

19/Nov/2024

19-NOV-2024 LM
REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

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COA-24-CV-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*, R.S.O. 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

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November 15, 2024

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REPLY SUBMISSIONS OF ONTARIO

A. The CLC cannot redefine the terms of this reference

1. Ontario has asked this Court to answer a narrow question of statutory interpretation in this reference. Ontario seeks the Court's opinion on whether s. 207(1)(a) of the *Criminal Code* authorizes a provincial lottery scheme which permits its players to pool liquidity with players outside of Canada.

2. The reference question specifically asks that the Court base its opinion on the Proposed Model described in the OIC's schedule,

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**? If not, to what extent?

OIC 210/2024, AGO Record, Vol. 1, Tab 1, p. 3

3. In response, the CLC asks this Court to ignore fundamental aspects of the Schedule in order to find the model unlawful. In particular, the CLC asks the Court:

- (a) to disregard the model's express prohibition on the participation of Canadians located outside of Ontario.
- (b) to substitute Ontario's definition of International Sites in the Schedule with the foreign lottery corporations it alleges are operating illegally in its members' jurisdictions; and,
- (c) to assume that Ontario's lottery scheme in the Proposed Model will be extraterritorial, despite the clear delineation between iGO Sites and International Sites in the Schedule.

4. The Court should reject these efforts by the CLC to coopt this proceeding. Section 8 of the *Courts of Justice Act* establishes a process wherein Ontario can refer any question of Ontario's choosing to this Court for its opinion. As Flutter, NSUS and the Canadian Gaming Association correctly note, section 8 grants Ontario the exclusive and unilateral authority to frame the reference as it sees fit.

5. The Supreme Court recognized this exclusive authority in *Re: Quebec Magistrates' Court*, with Fauteux J writing:

Le Lieutenant-Gouverneur en conseil a donc l'exclusive et la plus grande discrétion en ce qui concerne le choix et la définition des questions qu'il désire soumettre; et il s'ensuit que la décision qu'il prend à cet égard délimite la juridiction de la Cour d'Appel aussi bien que la juridiction de cette Cour. Le judiciaire n'a pas la responsabilité de sonder les desseins de l'exécutif; il doit s'en tenir à la question spécifique sur laquelle on requiert son avis.

[Translation] The Lieutenant-Governor in Council therefore has the exclusive and the most expansive discretion in the selection and definition of the questions which he desires to submit; and it follows that the decision he makes in this respect defines the jurisdiction of the Court of Appeal as well as the jurisdiction of this Court. It is not the duty of the judiciary to fathom the designs of the executive; it must confine itself to the specific question on which its opinion is sought.

Re: Quebec Magistrates' Court, 1965 CanLII 46 (CSC), [1965] RCS 772 at [779](#)

6. Justice Fauteux's comments echo those of the Privy Council in *Reference re: Act to Amend the Lord's Day Act* (Man.), where it discussed the novel duty a reference imposes on a court:

Statutes empowering the executive Government, whether of the Dominion of Canada or of a Canadian Province, to obtain by direct request from the Court answers to questions both of fact and law, although intra vires of the respective Legislatures, impose a novel duty to be discharged, but not enlarged by the Court: see *Attorney General for Ontario v. Attorney General for Canada*, [1912] A.C. 571. It is more than ordinarily expedient in the case of such references that a Court should refrain from dealing with questions other than those which on excessive

responsibility are in express terms referred to it, and their Lordships will here act upon that view.

Reference re: Act to Amend the Lord's Day Act (Man.), [1924] J.C.J. No. 3 (P.C.), para. 6, AGO's Book of Authorities (Reply), Tab 1.

7. A reference is not a fact-finding exercise. Rather, the Court is confined to the question the Lieutenant Governor in Council has asked, including the set of facts provided as the basis for the question. Ontario does not have the burden of having to prove these facts. Parties in a reference are not permitted to raise new issues or other facts as they might in ordinary litigation.

Reference re Agricultural Products Marketing, [1978] 2 SCR 1198 at [1290](#).

