

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 INTERVENERS,
NSUS GROUP INC. AND NSUS LIMITED
(*Motion for Leave to Intervene, returnable May 1, 2024*)**

April 8, 2024

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PART I - OVERVIEW

1. NSUS Group Inc. (“**NSUS Group**”) and its wholly-owned subsidiary, NSUS Limited (together, “**NSUS**”), seek leave to intervene in this Reference as a friend of the Court pursuant to Rules 13.02 and 13.03 of the *Rules of Civil Procedure*. NSUS Group owns and operates GGPoker, the world’s largest online poker room, through its international subsidiaries. In Ontario, NSUS Limited is a registered internet gaming operator and operates GGPoker Ontario, Ontario’s largest online poker room. NSUS’s focus on online poker and market dominance in this arena means that it will be directly impacted by, and uniquely able to contribute to, the Court’s determination in this proceeding of whether Ontario players can participate in peer-to-peer games against players located outside of Canada.

2. As a registered internet gaming operator in Ontario, NSUS Limited must currently restrict access to GGPoker Ontario to players physically located in Ontario—what is known as a “closed liquidity” system. Ontario’s closed liquidity system significantly diminishes the online poker experience for players in the Ontario regulated market compared to players who can participate in the international market. Given that a cash game of online poker depends on finding multiple players available at the same time and interested in playing the same type of game, the small number of players in Ontario cannot support diverse poker game experiences, making it impossible for serious poker players to find higher stakes games. Poker tournaments limited only to Ontario players are similarly smaller and less interesting, with lower prize pools and shorter play than those available in the broader international market.

3. The diminished online poker experience available in Ontario is not just a problem for poker enthusiasts—it also undermines Ontario’s objective to bring internet gaming in the province

within an effective regulatory regime, since this diminished experience drives players to unregulated black market operators who are able to offer better experiences in the international market. Revenues for the government and registered operators are also impacted by unsatisfied players seeking out unregulated black market operators or deciding to play less. In short, closed liquidity seriously limits the poker experiences available to Ontario players and is a significant impediment to the successful transition of online poker in Ontario to a regulated market.

4. The Government of Ontario now seeks to implement an open liquidity system in Ontario that would permit players in Ontario to participate in regulated internet gaming involving players outside of Canada. It has brought this Reference to the Court of Appeal for Ontario to determine whether its proposal for an open liquidity system in Ontario would be lawful under the grant of regulatory jurisdiction in s. 207(1)(a) of the *Criminal Code*, which permits the government of a province “conduct and manage a lottery scheme in that province”. The Reference will determine the legality of an open liquidity system for peer-to-peer online gaming in Ontario.

5. As the owner and operator of GGPoker, the largest online poker room in the world, as well as GGPoker Ontario, the largest online poker room in the Ontario market, NSUS has a substantial and identifiable interest in and may be adversely affected by the outcome of this Reference. NSUS also has an important and distinct perspective that will usefully contribute to the Court’s resolution of the issues, as a registered operator in Ontario and the largest provider of peer-to-peer online poker worldwide, with extensive knowledge of the regulatory regimes that apply to gaming in all major international jurisdictions. NSUS’s intervention is in the interests of justice and should be permitted by this Court.

PART II - FACTS

A. The Proposed Interveners

1. NSUS Group and GGPoker

6. NSUS Group is a Canadian corporation that owns and operates GGPoker, the world's largest online poker room, through a number of international subsidiaries.¹ GGPoker has repeatedly been recognized as a leader in online poker, winning several awards for its innovation and online operations.² GGPoker offers a range of innovative online poker and casino games and unique features that enhance the gaming experience.³

7. GGPoker was founded in 2017, and soon launched its own branded poker rooms, GGPoker.com and GGPoker.co.uk.⁴ In 2021, GGPoker's network became the world's largest online poker room.⁵ In 2022, GGPoker's international "dot com" poker room became larger than all the other major online poker rooms combined.⁶ GGPoker continues to have the highest traffic in the global market.⁷

¹ Affidavit of Same Lightman affirmed April 8, 2024 ("**Lightman Affidavit**"), at para. 3, Motion Record of the Proposed Interveners, NSUS Group Inc. and NSUS Limited ("**MR**"), Tab 2, p. 16.

² Lightman Affidavit, at para. 4, MR, Tab 2, p. 17.

³ Lightman Affidavit, at para. 4, MR, Tab 2, p. 17.

⁴ Lightman Affidavit, at para. 5, MR, Tab 2, p. 17.

⁵ Lightman Affidavit, at para. 6, MR, Tab 2, p. 17; "GGPoker Overtakes Behemoth PokerStars to Become World's Largest Online Poker Room", Poker Industry PRO, dated June 22, 2021, Exhibit "A" to the Lightman Affidavit, MR, Tab 2A, p. 35.

⁶ Lightman Affidavit, at para. 6, MR, Tab 2, p. 17; Poker Industry PRO, "GGPoker is Now Larger Than All Other Major Dot-Com Operators Combined", dated August 10, 2022, Exhibit "B" to the Lightman Affidavit, MR, Tab 2B, p. 38.

⁷ Lightman Affidavit, at para. 7, MR, Tab 2, p. 17; "Cash Game Traffic", Poker Industry PRO, dated March 27, 2024, Exhibit "C" to the Lightman Affidavit, MR, Tab 2C, p. 42; "Worldwide Online Poker Sites Traffic Report", dated April 7, 2024, Poker Scout, Exhibit "D" to the Lightman Affidavit, MR, Tab 2D, p. 47.

2. NSUS's international structure and registration experience

8. GGPoker is operated internationally through a number of wholly-owned subsidiaries of NSUS Group, including subsidiaries incorporated in Malta, the Republic of Ireland, and the Isle of Man.⁸

9. NSUS's international subsidiaries have obtained licenses in a number of regulated jurisdictions around the world.⁹ For example:

(a) In 2017, NSUS Limited, an Irish corporation, was issued a license by the United Kingdom Gambling Commission.

