

**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**

**AND IN THE MATTER OF AN APPLICATION by Flutter Entertainment plc to intervene in the said Reference**

---

**FACTUM OF THE PROPOSED INTERVENER,  
FLUTTER ENTERTAINMENT PLC**

---

April 8, 2024

Henein Hutchison Robitaille LLP  
235 King Street East  
Toronto, ON M5A 1J9

Scott C. Hutchison (LSO# 29912J)  
[shutchison@hhllp.ca](mailto:shutchison@hhllp.ca)

Kelsey Flanagan (LSO: 74127U)  
[kflanagan@hhllp.ca](mailto:kflanagan@hhllp.ca)

Brandon Chung (LSO# 83164E)  
[bchung@hhllp.ca](mailto:bchung@hhllp.ca)

**Counsel for the Proposed Intervener,  
Flutter Entertainment plc**

TO: **THE ATTORNEY GENERAL OF ONTARIO**

Crown Law Office - Civil  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9  
Tel.: (416) 908-7465

Josh Hunter (LSO# 49037M)  
[joshua.hunter@ontario.ca](mailto:joshua.hunter@ontario.ca)

Ananthan Sinnadurai (LSO# 60614G)  
[ananthan.sinnadurai@ontario.ca](mailto:ananthan.sinnadurai@ontario.ca)

Hera Evans (LSO# 66269Q)  
[hera.evans@ontario.ca](mailto:hera.evans@ontario.ca)

Jennifer Boyczuk (LSO# 70838L)  
[jennifer.boyczuk2@ontario.ca](mailto:jennifer.boyczuk2@ontario.ca)

**Counsel for the Attorney General of Ontario**

**CONTENTS**

**PART I — OVERVIEW ..... 1**

**PART II — FACTS ..... 2**

**A. iGaming Ontario..... 2**

**B. Flutter Entertainment plc..... 3**

**C. The Reference ..... 5**

**PART III — ISSUES AND LAW ..... 6**

**A. The Test for Leave to Intervene ..... 7**

**B. Flutter Should be Granted Leave to Intervene ..... 9**

        (1) Flutter has a Real, Substantial and Identifiable Interest in the Appeal..... 9

        (2) Flutter has Special Expertise in the Subject Matter of the Appeal ..... 9

        (3) Flutter Brings an Important Perspective ..... 10

**PART IV — ORDER SOUGHT ..... 20**

**SCHEDULE “A” — LIST OF AUTHORITIES..... 21**

**SCHEDULE “B” — LIST OF STATUTES ..... 23**

## **PART I — OVERVIEW**

1. By Order in Council 210/2024, the Lieutenant Governor-in-Council asks this Court whether online gaming and sports betting would remain lawful under s. 207(1)(a) of the *Criminal Code* if the players were permitted to participate in online games and betting with individuals who are present outside of Canada. As explained in the Reference instruments, online gaming and sports betting (“igaming”) in Ontario is currently regulated by the Alcohol and Gaming Commission of Ontario (“AGCO”) and conducted and managed by iGaming Ontario (“iGO”). At present, players in Ontario can only play or bet against the house (acting on behalf of iGO) or against other players who are located in Ontario. This Court is being asked to answer whether the Ontario’s igaming regime would remain lawful under the *Criminal Code* if the overall size of the potential gaming audience of the scheme, otherwise known as its liquidity, is expanded to include players located outside of Ontario. In other words, the Court must answer whether a peer-to-peer gaming model where Ontario players participate in open or shared liquidity games can be “conducted and managed” by the province of Ontario.

2. Flutter Entertainment plc (“Flutter”) seeks leave to intervene in the Reference as a friend of the Court. Flutter is the parent company for many of the world’s largest and most popular igaming and sports betting brands. Flutter has extensive experience in offering peer-to-peer online games in Canada and worldwide. Two of Flutter’s best-known entities, PokerStars and FanDuel, are market-leading operators both internationally and in Ontario, and both are currently registered operators on behalf of iGO. Flutter has been instrumental in advocating for, advising on, and executing the implementation of multi-jurisdictional igaming regimes across the globe.

3. By virtue of its experience in the global gaming marketplace and its role as an operator on

behalf of iGaming Ontario, Flutter has special expertise and experience that will assist the Court in dealing with the issues arising on the Reference. Flutter not only has factual expertise as a leader in the global and Canadian igaming markets, but also has legal and regulatory expertise because of the role it has taken in advancing regulatory regimes across the globe. Flutter also has a significant interest in the outcome of the litigation as its business interests could be significantly impacted by the outcome of the Reference. Flutter’s perspective, as a private entity with experience operating igaming services involving open or shared liquidity, differs significantly from that of any other party to this Reference.

## **PART II — FACTS**

### **A. iGaming Ontario**

4. In July 2021, Ontario amended Part I of the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act* to permit the province to establish a new agency with the mandate to conduct and manage online gaming.<sup>1</sup> That same day, O. Reg. 517/21 was made, which established iGaming Ontario (“iGO”).<sup>2</sup> iGO has since been continued under O. Reg. 722/21 made under the *Alcohol and Gaming Commission of Ontario Act, 2019*. Online gaming pursuant to this framework became available to the public on April 4, 2022.

5. Pursuant to s. 6.1 of the *Alcohol and Gaming Commission of Ontario Act, 2019* one of iGO’s critical objects and duties is “conducting and managing prescribed online lottery schemes”.