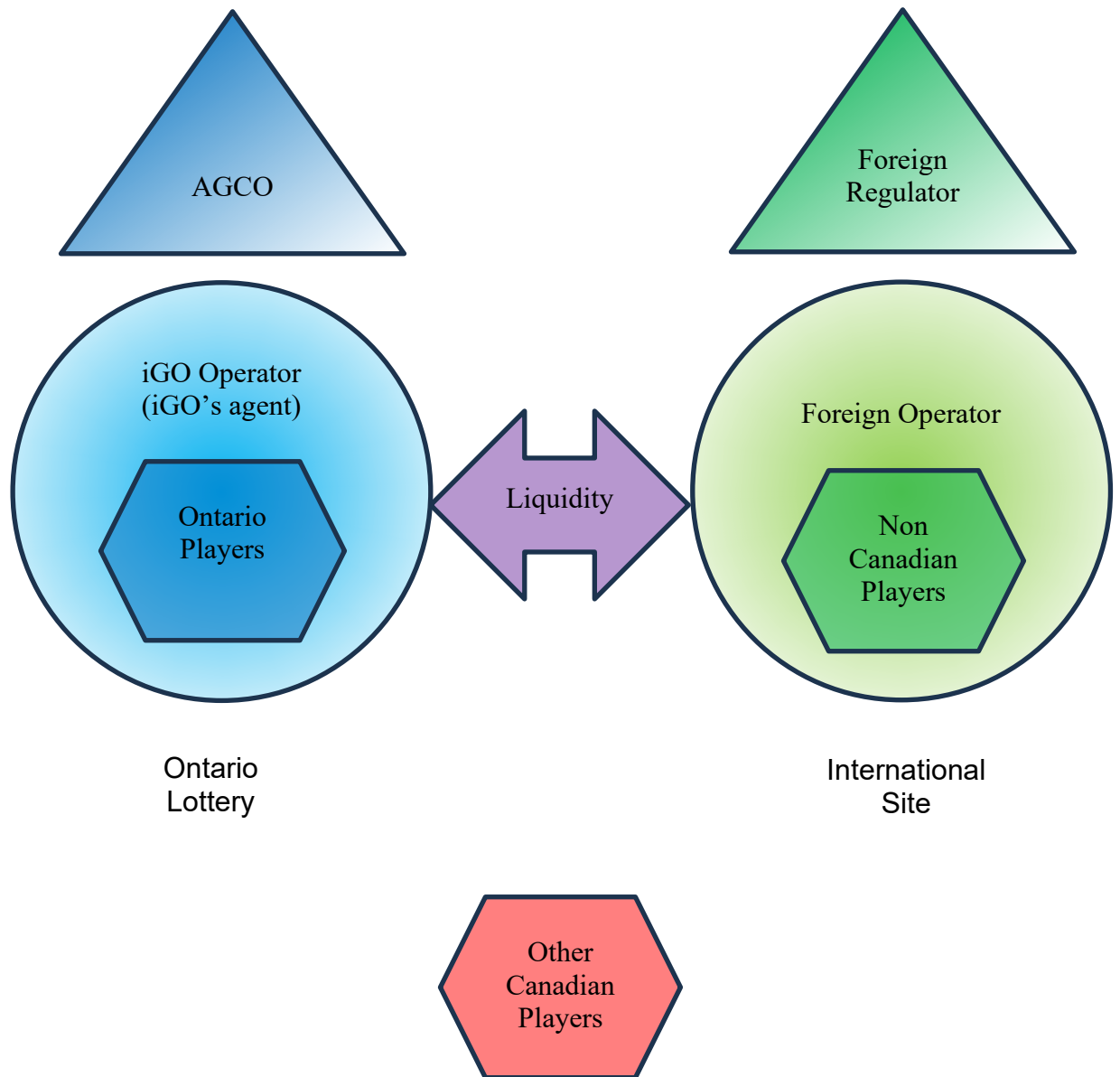
8. References are singularly unique proceedings and Ontario has the exclusive authority to bring them in this province for good reason: they are intended to provide guidance to the government. In this reference, Ontario has presented the Court with the Proposed Model to better inform its development of that specific model.

References by the Governor in Council (Re), [1912] J.C.J. No. 2 (P.C.), para. 10, AGO's Book of Authorities (Reply), Tab 2.

9. If the Court decides this reference based on a different model it will be answering a question Ontario has not asked. Its opinion will not assist the government and the very purpose of the reference would be undermined. With these principles in mind, Ontario responds to the following issues raised by the CLC.

B. Ontario's Proposed Model

10. The elements of Ontario's Proposed Model are depicted in the following figure. As discussed below, the CLC asks this Court to ignore key parts of the model.¹



¹ Note that iGO is an independent subsidiary of AGCO. [Bill 216, Schedule 9](#), which received Royal Assent on November 6, 2024, will, once it is proclaimed into force, continue iGO as a corporation without share capital that is not a subsidiary of the AGCO.

i) Canadians outside of Ontario will be excluded

11. Ontario has asked the Court to assume that individuals within Canada but outside of Ontario would not be permitted to participate in games and betting with Ontarians in the Proposed Model. The Schedule is express on this point:

Players located outside of Ontario but within Canada would not be permitted to participate in games or betting in the absence of an agreement between Ontario and the province or territory in which those players are located.

Schedule to OIC 210/2024, AGO's Record, Vol. 1, Tab 2, p. 12.

12. Ontario's stipulation that other Canadian players would be excluded from the model is intentional. Ontario already knows that the participation of these players in games and betting with individuals in Ontario would be unlawful without an agreement between Ontario and their provinces, pursuant to the express language of s. 207(1)(a) of the *Code*. Ontario is not seeking the Court's guidance on this point.

13. In response, the CLC asks this Court to simply ignore this requirement in the Schedule and find the Proposed Model unlawful. It suggests (at para. 69 of its factum) that "[t]his Court is under no obligation to accept bald assertions that Canadians outside Ontario would not participate in their proposed pooled liquidity scheme..."

14. The CLC's submission betrays a fundamental misunderstanding of the nature and purpose of a reference, as discussed above, and its acceptance would result in the Court answering a question Ontario has not asked.

15. In any event, while this Court is not tasked with determining the viability of the model, the evidence of both Ontario and the CLC conclusively establishes that this condition can be

implemented effectively. iGO Operators; international operators like Flutter; and the CLC’s members already use “geofencing” measures to restrict access to their gaming offerings based on a user’s physical location.

Affidavit of Jesse Todres, sworn May 31, 2024 (“Todres Affidavit”), paras. 34-40, AGO Record, Vol. 1, Tab 4, pp. 36-38.

Affidavit of George Sweny, sworn May 31, 2024 (“Sweny Affidavit”), paras. 16-17, 20-23, AGO Record, Vol. 1, Tab 5, pp. 372-373 (PDF).

Transcript of the cross-examination of William Hill on his affidavits affirmed April 18, 2024 and June 21, 2024, held October 1, 2024 (“Hill Transcript”), Joint Transcript Brief (“JTB”), pp. 845, 924-926, qq. 115, 423-431.

Affidavit of Ning Fung Tse, affirmed June 21, 2024 (“Tse Affidavit”), para. 15, CLC Record, Tab C, p. 287.

Transcript of cross-examination of Ning Fung Tse, affirmed June 21, 2024 held October 1, 2024 (“Tse Transcript”), JTB, pp. 968-972, 978-979, qq. 37-57, 87-90.

ii) Allegedly unlawful foreign lotteries are not International Sites

16. The Schedule expressly defines International Sites as the “gaming application or website” that would be available to “players outside of Canada” in the Proposed Model. The CLC submits that the Court should again just ignore this part of the Schedule; redefine International Sites to mean the foreign lotteries it alleges are currently unlawfully operating in its members’ jurisdictions; and find the Proposed Model unlawful. Again, the Court should decline the CLC’s invitation to decide the reference on its terms and not Ontario’s.