(b) In 2020, NSUS Malta Limited, a Maltese corporation, was issued a license by the Malta Gaming Commission. NSUS Malta Limited also holds operating licenses in the Netherlands (2021) and Germany (2022).

(c) In 2021, GG International Limited, an Isle of Man corporation, was issued a license by the Isle of Man Gambling Supervision Commission.¹⁰

10. As a result, NSUS has direct experience with and knowledge of the registration requirements and regulatory regimes in each of these jurisdictions.¹¹ In addition, based on its experience operating the world's largest poker room, NSUS Group has extensive knowledge of the regulatory regimes that apply to gaming in all major international jurisdictions.¹²

⁸ Lightman Affidavit, at para. 8, MR, Tab 2, pp. 17-18.

⁹ Lightman Affidavit, at para. 8, MR, Tab 2, pp. 17-18.

¹⁰ Lightman Affidavit, at para. 8, MR, Tab 2, pp. 17-18.

¹¹ Lightman Affidavit, at para. 10, MR, Tab 2, p. 18.

¹² Lightman Affidavit, at para. 10, MR, Tab 2, p. 18.

3. The regulation of internet gaming in Ontario

11. On April 4, 2022, the Ontario government became the first province in Canada to establish a regulated market for internet gaming.¹³

12. Under Ontario's internet gaming regulatory regime, private internet gaming operators who wish to offer internet gaming products directly to Ontarians must register with the Alcohol and Gaming Commission of Ontario ("AGCO") under the *Gaming Control Act*.¹⁴ Registered operators must comply with the *Registrar's Standards for Internet Gaming*, a comprehensive set of risk-based standards including with respect to manager integrity, oversight, customer service, responsible gaming, marketing and advertising, game design and integrity, and data management, among others (the "**Standards**").¹⁵

13. In addition to registering with the AGCO, operators must also sign an operating agreement with iGO, a subsidiary of the AGCO which conducts and manages internet gaming in the Province of Ontario.¹⁶ Under the operating agreements, operators offer internet gaming products in Ontario on behalf of and as an agent for iGO.¹⁷

14. Registered gaming operators in Ontario provide 20% of all gross gaming revenue to iGO, which is ultimately remitted to the Province of Ontario.¹⁸ In addition, registered gaming operators

¹³ Lightman Affidavit, at para. 11, MR, Tab 2, p. 18.

¹⁴ Lightman Affidavit, at para. 12, MR, Tab 2, p. 19; *Gaming Control Act, 1992, S.O. 1992, c. 24, s. 4(1). General, O Reg 78/12, s. 3(1).*

¹⁵ Lightman Affidavit, at para. 12, MR, Tab 2, p. 19; Registrar's Standards for Internet Gaming, Exhibit "E" to the Lightman Affidavit, MR, Tab 2E, p. 54; *Gaming Control Act, 1992, S.O. 1992, c. 24, ss. 3.8(1) and 21(2).*

¹⁶ Lightman Affidavit, at para. 13, MR, Tab 2, p. 19; *Alcohol and Gaming Commission of Ontario Act, S.O. 2019, c. 15, Sch. 1, s. 6.1.*

¹⁷ Lightman Affidavit, at para. 13, MR, Tab 2, p. 19.

¹⁸ Lightman Affidavit, at para. 14, MR, Tab 2, p. 19.

are required to pay the AGCO an annual license fee of \$100,000.¹⁹ There are also administration fees, referred to as AGCO recovery costs, which are periodically payable to the AGCO. The license fee is discounted against the recovery costs, which typically exceed \$100,000.²⁰

15. This regulatory structure is designed to be compliant with s. 207(1)(a) of the *Criminal Code*, which provides the Government of Ontario with regulatory jurisdiction over gaming in Ontario by allowing it “conduct and manage a lottery scheme” in Ontario.²¹

16. Prior to the advent of a regulated market in Ontario, private internet gaming operators had no means of registration in Ontario.

4. NSUS Limited and GGPoker Ontario

17. GGPoker is made available in Ontario by NSUS Limited under the brand GGPoker.ca (“**GGPoker Ontario**”).²² GGPoker Ontario is the largest online poker room in Ontario.²³

18. NSUS Limited is an Irish corporation and wholly-owned subsidiary of NSUS Group.²⁴ NSUS Limited has been registered with the AGCO as an internet gaming operator since registration first became available on April 4, 2022.²⁵

¹⁹ Lightman Affidavit, at para. 14, MR, Tab 2, p. 19.

²⁰ Lightman Affidavit, at para. 14, MR, Tab 2, p. 19.

²¹ Lightman Affidavit, at para. 15, MR, Tab 2, p. 19; *Criminal Code*, R.S.C. 1985, c. C-46, s. 207(1)(a).

²² Lightman Affidavit, at para. 9, MR, Tab 2, p. 18.

²³ Lightman Affidavit, at para. 22, MR, Tab 2, p. 21; “Cash Game Traffic”, Poker Industry PRO, dated March 27, 2024, Exhibit “G” to the Lightman Affidavit, MR, Tab 2G, p. 100.

²⁴ Lightman Affidavit, at para. 17, MR, Tab 2, p. 20.

²⁵ Lightman Affidavit, at paras. 9 and 16-17, MR, Tab 2, pp. 18-20; Certificate of Registration Issued to NSUS Limited, expiring April 3, 2025, Exhibit “F” to the Lightman Affidavit, MR, Tab 2F, p. 97.