Further such objects and duties are set out in O. Reg. 722/21 and include:

---

<sup>1</sup> 1996, S.O. 1996, c. 26; see s. 6.1 of [Alcohol, Cannabis and Gaming Regulation and Public Protection Act from July 5, 2021 to November 29, 2021](#) amended by [Protect, Support and Recover from COVID-19 Act \(Budget Measures\)](#), 2020, S.O. 2020, c. 36, Schedule 2, s. 7(1).

<sup>2</sup> [O. Reg. 517/21 \(Lottery Subsidiary – iGaming Ontario\)](#).

- (a) to develop, undertake and organize prescribed online lottery schemes;
- (b) to promote responsible gaming with respect to prescribed online lottery schemes;
- (c) to conduct and manage prescribed online lottery schemes in accordance with the *Criminal Code*, the *Gaming Control Act, 1992*, and their regulations.

6. Accordingly, through iGO, the province conducts and manages online gaming within its borders. As an agent of the Crown, iGO is responsible for conducting and managing online gaming in Ontario through its use of, and contractual relationships with, private operators (i.e., private entities that operate internet gaming websites for individuals in Ontario).

7. The current iGO structure permits only players in Ontario play against the house or against other players in Ontario. This is known as a *closed liquidity* model. Liquidity is the overall size of the potential gaming audience, and closed liquidity is when the pool of players is limited by jurisdiction. By contrast, *open liquidity* has a pool without jurisdictional limits — players located in any jurisdiction in which the game is offered can join the pool. Another alternative is *shared liquidity*, where the liquidity pool is opened to include multiple jurisdictions that enter an agreement with each other to share liquidity between those jurisdictions but does not include liquidity from jurisdictions that are not party to the agreement. Shared liquidity permits players in the jurisdictions with an agreement to compete with each other but not with players in other jurisdictions.<sup>3</sup>

**B. Flutter Entertainment plc**

8. Flutter is the parent company of many of the oldest and best-known gaming and betting entities in the world, including many who are leaders in igaming markets across the world. In 2023,

---

<sup>3</sup> Affidavit of George Sweny (sworn April 7, 2024) [**Sweny Affidavit**] (Motion Record of the Proposed Intervener, at Tab 2), at para. 16, fn. 4.

the various Flutter entities cumulatively had 12.3 million average monthly online players and \$11.79 billion in group revenue.<sup>4</sup>

9. Flutter operates a range of global brands including PokerStars and FanDuel.<sup>5</sup> PokerStars is an online poker cardroom. It is the largest real money online poker website in the world and has been since it was first launched in 2001.<sup>6</sup> An average of 850,000 hands of poker are currently dealt per hour on the PokerStars websites worldwide.<sup>7</sup> As of 2023, there are a total of approximately 132 million registered players and were 2.9 million active players in 140 countries.<sup>8</sup> FanDuel is America's largest online gaming operator and offers, among other things betting on all major U.S. sports.<sup>9</sup> There are an estimated 18 million customers of FanDuel in the United States. FanDuel is the official sportsbook partner of the NFL, NBA, WNBA, MLB, NHL, and PGA TOUR, and also offers bets on soccer, boxing, NASCAR, F1 Racing, UFC, and other sports.<sup>10</sup> As of the end of January 2024, FanDuel is the number one online sports betting brand in the United States based on gross gaming revenue.<sup>11</sup>

10. FanDuel and PokerStars are both registered operators providing igaming services on behalf of iGO. The version of FanDuel and PokerStars offered in Ontario are limited to players physically in Ontario.<sup>12</sup> The sites are "geofenced" such that the Ontario platforms can only legitimately be accessed by a person using an Ontario IP address and persons with Ontario IP addresses cannot access the other versions of the sites offered in other jurisdictions. As of March 2024, there are

---

<sup>4</sup> Sweny Affidavit, at para. 5.

<sup>5</sup> Sweny Affidavit, at paras. 3-7.

<sup>6</sup> Sweny Affidavit, at paras. 8-11.

<sup>7</sup> Sweny Affidavit, at para. 11.

<sup>8</sup> Sweny Affidavit, at para. 11.

<sup>9</sup> Sweny Affidavit, at para. 14.

<sup>10</sup> Sweny Affidavit, at para. 14.

<sup>11</sup> Sweny Affidavit, at para. 14.

<sup>12</sup> Sweny Affidavit, at para. 16.

approximately 30,000 active users PokerStars and 150,000 active users of FanDuel each month in Ontario.<sup>13</sup>

11. Flutter has significant global experience in offering peer-to-peer — and almost every other kind of igaming — products within international or multi-state shared liquidity models, including poker on PokerStars and other platforms.<sup>14</sup> For example, PokerStars uses a shared liquidity model in Michigan and New Jersey. Delaware, West Virigina, and Nevada are also part of this US state consortium, but Flutter does not presently operate in those states. In this multi-state arrangement, each state has its own regulatory schemes and has entered a joint contract to share liquidity between all 5 states under the Multi-State Internet Gaming Agreement (“MSIGA”). Negotiations for other states in the United States of America to join the MSIGA are ongoing. PokerStars also operates in a shared liquidity model for France, Spain, and Portugal under a shared liquidity agreement where each country regulates gaming within its jurisdiction, but liquidity is shared between the 3 countries. Flutter had significant involvement in the negotiation and execution of these international agreements.

