

## COURT OF APPEAL FOR ONTARIO

BEFORE: van RENSBURG J.A.

HEARD: MAY 1, 2024.

DISPOSITION OF COURT HEARING:



COURT FILE NO.:  
M54988, M54991, M55000, M55001, M55003  
& M55016 (COA-24-CV-0185)

TITLE OF PROCEEDING: IN THE MATTER  
OF REFERENCE RE iGAMING

DATE RELEASED: MAY 3, 2024

Nick Kennedy, for the moving party Mohawk Council of Kahnawà:ke

Scott C. Hutchison, Kelsey Flanagan and Brandon Chung, for the moving party  
Flutter Entertainment PLC

Graeme Hamilton and Teagan Markin, for the moving parties NSUS Group Inc. and  
NSUS Limited

Chanakya Sethi, Kristine Spence and Jacqueline Houston, for the moving parties  
Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and  
Gaming Saskatchewan and Manitoba Liquor and Lotteries Corporation

Adam Goldenberg, Gregory Ringkamp and Rachel Abrahams, for the moving party  
Canadian Gaming Association

Robert Danay and Keith Hogg, for the moving party the Attorney General of British  
Columbia

Joshua Hunter, Ananthan Sinnadurai, Hera Evans and Jennifer Boyczuk, for the  
responding party the Attorney General of Ontario

### Endorsement

By Order in Council 210/2024, the Lieutenant Governor in Council referred the  
following question to this court, pursuant to s. 8 of the *Courts of Justice Act*, R.S.O.  
1990, c. C.43:

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?

On March 1, 2024, I issued a procedural order setting out a timetable for motions for  
leave to intervene from interested parties and motions to adduce evidence. I heard  
these motions on May 1, 2024.

According to my procedural order, any Attorney General wishing to participate in the reference could intervene as of right by serving a notice of their intention to intervene including a brief statement of their position. Only the Attorney General of British Columbia (“British Columbia”) has done so.

The remaining moving parties sought leave to intervene in the following five groups:

1. the Canadian Gaming Association;
2. Flutter Entertainment PLC;
3. Mohawk Council of Kahnawà:ke;
4. NSUS Group Inc. and NSUS Limited (collectively, “NSUS”); and
5. Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and Gaming Saskatchewan, and Manitoba Liquor and Lotteries Corporation (collectively, the “Canadian Lottery Coalition Members”).

British Columbia and the Canadian Lottery Coalition Members also sought leave to file evidence and to participate in any cross-examination. The remaining moving parties indicated through their motion materials or oral submissions that they may seek to participate in cross-examination or to file evidence as well, depending on the evidence that is adduced by the other parties.

At the hearing of the motion, the Attorney General of Ontario (“Ontario”) took no position on any of the motions for leave to intervene but opposed leave to any of the interveners other than British Columbia to file evidence and to participate in any cross-examination.

After considering the parties’ written materials and hearing the submissions of counsel, I granted leave to the moving parties to intervene in the reference. It was apparent, however, that it was premature to determine the specific participation rights of any intervener, including with respect to the filing of evidence and cross-examination rights, until after Ontario has delivered its record. Ontario agreed to do so by May 31, 2024. It was also agreed that any intervener proposing to file evidence on the reference will deliver a motion record setting out the proposed evidence on or before June 21, 2024. These motions will be adjourned to be returned on a date thereafter to be fixed by the court.

Order to go granting leave to the moving parties to intervene in the reference. The motions are otherwise adjourned to a date to be fixed. Further timetabling and procedural directions will follow after the continuation of these motions.