19. NSUS Limited entered into an operating agreement with iGO effective September 30, 2022.²⁶ GGPoker Ontario has been live in Ontario since that date.²⁷

20. NSUS Limited also owns and operates GGPoker.ca, a Canadian website which is registered as a gaming site with the AGCO.²⁸ Through GGPoker.ca, players can download an Ontario-specific desktop game client to access the GGPoker Ontario gaming product.²⁹ NSUS Limited also offers a mobile app called “GGPoker Ontario” for Ontario residents which can be downloaded from third-party app stores.³⁰

B. Ontario has adopted a closed liquidity system

21. Under Ontario’s regulated market, internet gaming in Ontario is restricted to players who are physically located in Ontario.³¹ Registered operators are not permitted to provide internet gaming products to individuals located outside of Ontario.³²

22. This restriction is set out in the Standards.³³ Accordingly, NSUS Limited restricts access to GGPoker Ontario to eligible players who are physically located in Ontario.³⁴ To do so, NSUS Limited has implemented a geo-location mechanism that verifies the real-time physical location of players attempting to access GGPoker Ontario through the desktop or mobile game clients.³⁵

²⁶ Lightman Affidavit, at paras. 9 and 18, MR, Tab 2, pp. 18, 20.

²⁷ Lightman Affidavit, at para. 18, MR, Tab 2, p. 20.

²⁸ Lightman Affidavit, at para. 19, MR, Tab 2, p. 20.

²⁹ Lightman Affidavit, at para. 20, MR, Tab 2, p. 20.

³⁰ Lightman Affidavit, at para. 20, MR, Tab 2, p. 20.

³¹ Lightman Affidavit, at para. 23, MR, Tab 2, p. 21.

³² Lightman Affidavit, at para. 23, MR, Tab 2, p. 21.

³³ Registrar’s Standards for Internet Gaming, s. 3.02, Exhibit “E” to Lightman Affidavit, MR, Tab 2E, p. 54.

³⁴ Lightman Affidavit, at para. 21, MR, Tab 2, p. 20; Registrar’s Standards for Internet Gaming, s. 3.02, Exhibit “E” to Lightman Affidavit, MR, Tab 2E, p. 54.

³⁵ Lightman Affidavit, at para. 21, MR, Tab 2, p. 20.

This mechanism prevents individuals from accessing GGPoker Ontario if they are physically located outside of Ontario.³⁶

23. Given that the Standards preclude access by individuals from outside of Ontario, this means that for games that operate based on liquidity pools—in other words, peer-to-peer games where multiple players are playing against each other live for real money contributed by the players, which notably includes online poker—participation in those liquidity pools must be restricted to users physically located in Ontario.³⁷ This is known as a “closed liquidity” system, as compared to an “open liquidity” system that would allow participation in the same games and liquidity pools by players in other jurisdictions.

C. Disadvantages of a closed liquidity system in Ontario

24. There are significant disadvantages to limiting Ontario’s regulated market to a closed liquidity system for peer-to-peer internet gaming, rather than an open liquidity system that permits Ontario players to play against international users.³⁸ These disadvantages arise due to the simple disparity between the number of players available in Ontario compared to the number of players available around the world, and have a particularly acute impact on online poker.

25. In particular, a closed liquidity system severely limits the range of poker game experiences available for Ontario players compared to what is available in the broader international market.³⁹

The negative impacts of closed liquidity applies to both cash games and tournament play, and in turn undermines the regulatory objectives and limits revenue-generation for both the government

³⁶ Lightman Affidavit, at para. 23, MR, Tab 2, p. 21.

³⁷ Lightman Affidavit, at para. 24, MR, Tab 2, p. 21.

³⁸ Lightman Affidavit, at para. 25, MR, Tab 2, p. 21.

³⁹ Lightman Affidavit, at para. 26, MR, Tab 2, p. 21.

and private operators as players in Ontario, unsatisfied by offerings from regulated operators, increasingly turn to the black market.

1. Impacts on cash games

26. First, a closed liquidity system seriously limits the range of experiences for cash games of online poker. A cash game is a live game of online poker between real people, who buy into the game using their real money, and play until they give up their seat in the game.⁴⁰

27. Cash games of online poker work by finding players to play against each other who are active on the platform at the same time.⁴¹ However, the pool of players available to participate in a cash game is very limited if only players physically located in Ontario and online at that moment are eligible.⁴² Since a live cash game depends on multiple players available at the same time and interested in playing the same type of game, the limited pool of potential players in the Ontario market in turn limits the diversity of games that an operator can offer, because there are not enough players to support different game types.⁴³

28. For example, players choose poker games with different stakes, including blinds (a type of forced bet) and buy-in amounts, based on a number of personal factors.⁴⁴ But in a closed market like Ontario, higher stakes games are simply not available.⁴⁵ That is because large proportions of

⁴⁰ Lightman Affidavit, at para. 27, MR, Tab 2, p. 22.

⁴¹ Lightman Affidavit, at para. 27, MR, Tab 2, p. 22.

⁴² Lightman Affidavit, at para. 27, MR, Tab 2, p. 22.

⁴³ Lightman Affidavit, at para. 28, MR, Tab 2, p. 22.

⁴⁴ Lightman Affidavit, at para. 29, MR, Tab 2, p. 22.

⁴⁵ Lightman Affidavit, at paras. 29-30, MR, Tab 2, pp. 22-23.

players tend to seek out low to medium stakes, leaving fewer high stakes players to play against each other in high stakes games.⁴⁶

29. In contrast, global liquidity makes it easier to find other players willing to play at the same stake level.⁴⁷ Accordingly, there is a much greater diversity of poker game types and player experiences available in the international market compared to a closed market such as Ontario.⁴⁸

2. Impacts on tournament play

30. A closed liquidity model similarly restricts the available experiences for players in online poker tournaments.⁴⁹ In a poker tournament, unlike a cash game, players buy in to the tournament through an entry fee, which contributes towards the potential prize pool, and play for chips until only one player remains.⁵⁰ Prizes are distributed from the prize pool based on the order in which players are eliminated from the tournament (as a result of losing all of their chips).⁵¹

31. Under a closed liquidity system, where the number of players is inherently smaller, the potential prize pool is correspondingly smaller and the entire tournament is less interesting.⁵² For example, GGPoker's weekly tournament in the international market has a prize pool of \$500,000 USD, whereas the version of this tournament on GGPoker Ontario has a prize pool of \$50,000 CAD.⁵³ More players and higher prize pools also means that players can play more for less

⁴⁶ Lightman Affidavit, at para. 29, MR, Tab 2, p. 22.