### **C. The Reference**

12. In Order in Council 210/2024 and the accompanying schedule, Ontario asks for the Court’s opinion on a model for the regulation of igaming (within the iGO scheme generally) whereby players in Ontario will participate in peer-to-peer games that may involve players outside of Canada. Players physically located in Ontario would continue to access games and sports betting through iGaming Ontario sites and, accordingly, continue to operate under the iGaming Ontario’s

---

<sup>13</sup> Sweny Affidavit, at paras. 17, 19.

<sup>14</sup> Sweny Affidavit, at para. 21.



conduct and management of the iGaming Ontario. Ontario players and any games they participate in would remain subject to all the regulatory and contractual controls on the games offered on behalf of iGO. However, they would be able to participate in games where they play or bet against players outside of Canada. Players located outside Canada would access games and sports betting through the Operator's gaming application or website available in their own jurisdiction and those international sites, along with the players using them, would be subject to the relevant jurisdiction's legal and regulatory regime.

13. As a result, players participating in Ontario's electronic gaming scheme would be able to bet against or participate in the same betting pool as players located outside Canada participating in foreign gaming schemes. Open access to the international pool of wagered sums offers larger potential winnings to law-abiding gamblers in Ontario.

14. This reference asks whether the "open liquidity" model proposed by the Order in Council conforms to the exception in s. 207(1)(a) of the *Code*, which 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". More precisely, this Court is asked whether the open liquidity model is conducted and managed "in that province".

### **PART III — ISSUES AND LAW**

15. The issue in this motion is whether Flutter should be granted leave to intervene in this Reference. As set out further below, it is respectfully submitted that Flutter more than satisfies the test for granting leave to intervene.

**A. The Test for Leave to Intervene**

16. Rule 13.02 of the *Rules of Civil Procedure* provides that any person may apply to intervene in a proceeding as a friend of the court for the purpose of rendering assistance to the court by way of argument.<sup>15</sup>

17. An applicant seeking to intervene must meet at least *one* of the following factors laid out in the *Reference re Greenhouse Pollution Pricing Act*:

- (a) the applicant has a real, substantial and identifiable interest in the subject matter of the proceedings;
- (b) the applicant has an important perspective distinct from the immediate parties; or
- (c) the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base.<sup>16</sup>

18. Flutter meets each of these disjunctive considerations.

19. As Dubin C.J.O. explained in *Peel (Regional Municipality) v. Great Atlantic and Pacific Co of Canada*, the decision of whether to grant leave to intervene should be guided by three criteria, namely:

- (a) the nature of the case;
- (b) the issues that arise in the case; and
- (c) the likelihood that the proposed intervener will be able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.<sup>17</sup>

---

<sup>15</sup> *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#), at Rule 13.02.

<sup>16</sup> *Reference re Greenhouse Pollution Pricing Act*, [2019 ONCA 29](#), at [para. 8](#); *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#), at [para. 2](#).

<sup>17</sup> *Peel (Regional Municipality) v. Great Atlantic and Pacific Co of Canada*, [1990 CanLII 6886](#) (Ont. C.A.), at [para. 10](#) [*“Peel”*].

20. In determining what constitutes an appropriate intervention, this Court has recognized that it “should have all of the relevant possibilities brought to its attention, including submissions on the impact of its judgment, not only on the parties, but on those not before the court”.<sup>18</sup> This is so even where only certain aspects of the ultimate decision may bear on the rights of others not party to the litigation.<sup>19</sup>

21. As Fairburn A.C.J.O recognized in *40 Days for Life v. Dietrich*, “interveners do not need to be entirely disinterested in the outcome of a legal issue”.<sup>20</sup> This Court has recognized that valid contribution may be made in appropriate cases by intervenors who advocate a particular interpretation of the law, or who bring a certain perspective.<sup>21</sup> Such contributions may assist the court in its analysis of the issues for determination by placing them under scrutiny through a different lens or from a different perspective.<sup>22</sup>

22. Overlap in the positions of the proposed intervenor and a party to the proceedings is not a ground for the denial of a leave to intervene. In fact, some overlap between the parties and a public or private interest intervenor is to be expected.<sup>23</sup> It is still open to a proposed intervenor, whose position “generally aligns” with that of a party, to show that it will make a useful contribution.<sup>24</sup>

---

<sup>18</sup> *Louie v. Lastman*, [2001 CanLII 2843](#) (Ont. C.A.) at [para. 12](#) [*Lastman*].

<sup>19</sup> *Lastman*, [2001 CanLII 2843](#) (Ont. C.A.) at [para. 12](#).

<sup>20</sup> *40 Days for Life v. Dietrich*, 2023 ONCA 379, at [para. 20](#) (emphasis added).

<sup>21</sup> *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006 CanLII 60327](#) (Ont. C.A.), at [para. 9](#) [*Oakwell*]; *Childs v. Desormeaux*, [2003 CanLII 47870](#) (Ont. C.A.), at [paras. 15-16](#) [*Childs*]. See also *Choc v. Hudbay Minerals Inc. et al.*, [2013 ONSC 998](#), at [para. 11](#) [*Hudbay*].

<sup>22</sup> *Oakwell*, [2006 CanLII 60327](#) (Ont. C.A.), at [para. 9](#).

<sup>23</sup> *Working Families Ontario v. Ontario*, [2021 ONSC 3652](#) at [para. 7](#).