17. In support of its submission, the CLC seeks to adduce extensive evidence that purports to establish that foreign lottery corporations are making their games available to individuals in the CLC members’ jurisdictions. The Court should decline to admit this evidence because

it is not relevant and would broaden the scope of the reference by raising new and unrelated issues.

18. Whether these corporations are currently complying with the *Criminal Code* elsewhere in Canada has no bearing on the narrow question of whether the Proposed Model, as a question of law, would be lawful under s. 207(1)(a) of the *Criminal Code*.

19. Indeed, this would be the case even if the CLC's allegations were accepted as true. As noted, under the Proposed Model International Sites are required to bar individuals elsewhere in Canada from participating in games and betting with Ontarians.

20. Even if one of the foreign lottery corporations impugned by the CLC were to become an International Site, it would be required to comply with this requirement as a condition of its participation. What that corporation is or is not presently doing elsewhere in Canada is not a factor in the analysis.

21. The Court should also refrain from adjudicating the CLC's claims because this is not the appropriate forum for the determination of serious allegations of criminal wrongdoing. As the CGA and Flutter point out, there is no judicial finding anywhere in Canada that any of the purported affiliates have violated the *Criminal Code*'s gaming prohibitions. To accept the CLC's claims, this Court would first need to decide them.

Factum of the Intervener, Canadian Gaming Association ("CGA"), para 32.

Factum of the Intervener, Flutter Entertainment PLC, para 10.

Hill Transcript, JTB, pp. 841-843, qq. 95-97, 100-108.

22. Given the issue's irrelevance, and in the absence of the processes and safeguards of a criminal prosecution, the Court should decline to admit the CLC's evidence and disregard its submissions on this point. If a CLC member believes a lottery corporation is violating the *Criminal Code* in its jurisdiction, it is entitled to raise the issue with the police and the Attorney General of that jurisdiction for investigation and potential prosecution.

23. Of particular concern to Ontario, the CLC repeatedly conflates iGO's Operators with the foreign corporations it alleges are breaching the *Criminal Code*, despite the absence of any evidence of wrongdoing by iGO's Operators. Indeed, the CLC's own witness subjected the existing iGO sites to a rigorous vetting process and found that none would accept wagers from him while he was outside of Ontario.

CLC Factum, paras. 17, 18, 21 - 23, 25 - 27, 68, 69.

Tse Affidavit, para. 15, CLC Record, p. 287.

24. There is no basis for attributing the conduct of the foreign lottery corporations to iGO Operators. The fact that corporations share an ownership structure does not without more make one corporation responsible for another's actions.

Aquino v. Bondfield Construction Co., 2024 SCC 31, [para. 82](#)

25. Where an iGO Operator breaches provincial requirements, however, the AGCO can and does act. For example, the AGCO recently took enforcement action against an iGO Operator that failed to comply with the geofencing requirement in the AGCO Registrar's Standards for Internet Gaming.

Alcohol and Gaming Commission of Ontario, Order of Monetary Penalty No.: 2672961 to NorthStar Gaming (Ontario) Inc., dated October 16, 2024, AGO Book of Authorities (Reply), Tab 3.

iii) Ontario will not conduct and manage the International Sites

26. The suggestion by the CLC that Ontario’s lottery scheme within the Proposed Model is extraterritorial in nature suggests a fundamental misunderstanding of the nature and scope of Ontario’s lottery scheme within the Proposed Model.

27. Under the model, Ontario’s lottery scheme would be conducted and managed by Ontario *in this province alone* in the same manner that iGO sites are currently conducted and managed. Through the scheme, Ontario would offer games and betting to players in Ontario. The province would not conduct and manage the scheme anywhere else. No part of Ontario’s lottery scheme will operate extraterritorially, within Canada or beyond.

28. The proposed scheme would permit players in Ontario to pool their wagers with players participating in distinct foreign lottery schemes through the International Sites, which are conducted and managed by other entities outside of Canada. But those international players *would not* participate in any lottery scheme operated by an iGO Operator.

29. The scope of each scheme is expressly defined in the Schedule:

Players physically located in Ontario will continue to access games and sports betting through iGO Sites. Players outside of Canada would access games and sports betting through the Operator’s gaming application or website available in their jurisdiction (the “International Site”).

iGaming Ontario will continue to conduct and manage the iGO Sites through its agents, the Operators. However, operators would not act as agents of iGaming Ontario in operating the International Sites. Those sites, along with the players using them, would be subject to the relevant jurisdiction’s legal and regulatory regime.

Schedule to OIC 210/2024, AGO’s Record, Vol. 1, Tab 2, pp. 12-13.

30. As contemplated by former Justice Minister John Turner, Ontario would maintain “absolute control as to the terms” of the lottery scheme in this province, including control over the types of games available to players in Ontario; the rules and eligibility conditions that govern those games; and the requirements for their wagering and payouts.

House of Commons Standing Committee on Justice and Legal Affairs, 1st Session, 28th Parliament, 1968-1969 (11 March 1969), AGO Record, Vol. 2, Tab 9, pp. 459 (Minister John Turner).

Schedule to OIC, AGO Record, Vol. 1, Tab 2, pp. 13-14.

Mohawk Council of Kahnawà:ke v. iGaming Ontario, 2024 ONSC 2726 at [para. 103](#).

31. In seeking to blur the lines between the two distinct schemes envisioned and argue that the Proposed Model is the type of single unified game at issue in *Earth Future*, the CLC suggests (at para. 40 of its factum) that this reference is about the individual games played between players participating through Ontario’s lottery scheme and those participating through International Sites.

32. The CLC errs in suggesting that a game is the only type of lottery scheme contemplated under s. 207(1)(a). In fact, s. 207(4), which defines “lottery scheme” for the purposes of s. 207(1), provides for a much broader meaning:

207 (4) In this section, *lottery scheme* means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than [...]

