

COURT OF APPEAL FOR ONTARIO

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

**FACTUM OF THE PROPOSED INTERVENER, MOHAWK COUNCIL OF
KAHNAWÀ:KE
(Motion for Leave to Intervene, Returnable May 1, 2024)**

April 8, 2024

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PART I - OVERVIEW

1. The Mohawk Council of Kahnawà:ke (“MCK”) moves for leave to intervene in this Reference pursuant to Rules 13.02 and 13.03 of the *Rules of Civil Procedure*.

2. The question on this Reference is whether online gaming and sports betting that is otherwise lawful under s. 207(1)(a) of the *Criminal Code* would remain lawful if its users were permitted to participate in games of chance involving individuals outside of Canada, and if not, to what extent it would not be lawful.

3. The *Criminal Code of Canada* generally prohibits wagering, betting, and games of chance. Section 207(1)(a) creates an exception to those prohibitions for lottery schemes¹ conducted and managed by provincial governments in the provinces. Answering the question on this Reference will therefore require this Court to interpret the exception in s. 207(1)(a) in light of the rest of the *Criminal Code*, the legislative context and history, Parliament’s intent, and the practical reality of conducting and managing lottery schemes.

4. MCK’s position is that s. 207(1)(a), interpreted in light of these factors, does not permit international gaming of the type proposed in the Reference question. MCK is uniquely positioned to assist the Court in answering the question on the Reference. MCK has expertise with the conduct, management, operation, regulation, and licensing of online lottery schemes, given that Kahnawà:ke was one of the first jurisdictions in the world to do so, both in Canada and internationally. MCK also has expertise with the *Criminal*

¹ Which is defined in the *Criminal Code* to mean all types of wagering, betting and games of chance. See [ss. 207\(4\)](#) of the *Criminal Code*.

Code's provisions related to gaming, having participated in their development through the legislative process and in litigation.

5. As a result, MCK has deep expertise in these areas and the unique perspective of a First Nation with the relevant legal and practical experience that will be of assistance to this Court in answering the Reference question. MCK's participation will also enrich the adversarial process by ensuring that the Court has the benefit of competing viewpoints. MCK therefore respectfully submits that its motion for leave to intervene should be granted.

PART II - THE FACTS

A. MCK, its expertise and its unique perspective

6. MCK is the governing body for the Kanien:kehá'ka (Mohawks) of Kahnawà:ke within the Mohawk Territory of Kahnawà:ke.² Kahnawà:ke is part of the Mohawk Nation whose vast traditional territory extends through what is now referred to as Quebec, Ontario, and the northeastern United States.³ The Mohawks have never been conquered and their territory has never been ceded.⁴

7. The Mohawks of Kahnawà:ke have inherent rights as Indigenous peoples and are Aboriginal and treaty rights holders within the meaning of s. 35 of the *Constitution Act*,

² Affidavit of Chief Ross Montour affirmed April 4, 2024 ("Montour Affidavit"), para. 1; Motion Record of the Proposed Intervener ("MR"); Tab 2, p. 7.

³ Montour Affidavit, para. 2; MR, p. 7.

⁴ Montour Affidavit, para. 2; MR, p. 7.

1982.⁵ They also have the right to self-government and economic self-determination under the *United Declaration on the Rights of Indigenous Peoples* (“UNDRIP”).⁶

8. Gaming, wagering, betting, and games of chance has been a part of Mohawk culture since time immemorial.⁷ MCK has exercised that right in modern times by enacting the *Kahnawà:ke Gaming Law*, which it enacted in 1996, to regulate and license land-based and online gaming.⁸ In fact, Kahnawà:ke was one of the first jurisdictions in the world to recognize the economic benefits of online gaming.⁹

9. The *Kahnawà:ke Gaming Law* establishes the Kahnawà:ke Gaming Commission (“KGC”) to regulate and license land-based and online gaming.¹⁰ KGC licenses and regulates online gaming through its *Regulations Concerning Interactive Gaming*.¹¹ Gaming websites licensed by KGC are hosted on designated web servers in the community of Kahnawà:ke and are accessed by players around the world.¹² There are currently 48 online gaming operators licensed by the KGC, and the KGC regulates 145 individual websites.¹³

10. MCK also conducts and manages online gaming through Mohawk Online, a socio-economic initiative wholly owned by MCK that operates an online gaming platform offered throughout Canada, except in Ontario.¹⁴

⁵ Montour Affidavit, para. 3; MR, p. 8.

⁶ Montour Affidavit, para. 3; MR, p. 8.