<sup>24</sup> *Hudbay*, [2013 ONSC 998](#), at [para. 11](#); *Oakwell*, [2006 CanLII 60327](#) (Ont. C.A.), at [para. 9](#); *Childs*, [2003 CanLII 47870](#) (Ont. C.A.), at [paras. 15-16](#); *Peel*, [1990 CanLII 6886](#) (Ont. C.A.); *P.S. v. Ontario*, [2014 ONCA 160](#), at [paras. 11-13](#).

**B. Flutter Should be Granted Leave to Intervene**

23. In this case, all three factors outlined in the *Reference re Greenhouse Pollution Pricing Act* weigh in favour of Flutter's intervention. The factors listed in *Peel* also favour Flutter being granted leave to intervene.

24. The case is a reference and does not reach this Court through the traditional adversarial process. As such, Flutter's perspective is even more critical to the resolution of the issue before the Court. Given its expertise and experience in the areas of online gaming and open liquidity, Flutter is also likely to make a useful contribution that will not cause any injustice.

**(1) Flutter has a Real, Substantial and Identifiable Interest in the Reference**

25. Flutter's interest in this matter is real, substantial and identifiable. This reference deals squarely with Flutter's business interests. Flutter and its subsidiaries have provided peer-to-peer gaming and betting services, including igaming operations, for decades and are leaders in both Canada and internationally. The outcome of the reference will directly impact Flutter's business interests as an operator providing services to iGO. The outcome of the Reference will determine whether Flutter can, on behalf of iGO, open the pool of available wagers to players in Ontario, which directly impacts both the desirability of Flutter's products and Flutter's profits.

**(2) Flutter has Special Expertise in the Subject Matter of the Reference**

26. Flutter has extensive experience and expertise in peer-to-peer online gaming. Flutter is the parent company of over 10 major corporations that offer peer-to-peer games and other igaming.

27. As thoughtfully explained in the affidavit of George Sweny,<sup>25</sup> Flutter works regularly with governments and regulatory authorities across the world to educate and explain the advantages resulting from proper regulation of the igaming industry, including ensuring safe and responsible protection for players and providing significant revenue opportunities for local governments.

28. For example, Flutter was one of several industry participants consulted by Ontario in relation to the current iGaming Ontario regime. Flutter is currently actively engaged with similar officials in Alberta, British Columbia and Quebec as those provinces consider the benefits and options of igaming regulation.

29. Outside of Canada, Flutter is also engaged in providing advice to the Commonwealth of Pennsylvania, as it considers joining the Multi State Internet Gaming Agreement (MSIGA) in the USA, which combines player liquidity for peer-to-peer games such as poker and daily fantasy sports. There are many other examples, currently underway, where Flutter is actively involved in discussions with governments, either directly or via industry associations, including in Finland, Brazil and multiple state governments within the USA.

30. Flutter's experience as an industry participant and in the regulation and application of different liquidity models will be of assistance in this Reference, which raises the question of whether Ontario's igaming regime can involve open or shared liquidity.

### **(3) Flutter Brings an Important Perspective**

31. If granted leave to intervene, Flutter will argue that both the wording of s. 207(1)(a) and the purpose underlying it support an interpretation of the provision and the phrase "in that

---

<sup>25</sup> See Sweny Affidavit, at paras. 23-29.

province” that is broad enough to accommodate an “open liquidity” model. Given its role as a leading private entity, both in Ontario and worldwide, and its experience in executing open and shared liquidity models in other jurisdictions, Flutter provides a unique and important perspective based on special experience and expertise that is not otherwise available to the Court.

32. If granted leave to intervene, Flutter proposes to make three submissions:

- (a) First, specific principles of statutory interpretation favour the conclusion that an open or shared liquidity model falls within the confines of the requirement that the province conduct and manage any gaming scheme “in that province”. These principles include the principle of strict construction of penal statutes and dynamic interpretation and technological neutrality.
- (b) Second, Ontario is not only permitted to regulate gaming pursuant to s. 207(1)(a), it is constitutionally entitled to do so. In accordance with the jurisprudence interpreting ss. 92(13) and (16), s. 207(1)(a) must allow Ontario to pass laws regulating any gambling that has a “real and substantial connection” to the province. A narrower scope would reduce Ontario’s constitutional authority in contravention of the principle of cooperative federalism.
- (c) Third, this Court need not follow the interpretation of s. 207(1)(b) in *Reference re Earth Future Lottery (P.E.I.)*.<sup>26</sup> That case concerned the interpretation of a different subsection than was at issue here. To the extent that the Supreme Court’s affirmation of *Earth Future Lottery* affects this Court’s interpretation of s. 207(1)(a), it should be revisited in light of the evolution of the law related to jurisdiction and internet transactions and commerce.

(a) The Principles of Statutory Interpretation

33. The critical section in this reference, s. 207(1)(a) of the *Criminal Code*, creates an exception to the broad prohibition on gambling set out in s. 206. This “conduct and manage” exception permits the government of a province to conduct and manage “lotteries” in specified circumstances. In this way, the scope of the *Criminal Code* prohibition against gaming is defined by the scope of the exceptions. That is, the scope of s. 207(1)(a) (as well as and the rest of s. 207)

---

<sup>26</sup> *Reference re Earth Future Lottery (P.E.I.)* [*Earth Future Lottery*], [2002 PESCAD 8](#), aff’d [2003 SCC 10](#).

identifies the parameters of the criminal prohibition against gambling.