Criminal Code, RSC, 1985, c. C-46, [s. 207\(4\)](#).

33. Ontario’s lottery scheme under the Proposed Model is the broader framework of iGaming described in the Schedule, with the inclusion of pooled liquidity. While that scheme

includes the pooling of liquidity with foreign lottery schemes operating outside Canada, the two schemes remain distinct. Each has their own players, their own regulators, and their own territorial scope. The Ontario lottery scheme will continue to operate entirely within this province's borders and only offer games to people located in Ontario.

C. Constitutional principles, including the real and substantial connection test, are relevant to the interpretation of s. 207(1)(a)

34. The CLC argues that “background principles” of constitutional law cannot be used to override what it says is the plain meaning of s. 207(1)(a). That is correct where there is only one plausible interpretation of the statute. But that is not the case here.

35. The intangible nature of online gaming necessarily gives rise to ambiguity that is not present when applying s. 207(1)(a) to a brick-and-mortar casino or to a lottery for which tickets are sold. Because of that ambiguity, the presumption of compliance requires a court to interpret a statute as complying with constitutional limits. This includes the established meaning of “in the province.”

R v Sharpe, 2001 SCC 2, [para. 33](#)

36. The CLC's argument ignores the Supreme Court of Canada's description of the presumption of compliance as “supplementing” the modern approach to statutory interpretation on which it relies. Applying the modern approach means interpreting s. 207(1)(a) in a manner that is consistent with established constitutional principles.

R v Sharpe, 2001 SCC 2, [para. 33](#)

37. Applying the real and substantial connection test in these circumstances is not novel. Courts have long been called upon to determine the situs of an incorporeal matter. While the Mohawk Council of Kahnawà:ke (“MCK”) notes that the development of the “family” of real

and substantial connection tests began with the Supreme Court’s 1990 decision in *Morguard*, it neglects to mention that these tests evolved from established principles of comity and private international law. Indeed, in *Morguard*, La Forest J.’s analysis recognized the necessity of developing the law to reflect the realities of a changing world.

Sharp v. Autorité des marchés financiers, 2023 SCC 29 at [para. 118](#)

Morguard Investments v Ltd v De Savoye, [1990] 3 SCR 1077, [1990 CanLII 29](#) at [1095-1101](#) [*Morguard*]

38. The Court in *Morguard* also noted that “[t]he private international law rule requiring substantial connection with the jurisdiction where the action took place is supported by the constitutional restriction of legislative power ‘in the province.’” Similarly, Ontario’s approach draws upon well-established principles and permits for the practical development of the law to reflect the current context of online gaming.

Morguard at [1109](#)

39. The CLC relies (at para 41 of its factum) on the decision in *SOCAN* for the proposition that the Supreme Court itself has cited its decision in *Earth Future*. However, in *SOCAN* the Supreme Court essentially endorsed Ontario’s position by applying the real and substantial connection test to determine whether internet communications occurred “in Canada”.

40. *SOCAN* involved a judicial review of a decision of the Copyright Board concerning whether internet service providers incur copyright liability in Canada. The Supreme Court disagreed with the Copyright Board’s determination that an internet communication occurred in Canada only if it originated from a server located in Canada.

41. The Court had to consider the meaning of “telecommunication” and “communicate” under various provisions of the *Copyright Act*. Although none of the statutory provisions at issue used the term “in Canada”, the Court accepted that for the *Copyright Act* to apply, the communications on the internet had to occur “in Canada.”

Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers, 2004 SCC 45, [para. 44](#) [SOCAN]

42. The majority opinion, written by Binnie J, used the “real and substantial connection” test to determine that the *Copyright Act* applied to international Internet transmissions that had a “real and substantial connection to Canada.” The existence of a real and substantial connection is contextual, depending on the connecting factors in a particular context: “In terms of the Internet, relevant connecting factors would include the *situs* of the content provider, the host server, the intermediaries and the end user. The weight to be given to any particular factor will vary with the circumstances and the nature of the dispute.”

SOCAN, paras. [60, 61](#)

43. SOCAN both identifies and resolves the “conundrum of trying to apply national laws to a fast-evolving technology that in essence respects no national boundaries.” The real and substantial connection test is the appropriate framework for determining whether the Proposed Model for online gaming occurs “in the province.” For the reasons set out in Ontario’s main factum, the Proposed Model has a real and substantial connection to Ontario, and the reference question should be answered in the affirmative.

SOCAN, [para. 41](#)

44. MCK also argues that the real and substantial connection test cannot guide the interpretation of s. 207(1)(a) because it had not been established in either 1969 or 1985, when

the current language was included in the *Criminal Code*. This argument must be rejected as contrary to “the traditional and widespread understanding of the role of the judiciary” in which “courts are said to apply the law as it really was or has been rediscovered.”

Canada (Attorney General) v Hislop, 2007 SCC 10 at paras [79, 84](#), citing W. Blackstone, *Commentaries on the Laws of England* (1765), vol. 1, at pp. 69-70

R v Jordan, 2016 SCC 27 at [para 93](#)

45. When the courts develop the common law, as they have in relation to principles of extraterritoriality and the real and substantial connection test, they are pronouncing on what the law is and has always been. There is no reason that these now established principles cannot guide this Court’s interpretation of a statutory provision that pre-dates them.

46. Contrary to MCK’s assertion that Ontario inappropriately applies a “living tree” approach to interpreting legislation, there is nothing improper about applying the common law, as it is currently understood, to interpret the *Criminal Code*. The common law, as it has developed, answers the question of how courts should assess whether an incorporeal lottery scheme, such as the Proposed Model, is or is not located “in the province.”

47. Correctly applying the common law to determine the *situs* of an incorporeal scheme is not an attempt to transform the Criminal Code into a “living tree.” On the contrary, it is exactly the kind of reference to “a province’s rules, principles or concepts forming part of the law of property and civil rights” that Parliament has mandated courts to consider in interpreting federal statutes.