⁴⁷ Lightman Affidavit, at para. 30, MR, Tab 2, p. 23.

⁴⁸ Lightman Affidavit, at para. 28, MR, Tab 2, p. 22.

⁴⁹ Lightman Affidavit, at para. 31, MR, Tab 2, p. 23.

⁵⁰ Lightman Affidavit, at para. 31, MR, Tab 2, p. 23.

⁵¹ Lightman Affidavit, at para. 31, MR, Tab 2, p. 23.

⁵² Lightman Affidavit, at para. 32, MR, Tab 2, p. 23.

⁵³ Lightman Affidavit, at para. 33, MR, Tab 2, p. 23.

money—the more players participating in a poker tournament, the longer the tournament will last, even if the entry fee remains the same.⁵⁴

32. The result is that poker players in Ontario have a significantly diminished online poker experience in the regulated market compared to players who can participate in the international market.⁵⁵ This difference is directly attributable to the closed liquidity model.

3. Regulatory challenges competing with black market operators

33. This diminished experience is not just a problem for Ontarians who want to play poker. It is also a concern for the Province of Ontario's objective to transition internet gaming in the province to an effective regulatory regime. That is because large numbers of Ontario players are driven to the online poker products of unregulated black market operators who offer international play, with a greater diversity of cash games and poker tournaments with larger prize pools.⁵⁶

34. Unlike registered operators, unregulated black market operators in Ontario do not adhere to the Standards, undermining the effectiveness of Ontario's regulatory scheme. While some operators participating illegally in the Ontario market may be regulated in other markets (affording some measure of protection to Ontarians albeit not necessarily in accordance with the AGCO's standards), other black market operators may be entirely unregulated and engage in practices that cause risks to players or the public, such as by insecurely handling players' funds or personal information, exploiting addictive behaviours, and facilitating money laundering.⁵⁷

⁵⁴ Lightman Affidavit, at para. 32, MR, Tab 2, p. 23.

⁵⁵ Lightman Affidavit, at para. 34, MR, Tab 2, p. 24.

⁵⁶ Lightman Affidavit, at para. 35, MR, Tab 2, p. 24.

⁵⁷ Lightman Affidavit, at para. 36, MR, Tab 2, p. 24.

4. Limits on revenue for Ontario and registered operators

35. A closed liquidity system also limits the revenue that the government and registered operators can generate through online poker.⁵⁸ In online poker, the operator generates revenue based on the number of participants by taking a commission.⁵⁹ When online poker is not meeting the needs of Ontario players, they will either play less or seek out games from unregulated black market operators who offer games involving larger international participant pools.⁶⁰ Less play in the regulated market results in lower revenues for the government and registered operators.⁶¹

5. Reduced ability to detect collusion and fraud

36. Finally, higher player participation in an open liquidity system also helps poker operators guard against collusion and fraud.⁶² The risk of “chip dumping” or collusion is higher in a closed liquidity system in a small jurisdiction like Ontario, where poker players will always play against the same players, leading to familiarity and the ability to seek out specific opponents.⁶³ These practices, which may be used for money laundering purposes, are much harder in an open liquidity system.⁶⁴ More players also make it easier for poker operators to identify suspicious patterns of play to deter fraud, given the larger set of available data.⁶⁵

37. Overall, restrictions on expanding liquidity to players outside of Ontario seriously limits the poker experiences available to Ontario players and is a significant impediment to the successful

⁵⁸ Lightman Affidavit, at para. 37, MR, Tab 2, p. 25.

⁵⁹ Lightman Affidavit, at para. 37, MR, Tab 2, p. 25.

⁶⁰ Lightman Affidavit, at para. 38, MR, Tab 2, p. 25.

⁶¹ Lightman Affidavit, at para. 38, MR, Tab 2, p. 25.

⁶² Lightman Affidavit, at para. 39, MR, Tab 2, p. 25.

⁶³ Lightman Affidavit, at para. 39, MR, Tab 2, p. 25.

⁶⁴ Lightman Affidavit, at para. 39, MR, Tab 2, p. 25.

⁶⁵ Lightman Affidavit, at para. 39, MR, Tab 2, p. 25.

transition of online poker in Ontario to an effective regulated market.⁶⁶ Notably, many European jurisdictions which have implemented regulated internet gaming regimes allow for open liquidity, including Germany, Netherlands, Sweden, the United Kingdom, Denmark, Romania, the Czech Republic, Switzerland, Greece, Belgium, Lithuania, Latvia, Estonia, Bulgaria, and Malta.⁶⁷

D. The Reference will determine the legality of an open liquidity system in Ontario

38. Ontario now seeks to implement an open liquidity system that would permit players in Ontario to participate in regulated internet gaming involving players outside of Canada.⁶⁸ On February 2, 2024, the Ontario government approved and ordered Order in Council 210/2024 (the “**Order in Council**”) setting out its proposal for an open liquidity model in Ontario.⁶⁹

39. However, the Order in Council also states Ontario’s view that there is uncertainty about whether doing so would be consistent with the requirements of the *Criminal Code* as they have been interpreted to date.⁷⁰ Accordingly, Ontario referred to the Court of Appeal for Ontario the following question:

Would legal online gaming and sports betting remain lawful under the *Criminal Code* if its users were permitted to participate in games and betting involving individuals outside of Canada as described in the attached Schedule? If not, to what extent?⁷¹

40. Ontario’s proposal to permit open liquidity for internet gaming is set out in the Schedule to the Order in Council.⁷² Under the proposal, players within Ontario would be able to participate

⁶⁶ Lightman Affidavit, at para. 40, MR, Tab 2, p. 26.