34. Section 207(1)(a) provides:

**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 [Emphasis added.]

35. The language of s. 207(1)(a) does not prevent Ontario from implementing a system of gaming regulation that permits users within its jurisdiction to bet against users located outside of Canada. Such an interpretation must arise by implication, and only if this Court were to interpret s. 207(1)(a) to mean that it is only lawful for the government of a province to conduct and manage a lottery scheme “entirely” in that province.

36. However, well-worn canons of statutory interpretation militate against such a restrictive interpretation of s. 207(1)(a), namely: the principle of strict construction of penal statutes, and the related principles of dynamic interpretation and technological neutrality.

**(i) Strict Construction of Penal Statutes**

37. Through this principle, Canadian courts have long recognized that any ambiguity in provisions that create criminal liability — which s. 207(1)(a) does by establishing the boundaries of s. 206 — should be resolved in favour of a narrower criminal prohibition.

38. Specifically, the principle of strict construction requires that “[w]here an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation

fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself”.<sup>27</sup> The justification for this is that “[i]f one is to be incarcerated, one should at least know that some Act of Parliament requires it in express terms, and not, at most, by implication”.<sup>28</sup> The Supreme Court recently reiterated this principle in *R. v. D.L.W.*, confirming that “enactments which take away the liberty of the subject should be clear and any ambiguity resolved in favour of the subject”.<sup>29</sup>

39. Here, s. 207(1)(a) of the *Code* is afflicted with “real” ambiguity, in the sense that the provision is reasonably capable of more than one meaning.<sup>30</sup> There is nothing in the language or context of s. 207(1)(a) to resolve the uncertainty of whether “in that province” means “[entirely] in that province”. Significantly, the principle of strict construction counsels against adopting that interpretation, as doing so would effectively expand the scope of criminal liability set out in s. 206. More fundamentally, it would therefore be unjust to criminalize conduct that the statutory scheme does not prohibit in clear and certain terms.<sup>31</sup>

## (ii) Dynamic Interpretation and Technological Neutrality

40. Second, the principles of dynamic interpretation and technological neutrality also work to address the ambiguity latent in s. 207(1)(a). Dynamic interpretation (sometimes captured by the notion that “the law is always speaking”) expresses what McLachlin C.J.C described in *R. v. 974649 Ontario Inc.*, namely that “[t]he intention of Parliament or the legislatures is not frozen for all time at the moment of a statute’s enactment, such that a court interpreting the statute is forever

---

<sup>27</sup> *Bélanger v. the Queen*, [1970] S.C.R. 567, at p. 573.

<sup>28</sup> *Marcotte v. Deputy Attorney General for Canada* (1974), [1976] 1 S.C.R. 108 [*Marcotte*], at p. 115.

<sup>29</sup> *R. v. D.L.W.*, 2016 SCC 22, at para. 50 (emphasis added).

<sup>30</sup> *R. v. Basque*, 2023 SCC 18, at para. 74.

<sup>31</sup> *Marcotte*, [1976] 1 S.C.R. 108.



confined to the meanings and circumstances that governed on that day”.<sup>32</sup> As the *Interpretation Act* says, “[t]he law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning”.<sup>33</sup>

41. Accordingly, the interpretation of s. 207(1)(a) must be sensitive to the manner in which technology and commercial practice have developed and changed since the enactment of that provision.

42. As with any exercise of statutory interpretation, the critical question here is what Parliament intended. As this Court recognized in *R. v. Andriopoulos*, what Parliament was concerned with in s. 207 was “decriminaliz[ing] [gaming] in circumstances where regulations will minimize the potential for public harm”.<sup>34</sup> Section 207(1)(a) specifically represents a Parliamentary recognition that gaming is better addressed through functioning regulation by the government of the province than by a complete criminal prohibition. Ultimately, Parliament’s concern was that the province was managing the risks of the games that it offered.

43. In light of the foregoing, this Reference raises the question of how to interpret the words “in that province” s. 207(1)(a) in a manner that respects the intention above while also accounting for the radical ways in which technology has advanced since the enactment of the provision. When the requirement that a provincial scheme be conducted “in that province” in s. 207(1)(a) was enacted — first in 1969 and then with amendments in 1985 — the extra-provincial reach of online gaming schemes (and similar internet commerce) simply did not exist. Gaming has changed

---

<sup>32</sup> *R. v. 974649 Ontario Inc.*, [2001 SCC 81](#), at [para. 38](#).

<sup>33</sup> *Interpretation Act*, R.S.O. 1990, c. I.11, s. 4.

<sup>34</sup> *R. v. Andriopoulos*, [1994 CanLII 147](#) (Ont. C.A.).

drastically since then: the Internet and related responses by governments everywhere has made online gaming possible, practical, and (with sufficient regulation and oversight) safe.

44. The interpretation of “in that province” can comfortably account for the advent of igaming. This Court has in numerous cases recognized the way in which changes in technology can be accommodated by a dynamic and technologically neutral interpretive approach. Two cases in particular are worth mentioning here.