Interpretation Act, RSC 1985, c. I-21, [s. 8.1](#)

D. The territorial references in s. 207 do not preclude sharing liquidity with foreign lottery schemes

48. The CLC erroneously suggests (at paras. 54 and 55 of its factum) that international elements such as pooled liquidity are unlawful because s. 207(1)(a) does not expressly reference international lottery schemes or impose restrictions on them.

49. The CLC's submission is based on a purported need for consistency with s. 207(1)(a), (b), (e), and (f), which address the conduct of gaming-related activities in other provinces and require those provinces' consent or cooperation, and s. 207(1)(h), which authorizes the export of gaming-related goods internationally so long as they are lawful in the receiving country.

50. The CLC's submission is misguided for two reasons. First, Ontario does not suggest that there are no limits on the inclusion of international elements in a provincial lottery scheme under s. 207(1)(a). Ontario's primary submission in this reference is that these elements are permitted so long as the scheme maintains its real and substantial connection to Ontario.

51. Second, the territorial references in these provisions, and the associated conditions they impose, reflect Parliament's specific goals in those areas. In particular, for s. 207(a), (b), (e), and (f), the conditions reflect Parliament's clear intention to ensure that provinces have complete control over gaming within their territories to safeguard against the ills associated with unlawful gaming, as discussed in Ontario's main factum (at paras. 84 to 93).

“Bill C-150, Criminal Law Amendment Act,” 2nd reading, House of Commons Debates, 28-1, vol. V, (January 23 and 27, 1969 and February 11 and 13, 1969), Tab 8, 440-441 (Minister Turner)

“Bill C-150, Criminal Law Amendment Act,” Report Stage, House of Commons Debates, 28-1, vol. VIII, (21 April 1969), AGO Record, Vol. 2, Tab 10, pp. 471 (Minister Turner)

House of Commons Standing Committee on Justice and Legal Affairs, 1st Session, 28th Parliament, 1968-1969 (11 March 1969), AGO Record, Vol. 2, Tab 9, 455-460. (Minister Turner)

52. While Ontario would not knowingly permit its lottery scheme to pool liquidity with a foreign lottery scheme operating unlawfully, there is no indication that Parliament was concerned with this prospect in enacting s. 207(1)(a). Parliament was concerned with protecting Canadians, not foreign gamblers.

53. The CLC's contention (at para. 55 of its factum) that Ontario's interpretation of s. 207(1)(a) breaches the presumption of extraterritoriality is similarly misplaced: Ontario does not submit that the *Criminal Code* would apply extraterritorially in the International Sites' jurisdiction.

54. The International Sites would be governed by the regulatory and legal regime in place in its jurisdiction, not s. 207(1) or any other provision of Canada's *Criminal Code*. The *Criminal Code* would govern Ontario's scheme, which is the only scheme that would be offering games to persons located in Canada. In accordance with the *Code*, those players would have to be located in Ontario absent an agreement with another province.

E. Sections 204(1) and 207.1 do not create exceptions for foreign lotteries

55. The CLC suggests that Parliament has expressly exempted certain types of foreign gambling from the prohibition on foreign lotteries in s. 206(7) and the absence of the same express exemption in s. 207(1)(a) renders Ontario's Proposed Model unlawful.

56. At the outset, it must be remembered that s. 207(1) begins with language creating a blanket exemption for all lottery schemes under s. 207(1) from the other provisions of Part

VII of the Code, including s. 206(7). However, even if this were not the case, Ontario's lottery scheme within the Proposed Model is not a foreign lottery for the reasons set out above, at paras. 28 to 35.

57. Regardless, the CLC's submissions on this point misunderstand sections 204 and 207.1 of the Code. Section 204(1) does not authorize the conduct of a foreign lottery in Canada or otherwise create an exemption from s. 206(7) of the *Code*.

58. Instead, the section exempts individuals wagering *in* Canada on certain horse races outside Canada from the prohibitions in sections 201 and 202 of the *Code* which bar, among other things, betting and keeping a common gaming house in this country.

59. Similarly, section 207.1 authorizes lottery schemes on cruise ships operating in Canadian waters or under a Canadian flag from the general prohibitions on gaming in the *Criminal Code*. The provision, which was to the benefit of tourists and the cruise ship industry in parts of Canada, addresses domestic conduct, not foreign gaming activities.

“Bill C-52, an Act to amend the Criminal Code, the Controlled Drug and Substances Act and the Corrections and Conditional Release Act, 2nd reading, House of Commons Debates, (8 October 1998), p. 8962 (Michel Bellehumeur).

F. The lack of amendments to s. 207(1)(a) supports pooled liquidity

60. MCK's suggestion that this Court should conclude that s. 207(1)(a) prohibits international play because Parliament has not amended the provision to provide for it, despite amending other sections in Part VII of the *Code*, is without merit.

61. The question before this Court is a novel one – distinct both factually and legally from *Earth Future* – and there have been no judicial rulings or interpretations which might have prompted Parliament to amend s. 207(1)(a) to clarify its meaning.

62. In reality, Parliament’s hands off approach to s. 207(1) favours Ontario’s position. As discussed above, in 1999, Parliament added s. 207.1 to the *Code* to legalize certain lottery schemes on cruise ships. In doing so, Parliament expressly provided that cruise ship lottery schemes should not be “linked, by any means of communication, with any lottery scheme, betting, pool selling or pool system of betting located off the ship”.

Criminal Code, RSC, 1985, c. C-46, [s. 207.1](#)

63. If Parliament intended for provincial lottery schemes to have similar restrictions on linkages with other lottery schemes or pooled liquidity it would have amended s. 207(1)(a) to impose those restrictions at that time. The fact that it did not must be given meaning.