⁶⁷ Lightman Affidavit, at para. 35, MR, Tab 2, p. 24.

⁶⁸ Order in Council, dated February 2, 2024, Exhibit “H” to Lightman Affidavit (“**Order in Council**”), p. 2, MR, Tab 2H, p. 104.

⁶⁹ Lightman Affidavit, at para. 42, MR, Tab 2, p. 26.

⁷⁰ Order in Council, p. 2, MR, Tab 2H, p. 105.

⁷¹ Order in Council, p. 2, MR, Tab 2H, p. 105; Lightman Affidavit, at para. 45, MR, Tab 2, p. 27.

⁷² Lightman Affidavit, at para. 43, MR, Tab 2, p. 26.

in peer-to-peer games involving players located outside of Canada.⁷³ Registered operators would continue to provide gaming products to eligible players through registered applications and sites in Ontario, as agents of iGO, and in accordance with Ontario's regulatory requirements.⁷⁴ Operators would also continue to provide gaming products to players outside of Ontario on their international applications and sites, outside of their relationship with iGO and in accordance with the regulatory requirements of the international jurisdictions in which they operate.⁷⁵ However, registered operators would be permitted to allow Ontario players to participate in the same games and liquidity pools as players outside of Ontario on their international platforms.⁷⁶

41. Under the proposal, players located outside of Ontario but within another Canadian province or territory would not be permitted to participate in these games absent an agreement between Ontario and the province or territory in which those players are located.⁷⁷

E. Ontario's intended submissions in the Reference

42. Ontario filed its Statement of Particulars in the Reference on February 29, 2024.⁷⁸ Ontario submits that permitting players located in Ontario to participate in online gaming and sports betting involving players located outside Canada is permitted by s. 207(1)(a) of the *Criminal Code*, which provides:

Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful for the government of a province,

⁷³ Lightman Affidavit, at para. 43, MR, Tab 2, pp. 26-27; Schedule to the Order in Council, dated February 2, 2024, Exhibit "I" to Lightman Affidavit ("**Schedule**"), p. 2 MR, Tab 2I, p. 109.

⁷⁴ Lightman Affidavit, at para. 43, MR, Tab 2, p. 26-27; Schedule, p. 2 MR, Tab 2I, p. 109.

⁷⁵ Lightman Affidavit, at para. 43, MR, Tab 2, p. 26-27; Schedule, p. 2 MR, Tab 2I, p. 109.

⁷⁶ Lightman Affidavit, at para. 43, MR, Tab 2, p. 26-27; Schedule, p. 2 MR, Tab 2I, p. 109.

⁷⁷ Lightman Affidavit, at para. 44, MR, Tab 2, p. 27; Schedule, p. 2 MR, Tab 2I, p. 109.

⁷⁸ Lightman Affidavit, at para. 46, MR, Tab 2, p. 27; Attorney General of Ontario, Statement of Particulars in COA-24-M-0027, dated February 29, 2024, Exhibit "J" to Lightman Affidavit ("**Statement of Particulars**"), MR, Tab 2J, p. 113.

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.⁷⁹

43. Among other things, Ontario argues that the phrase “in the province” in s. 207(1)(a) should be construed to have the same meaning as the reference to “in the Province” in ss. 92(13) and (16) of the *Constitution Act, 1867*, so that a lottery scheme is being conducted and managed “in the province” for the purposes of s. 207(1)(a) if it has a real and substantial connection to that province.⁸⁰ Ontario submits that this standard is met by Ontario’s proposal to permit players in Ontario to participate in the same betting pool as players outside of Canada.⁸¹

44. Ontario also submits that s. 207(1)(a) prevents a province from conducting and managing a lottery scheme that involves persons in another province in Canada without that province’s permission, but does not place restrictions on persons outside of Canada.⁸²

45. Ontario further set out its position on the decision of the Appeal Division of the PEI Supreme Court in *Reference re Earth Future Lottery*, which held that a registered charity in PEI could not conduct and manage a proposed internet lottery scheme that would be accessible to the global market under s. 207(1)(b) of the *Criminal Code*.⁸³ In that case, the Court found that the requirement that the lottery must be conducted and managed “in the province” did not mean “from

⁷⁹ *Criminal Code*, R.S.C 1985, c. C-46, s. 207(1)(a).

⁸⁰ Statement of Particulars, paras. 2-3, MR, Tab 2J, p. 114.

⁸¹ Statement of Particulars, para. 4, MR, Tab 2J, p. 114.

⁸² Statement of Particulars, para. 5, MR, Tab 2J, p. 115.

⁸³ *Earth Future Lottery (P.E.I.) (Re)*, 2002 PESCAD 8.

the province”.⁸⁴ The Supreme Court of Canada dismissed the appeal substantially for the reasons of the Court below.⁸⁵

46. Ontario argues that *Earth Future Lottery* is distinguishable, since it relates to charitable and religious organizations conducting lotteries under s. 207(1)(b) of the *Criminal Code*, which engages different considerations from s. 207(1)(a), and concerned the ability of persons outside of PEI to participate directly in the provincially licensed lottery scheme, whereas under Ontario’s proposal, persons outside of Canada only participate indirectly through foreign lottery schemes.⁸⁶ In the alternative, Ontario argues that the Court should depart from the decision in *Earth Future Lottery* based on the circumstances of this case.⁸⁷

PART III - ISSUES / LAW / ARGUMENT

47. The only issue in this motion is whether the Court should grant NSUS leave to intervene as a friend of the Court pursuant to rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*, which provide as follows:

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.

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.⁸⁸

⁸⁴ *Earth Future Lottery (P.E.I.) (Re)*, 2002 PESCAD 8 at para. 10.