45. First, in *John v. Ballingal*, this Court confirmed that the *Libel and Slander Act* applies to online and print newspapers, notwithstanding that only print newspapers existed at the time of enactment.<sup>35</sup> Specifically, this Court recognized that a “newspaper” — a term in the Act — did not have to be a printed paper. It could also include an online paper and internet publications.<sup>36</sup>

46. Second, in *Woods (Re)*, this Court held that being “present” at a hearing as required by s. 672.5(9) of the *Criminal Code* included videoconference, given the courts’ ability “to consider advances in technology that did not exist when Parliament enacted the provision”.<sup>37</sup>

47. This latter case applies with force here: a hearing is still occurring “in” a courthouse, notwithstanding that someone may be participating remotely. In the same way, a person placing a bet can still be gaming “in [the] province” of Ontario, notwithstanding that they may be placing that bet remotely.

48. This Court is not alone in recognizing the way in which the reach of the Internet has transformed the law and the traditional approach to territoriality. For example, in *Google Inc. v.*

---

<sup>35</sup> *John v. Ballingal*, [2017 ONCA 579](#) [*Ballingal*].

<sup>36</sup> *Ballingal*, [2017 ONCA 579](#), at [paras. 19-32](#).

<sup>37</sup> *Woods (Re)*, [2021 ONCA 190](#), at [para. 44](#).

*Equustek Solutions Inc.*, the Supreme Court held that, where a party has established the foundation for an injunction, Canadian courts can enjoin conduct anywhere in the world if doing so is necessary to ensure the injunction’s effectiveness in Canada. In reaching that conclusion, the Court noted that the Internet “has no borders – its natural habitat is global”.<sup>38</sup>

49. The endless reach of the Internet places added importance on the ability of provincial legislatures to usher gamers away from unregulated markets and into its protective aegis. As an industry leader, Flutter is aware that “open liquidity” models are being deployed in unregulated sectors. Interpreting s. 207(1)(a) to only permit closed liquidity results in continued access to the unregulated market, undermining one of the *Code*’s primary purposes with respect to gaming: to undermine illicit gambling. Conversely, a broad interpretation of s. 207(1)(a) that accommodates open liquidity models will ensure that Ontario players and private operators no longer operate in an unregulated, legally ambiguous market.

50. Ultimately, today, Parliament’s intention to ensure that the risks of gaming are managed by any province conducting and managing a gaming scheme can accommodate the reality that those schemes no longer respect traditional borders. Indeed, the principles of statutory interpretation demand an approach that accommodates this reality.

(b) The Province has Constitutional Jurisdiction to Regulate Gambling as Proposed

51. Second, if granted leave to intervene, Flutter will argue that the division of powers in ss. 91 and 92 of the *Constitution Act, 1867* also favours a broad interpretation of s. 207(1)(a).

52. Gaming, as a subject-matter that falls under both provincial and legislative competencies,

---

<sup>38</sup> *Google Inc. v. Equustek Solutions Inc.*, [2017 SCC 34](#), at [para. 41](#) (emphasis added).

is subject to the “double aspect” doctrine, can validly be the subject of legislation by both orders of government. The interpretation of s. 207(1)(a) must be taken as an expression of Parliament’s intention to respect provincial jurisdiction in this area. Section 207(1)(a) does not grant any authority to the provinces that the provinces do not already possess under their own grants of power — Parliament simply “carves out” a category of gaming from its exercise of its criminal law power.

53. As the Supreme Court recognized in *R. v. Furtney*, “the regulation of gaming activities has a clear provincial aspect under s. 92 of the *Constitution Act, 1867*”.<sup>39</sup> In particular, Stevenson J. held that “lottery activities are subject to the legislative authority of the province under various heads of s. 92, including ... property and civil rights (13), licensing (9), and maintenance of charitable institutions (7)”.<sup>40</sup>

54. While Parliament has exercised its jurisdiction over criminal law to enact the restrictions on gaming set out in Part VII of the *Code*, it is apparent that it has done so in a manner that respects and vindicates provincial jurisdiction in this area. In particular, the provinces’ constitutional capacity to legislate with respect to gaming is reflected in the exception in s. 207(1)(a). Indeed, the *Code*’s gaming provisions, interpreted in light of their history, context, and within the overall statutory scheme, were intended to grant provincial legislatures broad authority to enable lottery schemes within their jurisdiction. Enabling the provinces to regulate gaming within their jurisdiction furthers Parliament’s objectives of: (1) granting the provinces an important revenue tool; (2) creating workable control of gaming; and (3) undermining illicit gaming.

55. In this context, there is simply no reason to read “in that province” narrowly — that is, to

---

<sup>39</sup> *R. v. Furtney*, [1991] 3 S.C.R. 89, at p. 103.

<sup>40</sup> *Futney*, [1991] 3 S.C.R. 89, at p. 103.

say “[entirely] in that province”. This is so not only because of the provinces’ constitutional competence in this area, but also because they are more generally constitutionally competent to regulate activity that affects their territory, even when the activity starts outside of their borders.<sup>41</sup> The real question is whether the activity being targeted by provincial legislation has a real and substantial connection to the province enacting it.