G. The licensing requirement in s. 207(1)(b) is not at issue in this appeal

64. The CLC suggests (at para. 47 of its factum) that the ruling in *Earth Future* is dispositive because s. 207(1)(b) requires that a charitable lottery be operated pursuant to a provincial licence. The CLC argues that in rejecting PEI’s proposed charitable lottery, *Earth Future* effectively decided the question of the permissible scope of both a provincial lottery under s. 207(1)(a) and a provincially-licensed lottery under s. 207(1)(b).²

65. The ruling in *Earth Future* does not indicate that the Court considered the cooperative federalism issues that inform the permissible scope of a provincial licence under s. 207(1)(b)

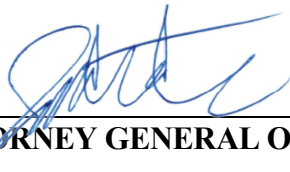
² The Proposed Model only contemplates the province conducting and managing a lottery scheme in Ontario, not a charity or religious organization licensed by the province under s. 207(1)(b).

and there is no indication that the issue was adjudicated. In finding PEI's proposed model unlawful, the court concluded that a charity was not entitled to conduct a traditional lottery on the global stage under s. 207(1)(b).

66. As discussed in Ontario's main factum (at paras. 112 and 113), the lottery at issue in *Earth Future* was fundamentally different from the lottery scheme Ontario proposes in this reference, which is limited to this province alone and simply permits pooled prizes with players using International Sites.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

November 15, 2024



ATTORNEY GENERAL OF ONTARIO


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

Lawyers for the Attorney General of Ontario

CERTIFICATE

1. An order under rule 61.09 (2) is not required.
2. The Attorney General of Ontario estimates that four hours will be required for Ontario's oral argument.
3. The Attorney General of Ontario's reply factum complies with rule 61.11 (3).
4. The number of words contained in the Attorney General of Ontario's reply factum is 4,899.
5. I am satisfied as to the authenticity of every authority listed in Schedule A.

November 15, 2024



Josh Hunter
Lawyer for the Attorney General of Ontario

SCHEDULE “A”: LIST OF AUTHORITIES**JURISPRUDENCE**

1. *Re: Quebec Magistrates’ Court*, [1965 CanLII 46](#) (CSC), [1965] RCS 772
2. *Reference re: Act to Amend the Lord's Day Act (Man.)*, [1924] J.C.J. No. 3 (P.C.)
3. *References by the Governor in Council (Re)*, [1912] J.C.J. No. 2 (P.C.)
4. *Aquino v. Bondfield Construction Co.*, [2024 SCC 31](#)
5. Alcohol and Gaming Commission of Ontario, Order of Monetary Penalty No.: 2672961 to NortStar Gaming (Ontario) Inc.
6. *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, [2024 ONSC 2726](#)
7. *R v Sharpe*, [2001 SCC 2](#)
8. *Sharp v. Autorité des marchés financiers*, [2023 SCC 29](#)
9. *Morguard Investments v Ltd v De Savoye*, [1990] 3 SCR 1077, [1990 CanLII 29](#)
10. *Society of Composers, Authors and Music Publishers of Canada v Canadian Assn. of Internet Providers*, [2004 SCC 45](#)
11. *Canada (Attorney General) v Hislop*, [2007 SCC 10](#)
12. *R v Jordan*, [2016 SCC 27](#)

SCHEDULE “B”: STATUTES AND REGULATIONS

The Constitution Act, 1867, 30 & 31 Vict, c 3, ss. 92(13) and (16)

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed. End note(48)
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:
 - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

Courts of Justice Act, R.S.O. 1990, c C43, ss 8

References to Court of Appeal

8 (1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration. R.S.O. 1990, c. C.43, s. 8 (1).

Opinion of court

(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons for it, and any judge who differs from the opinion may certify his or her opinion and reasons in the same manner. R.S.O. 1990, c. C.43, s. 8 (2).

Submissions by Attorney General

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (3).

Same

(4) The Attorney General of Canada shall be notified and is entitled to make submissions to the court if the question relates to the constitutional validity or constitutional applicability of an Act, or of a regulation or by-law made under an Act, of the Parliament of Canada or the Legislature. R.S.O. 1990, c. C.43, s. 8 (4).

Notice

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court. R.S.O. 1990, c. C.43, s. 8 (5).

Appointment of counsel

(6) If an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest and the reasonable expenses of counsel shall be paid by the Minister of Finance. R.S.O. 1990, c. C.43, s. 8 (6); 2006, c. 21, Sched. A, s. 2.

Appeal

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies from it as from a judgment in an action. R.S.O. 1990, c. C.43, s. 8 (7).

* * *

Criminal Code, R.S.C. 1985, c C-46, ss 197(1), 201(1), 202(1), 204, 206(1) and (7), 207(1)(e) and (4), 207.1

Definitions

197 (1) In this Part,

bet means a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada; (*pari*)

common bawdy-house [Repealed, 2019, c. 25, s. 69.1]

common betting house means a place that is opened, kept or used for the purpose of

- (a) enabling, encouraging or assisting persons who resort thereto to bet between themselves or with the keeper, or
- (b) enabling any person to receive, record, register, transmit or pay bets or to announce the results of betting; (*maison de pari*)

common gaming house means a place that is

- (a) kept for gain to which persons resort for the purpose of playing games, or
- (b) kept or used for the purpose of playing games
 - (i) in which a bank is kept by one or more but not all of the players,
 - (ii) in which all or any portion of the bets on or proceeds from a game is paid, directly or indirectly, to the keeper of the place,
 - (iii) in which, directly or indirectly, a fee is charged to or paid by the players for the privilege of playing or participating in a game or using gaming equipment, or
 - (iv) in which the chances of winning are not equally favourable to all persons who play the game, including the person, if any, who conducts the game; (*maison de jeu*)

disorderly house means a common betting house or a common gaming house; (*maison de désordre*)

game means a game of chance or mixed chance and skill; (*jeu*)

gaming equipment means anything that is or may be used for the purpose of playing games or for betting; (*matériel de jeu*)

keeper includes a person who

- (a) is an owner or occupier of a place,
- (b) assists or acts on behalf of an owner or occupier of a place,
- (c) appears to be, or to assist or act on behalf of an owner or occupier of a place,
- (d) has the care or management of a place, or
- (e) uses a place permanently or temporarily, with or without the consent of the owner or occupier thereof; (*tenancier*)

place includes any place, whether or not

- (a) it is covered or enclosed,
- (b) it is used permanently or temporarily, or
- (c) any person has an exclusive right of user with respect to it; (*local ou endroit*)

prostitute[Repealed, 2014, c. 25, s. 12]

public place includes any place to which the public have access as of right or by invitation, express or implied. (*endroit public*)

[...]