⁸⁵ *Reference re Earth Future Lottery*, 2003 SCC 10 at para. 1.

⁸⁶ Statement of Particulars, paras. 6-8, MR, Tab 2J, p. 115.

⁸⁷ Statement of Particulars, paras. 9-12, MR, Tab 2J, p. 116.

⁸⁸ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 13.02 and 13.03(2).

48. In considering a motion for leave to intervene, the Court has traditionally considered the nature of the case, the issues that arise, and the likelihood that the proposed intervener will make a useful contribution to the case without causing injustice to the immediate parties.⁸⁹ In considering whether an intervener will make a useful contribution, the Court should consider the proposed intervener's expertise and interest in the issues at stake, and the specific contribution the intervener proposes to make.⁹⁰

49. The Court has long held that the test for intervention is applied more flexibly in public interest cases based on the courts' recognition of the importance of hearing from a broader number of parties.⁹¹ In this context, the Court will grant leave to intervene where the proposed intervener meets at least one of the following three criteria:

- (a) The intervener is a well-recognized group with a special expertise and with a broad identifiable membership base;
- (b) The intervener has a substantial and identifiable interest in the subject matter of the proceeding; or
- (c) The intervener has an important perspective, distinct from the immediate parties.⁹²

⁸⁹ *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, 1990 CanLII 6886 (ON CA) at para. 10; *Martin v. Health Professions Appeal and Review Board*, 2022 ONSC 1340 at paras. 47 and 51.

⁹⁰ *Association for Reformed Political Action v. City of Hamilton*, 2022 ONSC 6691 at para. 13; *Elementary Teachers' Federation et al v. Her Majesty*, 2018 ONSC 6318.

⁹¹ *Fair Change v. Her Majesty the Queen*, 2021 ONSC 2108 at para. 14; *Halpern v. Toronto (City) Clerk*, 2000 CanLII 29029 (Div. Ct.) at para. 16.

⁹² *Fair Change v. Her Majesty the Queen*, 2021 ONSC 2108 at para. 16; *Martin v. Health Professions Appeal and Review Board*, 2022 ONSC 1340 at para. 53.

50. While the Reference does not raise constitutional or *Charter* issues, the issues raised in this Reference are questions of public law respecting the interpretation of a regulatory scheme and its legality under the *Criminal Code*, engaging broader public interests. The public interest in this Reference is reflected in the Court's order of March 1, 2024, setting out a procedure to notify the public and permit parties to seek leave to intervene.⁹³

51. NSUS seeks leave to intervene in the Reference based on its substantial and identifiable direct interest in the subject matter, and its important and distinct perspective which will assist the Court in resolving the issues.⁹⁴

A. NSUS has a substantial and identifiable interest in the issues raised by the Reference

52. NSUS has a substantial and identifiable interest in the Court's resolution of this issue as the owner and operator of GGPoker, the world's largest online poker room, as well as GGPoker Ontario, the largest online poker room in the Ontario market.⁹⁵ This interest will be significantly impacted by the Court's decision in the Reference, which will determine the legality of an open liquidity system for online peer-to-peer gaming in Ontario.⁹⁶

53. In particular, the Court's decision as to whether Ontario's proposed open liquidity system is permitted under the *Criminal Code* will impact NSUS in the following ways:⁹⁷

- (a) The Court's decision will affect the quality of the poker experience for players on GGPoker Ontario, which will impact NSUS's ability to provide the best possible

⁹³ Order of Justice Van Rensberg dated March 1, 2024, OA-24-CV-0185, at paras. 5-6, MR, Tab 3, pp. 121-122.

⁹⁴ Lightman Affidavit, at para. 41, MR, Tab 2, p. 26.

⁹⁵ Lightman Affidavit, at para. 42 MR, Tab 2, p. 26.

⁹⁶ Lightman Affidavit, at para. 42 MR, Tab 2, p. 26.

⁹⁷ Lightman Affidavit, at para. 43, MR, Tab 2, p. 26.

gaming products for Ontarians. As noted above, restrictions on open liquidity leads to fewer players, a less diverse offering of cash games, and smaller tournaments with smaller prize pools;

(b) The Court's decision will, in turn, impact NSUS's revenues from the Ontario market because it will impact NSUS' ability to draw new and returning players to its platform and defend its market share against unregulated black market operators;

(c) The Court's decision will also affect NSUS's ability to take effective steps against collusion and fraud, which could have a broader impact on NSUS's global reputation and operations; and

(d) The Court's decision will affect whether GGPoker Ontario can offer other games and features which are only economically viable with a sufficiently large liquidity pool.⁹⁸

54. Given that GGPoker Ontario is the largest poker room in Ontario, and poker is uniquely impacted by the liquidity model, the magnitude of these impacts on NSUS is distinct among regulated internet gaming operators in Ontario.⁹⁹

55. Beyond determining the legality of Ontario's proposal, the Court's decision in this Reference will also be an important precedent for other provinces and territories seeking to

⁹⁸ Lightman Affidavit, at para. 49, MR, Tab 2, p. 28.

⁹⁹ Lightman Affidavit, at para. 50, MR, Tab 2, p. 29.

regulate internet gaming, potentially impacting NSUS' offering in these other jurisdictions.¹⁰⁰ In particular, the Court's analysis will involve describing and interpreting aspects of the regulatory framework in Ontario to which NSUS is subject, including the provisions of the *Criminal Code* that shape the permissible scope of gaming in Canada.¹⁰¹ Accordingly, this decision will shape the regulatory landscape for other provinces that seek to adopt regulatory schemes, which will impact NSUS's business interests in those markets.¹⁰²

B. NSUS has a distinct and important perspective to offer the Court

56. NSUS also has a distinct perspective from the Attorney General of Ontario and any other potential interveners, which will assist the Court in resolving the issues in the Reference.¹⁰³

57. NSUS's perspective is distinct from the Province of Ontario, which acts as the regulator through the AGCO and conducts and manages internet gaming in Ontario through iGO.¹⁰⁴ NSUS is the subject of regulatory oversight, rather than the regulator who enforces the requirements.¹⁰⁵ In addition, as a registered operator under Ontario's regime and in the international market, NSUS has first-hand knowledge of how online poker in Ontario and registered operators are impacted by a closed liquidity system and what users expect from their online poker experience.¹⁰⁶

¹⁰⁰ Lightman Affidavit, at para. 51, MR, Tab 2, p. 29.