(c) Reference re Earth Future Lottery (P.E.I.), 2002 PESCAD 8

56. In deciding this Reference, this Court will likely need to confront the Court of Appeal for Prince Edward Island’s 2002 decision in *Reference re Earth Future Lottery (P.E.I.)*. That case concluded that an Internet lottery scheme which, for all intents and purposes, was aimed at a market almost entirely outside the Province, did not fit within the exception in s. 207(1)(b).<sup>42</sup> That section provides that it is lawful for charitable or religious organizations to conduct and manage a lottery scheme in that province.<sup>43</sup> In doing so, the Court remarked that the *Code*’s gaming provisions “clearly demonstrate that Parliament does not happily abide gaming activities of any sort in Canada. The little it tolerates, it does so grudgingly”.<sup>44</sup> The Supreme Court summarily dismissed an appeal from the Court of Appeal’s decision, with no substantive analysis of its own.<sup>45</sup>

57. At the outset, it is important to recognize, as the Supreme Court did in *Reference re Code of Civil Procedure (Que.)*, art. 35, that a reference is “merely an advisory procedure”.<sup>46</sup> Because

---

<sup>41</sup> See, e.g., *Global Securities Commission v. British Columbia*, [2000 SCC 21](#), and *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#), for examples of cases involving legislation that addressed some extra-provincial aspects while being aimed at intra-provincial matters.

<sup>42</sup> *Earth Future Lottery*, [2002 PESCAD 8](#).

<sup>43</sup> *Criminal Code*, s. 207(1)(b).

<sup>44</sup> *Earth Future Lottery*, 2002 PESCAD 8, [at para. 7](#).

<sup>45</sup> *Reference re Earth Future Lottery*, [2003 SCC 10](#).

<sup>46</sup> *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#), at [para. 151](#).

of this advisory nature, they are “in principle, non-binding”.<sup>47</sup> While references are “in practice treated as judicial decisions and followed by other courts”,<sup>48</sup> that need not be the case here, given that the critical analysis was done by another provincial appellate court and given that the Supreme Court conducted no analysis of its own. If it is necessary, the technological advancements described above justify a departure from any applicable persuasive *stare decisis* pursuant to the test set out in *Bedford v. Canada*.<sup>49</sup>

58. Flutter will also submit that *Earth Future Lottery* does not apply here and that it misunderstands the purpose underlying the *Code*’s gaming provisions and should have no impact on this Court’s interpretation of s. 207(1)(a). This is the case for two reasons.

59. First, as Patrick Monahan (prior to his appointment to this Court) and Gerold Goldlist recognized in their seminal article, “Roll Again: New Developments concerning Gaming”, s. 207(1)(a) and s. 207(1)(b) have different Parliamentary intentions behind them. As they explain, the distinctions between the sections clearly demonstrate that “Parliament has adopted a more restrictive approach to lottery schemes conducted and managed by a charitable organization than the approach to those conducted and managed by provincial governments”.<sup>50</sup> Accordingly, the approach to “in that province” adopted in *Earth Future Lottery*, which related specifically to s. 207(1)(b), does not easily translate into this Reference, which involves s. 207(1)(a).

60. Second, contrary to what is suggested in *Earth Future Lottery*, the history of s. 207 is not one of begrudging tolerance towards some gaming. Rather, these provisions represent Parliament’s

---

<sup>47</sup> *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27, at [para. 151](#), citing *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), at [para. 40](#).

<sup>48</sup> *Reference re Code of Civil Procedure (Que.)*, art. 35, 2021 SCC 27, at [para. 152](#).

<sup>49</sup> *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#), at [para. 46](#).

<sup>50</sup> Patrick J. Monahan & A. Gerold Goldlist, “Roll Again: New Developments concerning Gaming”, (1999) 42 *Crim. L.Q.* 182 [“**Roll Again**”], at p. 191.

understanding that it is preferable to offer gamers a safe, regulated environment than to prohibit gaming outright. They operate on the assumption that “it is impractical to attempt to prohibit gaming entirely, since such activities are socially acceptable and pose no inherent threat to the public interest”.<sup>51</sup>

#### **PART IV — ORDER SOUGHT**

61. Flutter respectfully requests an order that it:
- (a) Be granted leave to intervene in this Reference as a friend of the court;
  - (b) Be permitted to file a factum of no more than 20 pages;
  - (c) Be permitted to present oral argument at the hearing of the Reference, for no more than one hour;
  - (d) Not be granted costs, nor have costs awarded against it; and,
  - (e) Such further or other order as this Honourable Court may deem appropriate.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of April, 2024.**



---

Scott Hutchison  
Kelsey Flanagan  
Brandon Chung

**Counsel for the Proposed Intervener,  
Flutter Entertainment plc**

---

<sup>51</sup> “Roll Again”, (1999) 42 Crim. L.Q. 182, at p. 189.