⁷ Montour Affidavit, para. 5; MR, p. 8.

⁸ Montour Affidavit, paras 5-6; MR, p. 8.

⁹ Montour Affidavit, para. 9; MR, p. 9.

¹⁰ Montour Affidavit, para. 7; MR, p. 9.

¹¹ Montour Affidavit, para. 9; MR, p. 9.

¹² Montour Affidavit, para. 9; MR, p. 9.

¹³ Montour Affidavit, para. 9; MR, p. 9.

¹⁴ Montour Affidavit, para. 11; MR, p. 10.

11. MCK's gaming activities are public, transparent, and well-established. They have been acknowledged by the members of Parliament and the Senate, representatives of the Government of Canada, and the courts.¹⁵ MCK also participates in the development of the *Criminal Code*'s legislative framework governing gaming. In particular:

- (a) MCK representatives appeared before committees in Parliament and the Senate to testify about Bill C-218, which was proposed to and did, when enacted, repeal the *Criminal Code*'s prohibition on single-sports betting;¹⁶
- (b) MCK brought an application in the Ontario Superior Court of Justice in November 2022 challenging the constitutionality of Ontario's regime for online gaming – the same regime from which the question in the Reference arises;¹⁷ and
- (c) MCK representatives meet from time to time with representatives of the Government of Canada about the *Criminal Code*'s gaming provisions.¹⁸

B. The question on this Reference

12. The question on this Reference is:

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?¹⁹

¹⁵ Montour Affidavit, para. 14; MR, p. 10.

¹⁶ Montour Affidavit, paras 17, 20; MR, pp. 11-12.

¹⁷ Montour Affidavit, para. 21; MR, p. 12.

¹⁸ Montour Affidavit, paras 16, 22; MR, pp. 11-12.

¹⁹ [Order in Council 210/2024](#).

13. This question arises in the context of Ontario’s online gaming regime, in which iGaming Ontario – an agent of the Crown – purports to conduct and manage online gaming provided through private sector operators.²⁰ Operators offer internet games, including games of chance and mixed chance and skill played for money, as well as sports betting, on behalf of iGaming Ontario to individuals physically located in Ontario. The proposal underlying the Reference question is that individuals outside of Canada would access games and sports betting through the operator’s gaming application or website available in their jurisdiction and play with or against players on operators’ Ontario websites.

PART III - ISSUES

14. The issue on this motion is whether MCK should be granted leave to intervene in this Reference as a friend of the Court.

15. MCK respectfully submits that the answer to this question is “yes.” MCK meets the test for leave to intervene in this case. MCK’s expertise and unique perspective will permit it to make a useful contribution to the Court in answering the Reference question. Further, MCK will play a crucial role in the adversarial process by giving the Court the benefit of competing viewpoints.

PART IV - ARGUMENT

A. MCK meets the test for leave to intervene

16. Rule 13.02 of the *Rules of Civil Procedure* provides that “[a]ny person may, with leave of a judge [...] intervene as a friend of the Court for the purpose of rendering

²⁰ [Schedule - Order in Council 210/2024.](#)

assistance to the Court by way of argument.”²¹ In applying this rule, the Court will consider the nature of the case, the issues which arise, and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.²²

17. In constitutional cases, the rules governing motions for leave to intervene are relaxed.²³ The applicant must show that it either:

- (a) has a real, substantial and identifiable interest in the subject matter of the proceeding;
- (b) has an important perspective distinct from the immediate parties; or
- (c) is a well-recognized group with special expertise and a broadly identifiable membership base.²⁴

18. This Reference raises a constitutional issue because it concerns the intersection of federal and provincial laws: whether the *Criminal Code* limits the ability of the provinces to permit international gaming of the type described in the Reference question. However, even if the Reference does not raise a constitutional issue, MCK still meets the test for being granted leave to intervene.

²¹ [Rules of Civil Procedure, RRO 1990, Reg 194, Rule 13.02.](#)

²² [Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 29](#), Tab 3 of Book of Authorities [BoA] at para 8.

²³ *Ibid.*, Tab 3 of BoA citing [Peel \(Regional Municipality\) v Great Atlantic & Pacific Co of Canada Ltd \(CA\)](#) (1990), [74 OR \(2d\) 164](#), Tab 2 of BoA at p. 167.