¹⁰¹ Lightman Affidavit, at para. 51, MR, Tab 2, p. 29.

¹⁰² Lightman Affidavit, at para. 51, MR, Tab 2, p. 29.

¹⁰³ Lightman Affidavit, at para. 52, MR, Tab 2, p. 29.

¹⁰⁴ Lightman Affidavit, at para. 53, MR, Tab 2, p. 29.

¹⁰⁵ Lightman Affidavit, at para. 53, MR, Tab 2, p. 29.

¹⁰⁶ Lightman Affidavit, at para. 53, MR, Tab 2, p. 29.

58. Moreover, as an operator in both the regulated Ontario market and in international markets permitting open liquidity, NSUS has a practical understanding of how Ontario's proposal will function and can assist the Court with contextualizing those facts within the legal framework.

59. Given NSUS's dominance in the global online poker market and how uniquely impacted poker is by liquidity issues, NSUS's perspective is also distinct from other registered operators in Ontario and elsewhere who may seek leave to intervene.¹⁰⁷ GGPoker Ontario is the largest online poker room in the Ontario market, and GGPoker is the world's largest online poker room.¹⁰⁸ NSUS is the largest provider worldwide of peer-to-peer online poker, which is uniquely affected by closed liquidity.¹⁰⁹ It is not an overstatement to say that NSUS is the world expert on liquidity models for online poker and the best-placed entity to present the Court with the online poker perspective.¹¹⁰ There are no other registered operators in Ontario who have a comparable interest or expertise in how closed liquidity impacts online poker.

60. Indeed, NSUS has been deeply invested in the issue of pooled liquidity and has been involved in advocacy in other international jurisdictions considering open liquidity systems in their internet gaming regulation, including most recently Italy.¹¹¹ Given GGPoker's international reach, and NSUS's registration in multiple regulated jurisdictions, NSUS also has unparalleled experience analyzing and operating online poker within international regulatory schemes.¹¹²

¹⁰⁷ Lightman Affidavit, at para. 54, MR, Tab 2, p. 30.

¹⁰⁸ Lightman Affidavit, at para. 54, MR, Tab 2, p. 30.

¹⁰⁹ Lightman Affidavit, at para. 54, MR, Tab 2, p. 30.

¹¹⁰ Lightman Affidavit, at para. 54, MR, Tab 2, p. 30.

¹¹¹ Lightman Affidavit, at para. 55, MR, Tab 2, p. 30.

¹¹² Lightman Affidavit, at para. 55, MR, Tab 2, p. 30.

61. All of these factors give NSUS a distinct perspective that will assist it in making a useful contribution to the Court's analysis of the issues in the Reference.

C. NSUS's intended submissions

62. If granted leave to intervene, NSUS intends to make the following submissions:¹¹³

(a) An open liquidity system for peer-to-peer internet gaming, such as poker, will lead to more effective regulatory oversight of internet gaming in Ontario. An open liquidity system creates an opportunity to provide a higher quality experience for Ontarians, enabling registered operators to effectively compete with unregulated black market operators and drawing Ontarians away from the black market.

(b) Ontario is entitled to adopt an open liquidity system under s. 207(1)(a) of the *Criminal Code*, and in particular:

i. Section 207(1)(a) of the *Criminal Code* permits a province to “conduct and manage” gaming in that province, and in doing so carves out an exception to the general prohibition on gaming in Canada under s. 206 where it is done under the regulation of a provincial government;

ii. The regulatory scheme for internet gaming in Ontario falls within this exception because all internet gaming in Ontario is done under the regulation of the provincial government;

¹¹³ Lightman Affidavit, at para. 57, MR, Tab 2, pp. 30-31.

- iii. Section 207(1)(a) does not limit the policy choices that provincial governments can adopt in how they conduct and manage gaming in their respective provinces, including the policy choice to adopt an open liquidity model; and
 - iv. Permitting Ontario players to participate in open liquidity pools does not change the fact that all aspects of internet gaming in Ontario occur under the regulation of the provincial government, in accordance with s. 207(1)(a) of the *Criminal Code*; it simply changes the conditions that apply to internet gaming in Ontario.
- (c) The decision in *Earth Future Lottery* is distinguishable. In particular, that case was about the extent to which a charity could conduct and manage a lottery outside of the province under s. 207(1)(b). All elements of the lottery, including the international components, were to be conducted and managed by the charity. In contrast, in Ontario's proposal, the provincial government would only be conducting and managing internet gaming within the province, whereas gaming outside the province would be conducted and managed by private operators in various international jurisdictions. The only difference is that Ontario would be implementing a policy decision to permit its provincial gaming market to interact with the international market through open liquidity.
- (d) The adoption of an open liquidity system in Ontario is supported by the experience in international jurisdictions that have implemented regulatory frameworks for internet gaming, including the United Kingdom, Germany, Netherlands, Sweden,

Denmark, Romania, the Czech Republic, Switzerland, Greece, Belgium, Lithuania, Latvia, Estonia, Bulgaria, and Malta.

63. These proposed submissions are distinct from the submissions set out in Ontario's Statement of Particulars and will make a useful contribution to the proceeding.