Keeping gaming or betting house

201 (1) Every person who keeps a common gaming house or common betting house is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) an offence punishable on summary conviction.

[...]

Betting, pool-selling, book-making, etc.

202 (1) Every one commits an offence who

- (a) uses or knowingly allows a place under his control to be used for the purpose of recording or registering bets or selling a pool;
- (b) imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting;

(c) has under his control any money or other property relating to a transaction that is an offence under this section;

(d) records or registers bets or sells a pool;

(e) engages in book-making or pool-selling, or in the business or occupation of betting, or makes any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or betting;

(f) prints, provides or offers to print or provide information intended for use in connection with book-making, pool-selling or betting on any horse-race, fight, game or sport, whether or not it takes place in or outside Canada or has or has not taken place;

(g) imports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, book-making, pool-selling or betting on a horse-race, fight, game or sport, and where this paragraph applies it is immaterial

(i) whether the information is published before, during or after the race, fight game or sport, or

(ii) whether the race, fight, game or sport takes place in Canada or elsewhere,

but this paragraph does not apply to a newspaper, magazine or other periodical published in good faith primarily for a purpose other than the publication of such information;

(h) advertises, prints, publishes, exhibits, posts up, or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest;

(i) wilfully and knowingly sends, transmits, delivers or receives any message that conveys any information relating to book-making, pool-selling, betting or wagering, or that is intended to assist in book-making, pool-selling, betting or wagering; or

(j) aids or assists in any manner in anything that is an offence under this section.

[...]

204 (1) [Sections 201](#) and [202](#) do not apply to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked, to be paid to

(i) the winner of a lawful race, sport, game or exercise,

(ii) the owner of a horse engaged in a lawful race, or

(iii) the winner of any bets between not more than ten individuals;

(b) a private bet between individuals not engaged in any way in the business of betting;

(c) bets made or records of bets made through the agency of a pari-mutuel system on running, trotting or pacing horse-races if

(i) the bets or records of bets are made on the race-course of an association in respect of races conducted at that race-course or another race-course in or out of Canada, and, in the case of a race conducted on a race-course situated outside Canada, the governing body that regulates the race has been certified as acceptable by the Minister of Agriculture and Agri-Food or a person designated by that Minister pursuant to subsection (8.1) and that Minister or person has permitted pari-mutuel betting in Canada on the race pursuant to that subsection, and

(ii) the provisions of this section and the regulations are complied with.

Exception

(1.1) For greater certainty, a person may, in accordance with the regulations, do anything described in [section 201](#) or [202](#), if the person does it for the purposes of legal pari-mutuel betting.

Presumption

(2) For the purposes of paragraph (1)(c), bets made, in accordance with the regulations, in a betting theatre referred to in paragraph (8)(e), or by any means of telecommunication to the race-course of an association or to such a betting theatre, are deemed to be made on the race-course of the association.

Operation of pari-mutuel system

(3) No person or association shall use a pari-mutuel system of betting in respect of a horse-race unless the system has been approved by and its operation is carried on under the supervision of an officer appointed by the Minister of Agriculture and Agri-Food.

Supervision of pari-mutuel system

(4) Every person or association operating a pari-mutuel system of betting in accordance with this section in respect of a horse-race, whether or not the person or association is conducting the race-meeting at which the race is run, shall pay to the Receiver General in respect of each individual pool of the race and each individual feature pool one-half of one per cent, or such greater fraction not exceeding one per cent as may be fixed by the

Governor in Council, of the total amount of money that is bet through the agency of the pari-mutuel system of betting.

Percentage that may be deducted and retained

(5) Where any person or association becomes a custodian or depository of any money, bet or stakes under a pari-mutuel system in respect of a horse-race, that person or association shall not deduct or retain any amount from the total amount of money, bets or stakes unless it does so pursuant to subsection (6).

Percentage that may be deducted and retained

(6) An association operating a pari-mutuel system of betting in accordance with this section in respect of a horse-race, or any other association or person acting on its behalf, may deduct and retain from the total amount of money that is bet through the agency of the pari-mutuel system, in respect of each individual pool of each race or each individual feature pool, a percentage not exceeding the percentage prescribed by the regulations plus any odd cents over any multiple of five cents in the amount calculated in accordance with the regulations to be payable in respect of each dollar bet.

Stopping of betting

(7) Where an officer appointed by the Minister of Agriculture and Agri-Food is not satisfied that the provisions of this section and the regulations are being carried out in good faith by any person or association in relation to a race meeting, he may, at any time, order any betting in relation to the race meeting to be stopped for any period that he considers proper.

Regulations

(8) The Minister of Agriculture and Agri-Food may make regulations

(a) prescribing the maximum number of races for each race-course on which a race meeting is conducted, in respect of which a pari-mutuel system of betting may be used for the race meeting or on any one calendar day during the race meeting, and the circumstances in which the Minister of Agriculture and Agri-Food or a person designated by him for that purpose may approve of the use of that system in respect of additional races on any race-course for a particular race meeting or on a particular day during the race meeting;

(b) prohibiting any person or association from using a pari-mutuel system of betting for any race-course on which a race meeting is conducted in respect of more than the maximum number of races prescribed pursuant to paragraph (a) and the additional races, if any, in respect of which the use of a pari-mutuel system of betting has been approved pursuant to that paragraph;

(c) prescribing the maximum percentage that may be deducted and retained pursuant to subsection (6) by or on behalf of a person or association operating a pari-mutuel system of betting in respect of a horse-race in accordance with this section and providing for the determination of the percentage that each such person or association may deduct and retain;

(d) respecting pari-mutuel betting in Canada on horse-races conducted on a race-course situated outside Canada; and

(e) authorizing pari-mutuel betting and governing the conditions for pari-mutuel betting, including the granting of licences therefor, that is conducted by an association in a betting theatre owned or leased by the association in a province in which the Lieutenant Governor in Council, or such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, has issued a licence to that association for the betting theatre.