²⁴ [Reference re Greenhouse Gas Pollution Pricing Act](#), *supra* note 22, Tab 3 of BoA at para 8 citing [Bedford v Canada \(Attorney General\), 2009 ONCA 669](#), Tab 1 of BoA at para 2.

i. Nature of the case and issues which arise engage MCK's expertise

19. The Reference requires the Court to determine whether s. 207(1)(a) of the *Criminal Code* prohibits the provinces from conducting and managing lottery schemes that permit players on online gaming websites in Ontario to play with/against players in other countries. Answering this question will require the Court to interpret s. 207(1)(a) in light of its legislative history and context and judicial interpretation of that section. It may also require this Court to consider the mechanics of such international play, including the mechanisms through which operators in Ontario's online gaming regime will permit play between players in Ontario and other jurisdictions.

20. These issues engage MCK's expertise. MCK has significant expertise with the conduct, management, operation, regulation, and licensing of online lottery schemes, including lottery schemes with an international element. MCK also has significant expertise with the *Criminal Code*'s gaming provisions. For these reasons, MCK has a real, substantial, and identifiable interest in the subject matter of the proceeding and will make a useful contribution to the Court's consideration of the Reference question. Moreover, MCK will enrich the adversarial process in this Reference by advancing a position that is at odds with the position taken by Ontario.

ii. MCK will provide an important and distinct perspective

21. MCK has considerable experience regulating online gaming. Unlike the participating provincial Attorneys General, MCK has first-hand knowledge of what is required in conducting, managing, regulating, and licensing international gaming

schemes. This perspective will assist the Court in determining the extent to which such schemes are lawful under the *Criminal Code*.

iii. Granting MCK leave to intervene will not cause injustice

22. In following the timelines set out by the Court, MCK's participation will not cause any delay in the proceedings. MCK will take the record as it stands and will not seek to supplement it.

B. MCK's proposed submissions will assist this Court

23. If MCK is granted leave to intervene, MCK will make following submissions:

- (a) gaming was historically prohibited in Canada;
- (b) the *Criminal Code* still broadly prohibits gaming, but exempts some gaming from that prohibition so long as it falls within the narrow exception for "permitted lotteries" that Parliament has prescribed in ss. 207(1)(a) to (f) of the *Criminal Code*;
- (c) s. 207(1)(a) of the *Criminal Code* permits provincial governments to conduct and manage lottery schemes in their provinces, or in other provinces if there is an arrangement between the provinces;
- (d) the words "in that province" in s. 207(1)(a) are not synonymous with "in the Province" in s. 92(13) and 92(16) of the *Constitution Act, 1867*;
- (e) international gaming as proposed in the Reference question would exceed the scope of s. 207(1)(a);

(f) any legislation or regulation enacted by the Legislative Assembly of Ontario permitting this would be inoperative on the basis of federal paramountcy; and

(g) any non-legislative instruments permitting online gaming operators to do this would require those same operators to violate the *Criminal Code* in order to comply with those instruments.

PART V - ORDER REQUESTED

24. MCK requests an order that:

(a) MCK is granted leave to intervene in the Reference as friends of the Court under Rule 13.02 of the *Rules of Civil Procedure*;

(b) MCK's intervention shall be in accordance with the following terms:

(i) MCK may file an intervention factum on the Reference on the terms set out by the Court, but may not otherwise expand the record;

(ii) MCK shall have 1 hour to make oral argument at the hearing of this Reference or such time as this Honourable Court may deem appropriate; and

(iii) No costs shall be awarded in favour or against MCK in connection with the intervention.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April 2024.

A handwritten signature in black ink, reading "Mark Candy". The signature is written in a cursive style with a large initial "M" and a long, sweeping tail on the "y".

OKT LLP, Counsel for Mohawk Council of
Kahnawà:ke

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [*Bedford v Canada \(Attorney General\)*, 2009 ONCA 669](#)
2. [*Peel \(Regional Municipality\) v Great Atlantic & Pacific Co of Canada Ltd \(CA\)* \(1990\), 74 OR \(2d\) 164](#)
3. [*Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29](#)

**SCHEDULE “B”
RELEVANT STATUTES**

1. [*Criminal Code of Canada*, \(R.S.C., 1985, c. C-46\), ss. 207\(1\)\(a\)-\(f\), 207\(4\)](#)
2. [*Constitution Act, 1867*, 30 & 31 Vict, c 3, s. 92\(13\), 92\(16\)](#)
3. [Order in Council 210/2024](#)
4. [Schedule - Order in Council 210/2024](#)
5. [*Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 13.02](#)

1. [*Criminal Code of Canada, \(R.S.C., 1985, c. C-46\), ss. 207\(1\)\(a\)-\(f\), 207\(4\)*](#)

PART VII

Disorderly Houses, Gaming and Betting (continued)

Gaming and Betting (continued)

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*

(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.