D. The Proposed Intervention will not unduly delay or prejudice the proceeding

64. NSUS's intervention will not unduly delay this proceeding or cause any injustice or prejudice to the parties. NSUS will abide by any schedule set by the Court, will not file any additional evidence, and will not expand the issues.¹¹⁴ NSUS will also work with the other parties and interveners to avoid duplication of submissions to the extent possible.¹¹⁵

65. NSUS does not seek costs on this motion or in the proceeding and asks that no costs be ordered against it.¹¹⁶

PART IV - LEAVE REQUESTED

66. NSUS asks that its motion for leave in the Reference be granted on the following terms:

(a) NSUS will be permitted to file a factum of 30 pages or such other length as the Court may deem appropriate;

(b) NSUS will be permitted to make oral submissions at the hearing of the Reference;

and

¹¹⁴ Lightman Affidavit, at para. 58, MR, Tab 2, pp. 32-33.

¹¹⁵ Lightman Affidavit, at para. 58, MR, Tab 2, pp. 32-33.

¹¹⁶ Lightman Affidavit, at para. 58, MR, Tab 2, pp. 32-33.

(c) There shall be no costs award made for or against NSUS on this motion or on the Reference.

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



Graeme A. Hamilton/Teagan Markin

BORDEN LADNER GERVAIS LLP

Lawyers for the Proposed Intervener, NSUS Group
Inc. and NSUS Limited

SCHEDULE “A” – AUTHORITIES CITED

1. *Association for Reformed Political Action v. City of Hamilton*, 2022 ONSC 6691
2. *Earth Future Lottery (P.E.I.) (Re)*, 2002 PESCAD 8
3. *Elementary Teachers’ Federation et al v. Her Majesty*, 2018 ONSC 6318
4. *Fair Change v. Her Majesty the Queen*, 2021 ONSC 2108
5. *Halpern v. Toronto (City) Clerk*, 2000 CanLII 29029 (Div. Ct.)
6. *Martin v. Health Professions Appeal and Review Board*, 2022 ONSC 1340
7. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.*, 1990 CanLII 6886 (ON CA)
8. *Reference re Earth Future Lottery*, 2003 SCC 10

SCHEDULE “B” – LEGISLATION CITED

Rules of Civil Procedure, R.R.O. 1990, Reg. 184

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.

Leave to intervene in divisional court or court of appeal

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them.

(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.

Gaming Control Act, 1992, S.O. 1992, c. 24

Other standards and requirements

3.8 (1) If the regulations have not prescribed standards and requirements for a matter described in this section, the Registrar may establish in writing standards and requirements for the conduct, management and operation of gaming sites, lottery schemes or businesses related to a gaming site or a lottery scheme or for goods or services related to that conduct, management or operation if the standards and requirements deal with,

- (a) prohibiting or restricting certain persons from entering gaming sites or playing lottery schemes;
- (b) the prevention of unlawful activities;
- (c) the integrity of a lottery scheme;
- (d) surveillance, security and access related to gaming sites or lottery schemes;
- (e) internal controls;
- (f) the protection of assets, including money and money equivalents;
- (g) the protection of players and responsible gambling; and
- (h) the keeping of records, including financial records. 2011, c. 9, Sched. 17, s. 5.

Restrictions on suppliers

4 (1) Except as provided in this Act and the regulations, no person shall provide goods or services with respect to the playing of a lottery scheme for which a licence is required or hold himself, herself or itself out as providing those goods or services, unless,

(a) the person is registered as a supplier; and

(b) the person is providing those goods or services to a licensee or a registered supplier. 1992, c. 24, s. 4 (1); 1993, c. 25, s. 31 (1).

Duty of Supplier

21 (2) A registered supplier who provides a gaming site shall ensure that the site is operated in accordance with this Act, the regulations, the standards and requirements established by the Registrar under section 3.8 and the terms of the supplier's registration and the licences for gaming events held at the site. 2011, c. 9, Sched. 17, s. 11.

Alcohol and Gaming Commission of Ontario Act, S.O. 2019, c. 15, Sch. 1

Lottery Subsidiary

6.1 (1) The Lieutenant Governor in Council may, by regulation, establish or continue a corporation without share capital that is a subsidiary of the Commission that has as its objects and duties,

(a) conducting and managing prescribed online lottery schemes; and

(b) any other prescribed objects or duties. 2020, c. 36, Sched. 1, s. 6 (1).

Operations, etc.

(2) The lottery subsidiary shall comply with this Act, the regulations and any Ministerial directives in conducting and managing the prescribed online lottery schemes. 2020, c. 36, Sched. 1, s. 6 (1).

Powers of a natural person subject to prescribed limitation

(3) The lottery subsidiary has the capacity, rights and powers of a natural person, subject to such limitations as may be prescribed. 2020, c. 36, Sched. 1, s. 6 (1).

Revenues and investments

(4) Despite Part I of the Financial Administration Act, the revenues and investments of the lottery subsidiary do not form part of the Consolidated Revenue Fund. 2020, c. 36, Sched. 1, s. 6 (1).

Application of Business Corporations Act

(5) The regulations may specify provisions of the Business Corporations Act that apply to the lottery subsidiary and its directors and officers, with or without any prescribed modifications. 2020, c. 36, Sched. 1, s. 6 (1).

Non-application of Corporations Act

(6) The Not-for-Profit Corporations Act, 2010 does not apply to the lottery subsidiary, except as may be prescribed. 2020, c. 36, Sched. 1, s. 6.

Non-application of Corporations Information Act

(7) The Corporations Information Act does not apply to the lottery subsidiary. 2020, c. 36, Sched. 1, s. 6 (1).

General, O Reg 78/12

Operator

3. (1) No person, other than the Corporation or a supplier registered as an operator, is authorized to do any of the actions described in the definition of “operator” in section 1. O. Reg. 78/12, s. 3 (1).

Criminal Code, R.S.C. 1985, c. C-46

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.

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 of Appeal File No.: COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

**FACTUM OF THE PROPOSED INTERVENERS,
NSUS GROUP INC. AND NSUS LIMITED
(*Motion For Leave To Intervene*)**

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