## SCHEDULE “A” — LIST OF AUTHORITIES

### Jurisprudence

1. *Reference re Greenhouse Pollution Pricing Act*, [2019 ONCA 29](#)
2. *Bedford v. Canada (Attorney General)*, [2009 ONCA 669](#)
3. *Peel (Regional Municipality) v. Great Atlantic and Pacific Co of Canada*, [1990 CanLII 6886](#) (Ont. C.A.)
4. *Louie v. Lastman*, [2001 CanLII 2843](#) (Ont. C.A.)
5. *40 Days for Life v. Dietrich*, 2023 ONCA 379
6. *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006 CanLII 60327](#)
7. *Childs v. Desormeaux*, [2003 CanLII 47870](#) (Ont. C.A.)
8. *Choc v. Hudbay Minerals Inc. et al.*, [2013 ONSC 998](#)
9. *Working Families Ontario v. Ontario*, [2021 ONSC 3652](#)
10. *P.S. v. Ontario*, [2014 ONCA 160](#)
11. *Reference re Earth Future Lottery (P.E.I.)* [2002 PESCAD 8](#)
12. *Reference re Earth Future Lottery*, [2003 SCC 10](#)
13. *Bélanger v. the Queen*, [\[1970\] S.C.R. 567](#)
14. *Marcotte v. Deputy Attorney General for Canada* (1974), [\[1976\] 1 S.C.R. 108](#)
15. *R. v. D.L.W.*, [2016 SCC 22](#)
16. *R. v. Basque*, [2023 SCC 18](#)
17. *R. v. 974649 Ontario Inc.*, [2001 SCC 81](#)
18. *R. v. Andriopoulos*, [1994 CanLII 147](#) (Ont. C.A.)
19. *John v. Ballingall*, [2017 ONCA 579](#)
20. *Woods (Re)*, [2021 ONCA 190](#)



21. *Google Inc. v. Equustek Solutions Inc.*, [2017 SCC 34](#)
22. *R. v. Furtney*, [\[1991\] 3 S.C.R. 89](#)
23. *Global Securities Commission v. British Columbia*, [2000 SCC 21](#)
24. *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#)
25. *Reference re Code of Civil Procedure (Que.)*, art. 35, [2021 SCC 27](#)
26. *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#)

### **Secondary Sources**

27. Patrick J. Monahan & A. Gerold Goldlist, Roll Again: New Developments concerning Gaming, (1999) 42 CRIM. L.Q. 182

## **SCHEDULE “B” — LIST OF STATUTES**

[Alcohol and Gaming Regulation and Public Protection Act, 1996, S.O. 1996, c. 26, Sched.](#)

---

[Alcohol, Cannabis and Gaming Regulation and Public Protection Act from July 5, 2021 to November 29, 2021](#) amended by [Protect, Support and Recover from COVID-19 Act \(Budget Measures\)](#), 2020, S.O. 2020, c. 36, Schedule 2, s. 7(1).

---

[Interpretation Act, R.S.O. 1990, c. I.11, s. 4](#)

### **Law always speaking**

4. The law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning. R.S.O. 1990, c. I.11, s. 4.

---

[Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

### **Rule 13 Intervention**

#### **Leave to Intervene as Friend of the Court**

**13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02.

#### **Leave to Intervene in Divisional Court or Court of Appeal**

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

---

**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.

### **Terms and conditions of licence**

(2) Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct, management and operation of or participation in the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by the Lieutenant Governor in Council thereof or any law enacted by the legislature of that province may prescribe.

### **Offence**

(3) Every one who, for the purposes of a lottery scheme, does anything that is not authorized by or pursuant to a provision of this section

(a) in the case of the conduct, management or operation of that lottery scheme,

(i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years, or

(ii) is guilty of an offence punishable on summary conviction; or

(b) in the case of participating in that lottery scheme, is guilty of an offence punishable on summary conviction.

### **Definition of lottery scheme**

(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.

### **Definition of slot machine**

(4.01) In paragraph 4(c), slot machine means any automatic machine or slot machine, other than any automatic machine or slot machine that dispenses as prizes only one or more free games on that machine, that

- (a) is used or intended to be used for any purpose other than selling merchandise or services; or
- (b) is used or intended to be used for the purpose of selling merchandise or services if
  - (i) the result of one of any number of operations of the machine is a matter of chance or uncertainty to the operator,
  - (ii) as a result of a given number of successive operations by the operator, the machine produces different results, or
  - (iii) on any operation of the machine, it discharges or emits a slug or token.

### **Exception — charitable or religious organization**

(4.1) The use of a computer for the sale of a ticket, selection of a winner or the distribution of a prize in a raffle, including a 50/50 draw, is excluded from paragraph (4)(c) in so far as the raffle is authorized under paragraph (1)(b) and the proceeds are used for a charitable or religious object or purpose.

### **Exception re: pari-mutuel betting**

(5) For greater certainty, nothing in this section shall be construed as authorizing the making or recording of bets on horse-races through the agency of a pari-mutuel system other than in accordance with section 204.

---

[O. Reg. 517/21 \(Lottery Subsidiary – iGaming Ontario\)](#)

---

[\*The Constitution Act, 1867, 30 & 31 Vict, c. 3, ss. 91 and 92\*](#)

**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**

**COA-24-CV-0185**

**AND IN THE MATTER OF AN APPLICATION by Flutter Entertainment plc to intervene in the said Reference**

---

**COURT OF APPEAL FOR ONTARIO**

PROCEEDINGS COMMENCED AT TORONTO

---

**FACTUM OF THE PROPOSED INTERVENER,  
FLUTTER ENTERTAINMENT PLC**

---

**HENEIN HUTCHISON ROBITAILLE LLP**

235 King Street East  
Toronto, Ontario M5A 1J9

Scott C. Hutchison (LSO# 29912J)  
[shutchison@hhllp.ca](mailto:shutchison@hhllp.ca)

Kelsey Flanagan (LSO# 74127U)  
[kflanagan@hhllp.ca](mailto:kflanagan@hhllp.ca)

Brandon Chung (LSO# 83164E)  
[bchung@hhllp.ca](mailto:bchung@hhllp.ca)

**Counsel for the Proposed Intervener,  
Flutter Entertainment plc**