2. [Constitution Act, 1867, 30 & 31 Vict, c 3, s. 92\(13\), 92\(16\)](#)

Exclusive Powers of Provincial Legislatures

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,

13. Property and Civil Rights in the Province.

16. Generally all Matters of a merely local or private Nature in the Province.

3. Order in Council 210/2024

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

WHEREAS

Part VII of the *Criminal Code* creates a number of offences related to gaming and betting.

Section 207(1)(a) of the *Criminal Code* provides that notwithstanding any of the provisions of Part VII relating to gaming and betting, “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.”

iGaming Ontario has been established as a Crown agent to conduct and manage legal online gaming and sports betting as provided through prescribed lottery schemes in accordance with the *Criminal Code* and the *Gaming Control Act, 1992*, and the regulations made under those Acts. iGaming Ontario does this pursuant to and in accordance with the *Alcohol and Gaming Commission of Ontario Act, 2019*, the *Gaming Control Act, 1992*, and Ontario Regulations 722/21 and 78/12 (collectively, the “Gaming Control Legislation”).

Legal online gaming and sports betting benefits the public by providing a lawful alternative to the illicit gaming market; by providing measures to mitigate against the harms associated with gaming and betting (including money laundering, fraud, and addiction); by facilitating greater consumer choice; and by generating public revenue.

Players participating in legal online gaming and sports betting must be located in Ontario and are not entitled to participate in games or betting involving players located outside of Ontario. Some individuals in Ontario continue to access internet gaming and betting schemes which are not conducted and managed by iGaming Ontario and which involve players located outside of Ontario.

By permitting players participating in legal online gaming and sports betting to participate in games and betting involving players located outside of Canada, Ontario could channel players away from unlawful gaming and betting schemes operating without any oversight into a lawful alternative that is conducted and managed by the province. Ontario’s conduct and management of the scheme as it operates in this province would ensure that the public interest is secured through greater protections for players and the broader public, as well as the generation of revenue for the public purse.

While Ontario would like to permit players participating in legal online gaming and sports betting to participate in games and betting involving players outside of Canada,

there is uncertainty about whether doing so would be consistent with the requirements of the *Criminal Code* as they have been interpreted to date.

It is in the public interest that the issue of whether an online lottery scheme conducted and managed by a province which permits its users to participate in games and sports betting involving players outside of Canada is lawful under the *Criminal Code* be settled authoritatively as soon as possible.

THEREFORE, there be referred to the Court of Appeal for Ontario for hearing and consideration pursuant to section 8 (1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 the following question:

1. 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?

Schedule

Ministry of the Attorney General

Approved and Ordered: February 02, 2024

4. Schedule - Order in Council 210/2024

The role of iGaming Ontario

iGaming Ontario conducts and manages legal internet gaming and sports betting in Ontario when provided through private sector Operators. iGaming Ontario enters into agreements with private sector Operators pursuant to which those Operators act on behalf of and as agents for iGaming Ontario. In this capacity, the Operators offer internet games, including games of chance and mixed chance and skill played for money, as well as sports betting, on behalf of iGaming Ontario to individuals physically located in Ontario. These individuals access games and sports betting by registering for and logging into an electronic channel (for example, a gaming application or website) maintained by the operator (“**iGO Site**”). Players who are not physically located in Ontario are not permitted to participate in these games or sports betting.

iGaming Ontario is the operating mind of the iGO Sites and conducts and manages them pursuant to the Gaming Control Legislation, its operating agreements and the iGaming Ontario Policies (“**iGO policies**”) made thereunder.

The role of Operators

Operators and their suppliers apply for registration by the AGCO pursuant to the *Gaming Control Act, 1992*.

The AGCO will only register those Operators who act with honesty; integrity; in accordance with the law; and in the public interest. In assessing the eligibility of an operator for registration, the AGCO will carry out risk assessments and conduct due diligence investigations, including assessments of each Operator’s character, financial history, and competence, in accordance with section 9 of the *Gaming Control Act, 1992*.

iGaming Ontario, as the operating mind of the lottery scheme, only enters into agreements with Operators that meet its stringent requirements, including those governing anti-money laundering measures; player risk assessment; system standards; security; and insurance.

In operating iGO Sites as agents of iGaming Ontario, Operators are responsible for complying with the terms of their operating agreements with iGaming Ontario and the iGO policies; the terms and conditions of registration by the AGCO; the standards established by the Registrar of the AGCO; any other applicable standards and requirements, in accordance with section 22 of the *Gaming Control Act, 1992*; as well as all applicable law.