Approvals

(8.1) The Minister of Agriculture and Agri-Food or a person designated by that Minister may, with respect to a horse-race conducted on a race-course situated outside Canada,

(a) certify as acceptable, for the purposes of this section, the governing body that regulates the race; and

(b) permit pari-mutuel betting in Canada on the race.

Idem

(9) The Minister of Agriculture and Agri-Food may make regulations respecting

(a) the supervision and operation of pari-mutuel systems related to race meetings, and the fixing of the dates on which and the places at which an association may conduct those meetings;

(b) the method of calculating the amount payable in respect of each dollar bet;

(c) the conduct of race-meetings in relation to the supervision and operation of pari-mutuel systems, including photo-finishes, video patrol and the testing of bodily substances taken from horses entered in a race at such meetings, including, in the case of a horse that dies while engaged in racing or immediately before or after the race, the testing of any tissue taken from its body;

(d) the prohibition, restriction or regulation of

(i) the possession of drugs or medicaments or of equipment used in the administering of drugs or medicaments at or near race-courses, or

(ii) the administering of drugs or medicaments to horses participating in races run at a race meeting during which a pari-mutuel system of betting is used; and

(e) the provision, equipment and maintenance of accommodation, services or other facilities for the proper supervision and operation of pari-mutuel systems related to race meetings, by associations conducting those meetings or by other associations.

900 metre zone

(9.1) For the purposes of this section, the Minister of Agriculture and Agri-Food may designate, with respect to any race-course, a zone that shall be deemed to be part of the race-course, if

(a) the zone is immediately adjacent to the race-course;

(b) the farthest point of that zone is not more than 900 metres from the nearest point on the race track of the race-course; and

(c) all real property situated in that zone is owned or leased by the person or association that owns or leases the race-course.

Contravention

(10) Every person who contravenes or fails to comply with any of the provisions of this section or of any regulations made under this section is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Definition of *association*

(11) For the purposes of this section, *association* means an association incorporated by or pursuant to an Act of Parliament or of the legislature of a province that owns or leases a race-course and conducts horse-races in the ordinary course of its business and, to the extent that the applicable legislation requires that the purposes of the association be expressly stated in its constating instrument, having as one of its purposes the conduct of horse-races.

[...]

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.

Foreign lottery included

206 (7) This section applies to the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share, and the conducting or managing of any such scheme, contrivance or operation for determining the winners in any such lottery.

[...]

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;

[...]

Definition of *lottery scheme*

207 (4) In this section, *lottery scheme* means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than

- (a) three-card monte, punch board or coin table;
- (b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any horse-race; or
- (c) for the purposes of paragraphs (1)(b) to (f), a game or proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g) that is operated on or through a computer, video device, slot machine or a dice game.

[...]

Exemption — lottery scheme on an international cruise ship

207.1 (1) Despite any of the provisions of this Part relating to gaming and betting, it is lawful for the owner or operator of an international cruise ship, or their agent, to conduct, manage or operate and for any person to participate in a lottery scheme during a voyage on an international cruise ship when all of the following conditions are satisfied:

- (a) all the people participating in the lottery scheme are located on the ship;
- (b) the lottery scheme is not linked, by any means of communication, with any lottery scheme, betting, pool selling or pool system of betting located off the ship;
- (c) the lottery scheme is not operated within five nautical miles of a Canadian port at which the ship calls or is scheduled to call; and
- (d) the ship is registered
 - (i) in Canada and its entire voyage is scheduled to be outside Canada, or
 - (ii) anywhere, including Canada, and its voyage includes some scheduled voyaging within Canada and the voyage
 - (A) is of at least forty-eight hours duration and includes some voyaging in international waters and at least one non-Canadian port of call including the port at which the voyage begins or ends, and
 - (B) is not scheduled to disembark any passengers at a Canadian port who have embarked at another Canadian port, without calling on at least one non-Canadian port between the two Canadian ports.

Paragraph 207(1)(h) and subsection 207(5) apply

(2) For greater certainty, paragraph 207(1)(h) and subsection 207(5) apply for the purposes of this section.

Offence

(3) Every one who, for the purpose of a lottery scheme, does anything that is not authorized by this section

- (a) in the case of the conduct, management or operation of the lottery scheme,
 - (i) is guilty of an indictable offence and liable to imprisonment for a term of not more than two years, or
 - (ii) is guilty of an offence punishable on summary conviction; and
- (b) in the case of participating in the lottery scheme, is guilty of an offence punishable on summary conviction.

Definitions

(4) The definitions in this subsection apply in this section.

international cruise ship means a passenger ship that is suitable for continuous ocean voyages of at least forty-eight hours duration, but does not include such a ship that is used or fitted for the primary purpose of transporting cargo or vehicles. (navire de croisière internationale)

lottery scheme means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting. It does not include

(a) three-card monte, punch board or coin table; or

(b) bookmaking, pool selling or the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any race or fight, or on a single sporting event or athletic contest. (loterie)

* * *

[Interpretation Act](#), RSC 1985, c. I-21, s. 8.1

Duality of legal traditions and application of provincial law

8.1 Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada and, unless otherwise provided by law, if in interpreting an enactment it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, R.S.O. 1990, c. C.34, by Order-in-Council 210/2024 permitting international play in an online provincial lottery scheme

COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

**REPLY FACTUM
OF THE
ATTORNEY GENERAL
OF ONTARIO**

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