2024



A commissioner for taking affidavits
for British Columbia



Rebecca Hill

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COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE
VAN RENSBURG

) WEDNESDAY, THE 1ST
) DAY OF
) MAY 2024

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ORDER

THIS MOTION, made by the Attorney General of British Columbia for leave to adduce evidence in this proceeding, was heard on May 1, 2024 by videoconference.

ON READING the Motion Record of the Attorney General of British Columbia and hearing the submissions of Counsel for the Attorney General of British Columbia and Counsel for the Attorney General of Ontario,

1. **THIS COURT ORDERS** that the Motion made by the Attorney General of British Columbia is granted.

Date of issuance

(to be completed by registrar)

(Signature of judge, officer or registrar)

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