Internet gaming with international play

Under this model, players in Ontario will be able to participate in peer-to-peer games, including games of chance and mixed chance and skill played for money, and sports betting, involving players outside of Canada. 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.

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.

In particular, and among others, the following key aspects of iGaming Ontario's conduct and management of the iGO Sites would remain but would not apply to International Sites:

- **Player management:** iGaming Ontario would continue to ensure the identity, legal age, and eligibility of players located in Ontario.
- **Gaming funds:** iGaming Ontario would continue to maintain control and oversight of wagering and payouts to players located in Ontario. iGaming Ontario will also continue to control the gross gaming revenue ("GGR") accruing from the operation of the iGO Sites, including requiring that GGR be kept separate from the Operator's other funds, including in respect of operations outside of Canada, and providing that GGR is the sole and absolute property of iGaming Ontario until iGO pays the Operators their defined revenue share.
- **Game Eligibility and Rules of Play:** iGaming Ontario will continue to determine the games which may be offered to players in Ontario through iGO Sites. iGO will also retain the ability to establish a maximum rake for the peer-to-peer games played on iGO sites. The AGCO's standards governing rules of play will continue to apply.
- **Technology:** iGaming Ontario will retain a royalty-free right and licence to use each Operator's intellectual property, including technology assets, in relation to players in Ontario. Operators would not be obligated to locate their technology assets in Ontario.
- **Data:** iGaming Ontario will retain full and unrestricted access and control of all gaming data; player registration; and transaction data as it relates to players in Ontario. iGaming Ontario will ensure sensitive data associated with players in Ontario is secured and protected from unauthorized access.
- **Branding and Marketing:** iGO Sites will continue to prominently display the iGaming Ontario logo. Operators must comply with iGaming Ontario's policies and directions regarding marketing and advertising.
- **Audit and oversight:** iGaming Ontario will retain the right to audit and inspect Operators' books of accounts and other records, materials, information, and data as they relate to the operation of the iGO Site during the term of the agreements

with Operators and for a period of seven years thereafter.

iGaming Ontario will retain the right to audit and inspect all aspects of an Operator's security regime as it relates to the operation of an iGO Site.

iGaming Ontario and the Financial Transactions and Reports Analysis Centre of Canada will maintain the right to conduct audits and inspections of operators to ensure compliance with iGaming Ontario's requirements and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Separately, the AGCO will continue to have independent regulatory oversight of iGaming Ontario, Operators, and their suppliers. This oversight authority will include the ability to conduct compliance assurance activities, including audits, inspections, and the gathering of targeted data from operators and suppliers.

- **Customer Care:** Established customer care and dispute resolution programs will continue to operate for the benefit of players using iGO Sites, and any finding by iGaming Ontario will be binding on an Operator in respect of a customer care issue or a dispute. Any dispute by an Ontario player relating to the *Criminal Code* or the Gaming Control Legislation must be resolved in the provincial or federal court of competent jurisdiction in Ontario.
- **Anti-Money Laundering:** iGaming Ontario will maintain robust anti-money laundering and terrorist financing ("AML") programs on iGO Sites, including ensuring that Operators comply with iGO's AML policy on the detection, prevention, and deterrence of potential money laundering.
- **Responsible Gambling:** iGaming Ontario will maintain rigorous responsible gambling initiatives on iGO Sites, including requiring that operators obtain accreditation with the Responsible Gambling Council's "RG Check" program and maintain an iGaming self-exclusion registry for players in Ontario. The AGCO's standards prohibiting certain types of bonusing and inducements will continue to apply.
- **Anti-cheating:** The AGCO's standards governing anti-cheating measures on iGO Sites and the games accessible therein will continue to apply. These standards include the presence of measures to deter, prevent and detect cheating; to investigate complaints of cheating made by players in Ontario; and to notify the AGCO's OPP detachment of incidents of cheating for possible criminal investigation.
- **Monitoring, Suspension and Termination:** iGO will maintain sole and absolute discretion regarding the monitoring of Operators for compliance with its requirements, and may suspend and/or terminate the Operating Agreement if the Operator does not comply with its obligations.

5. [Rules of Civil Procedure, RRO 1990, Reg 194, Rule 13.02](#)

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 associate judge, 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; O. Reg. 186/10, s. 1; O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

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

Court File No.: COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**FACTUM OF THE PROPOSED
INTERVENER,
MOHAWK COUNCIL OF KAHNAWÀ:KE**
(On Motion for Leave to Intervene, Returnable May
1, 2024)

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