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IMGL
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FANTASY SPORTS

OPPORTUNITIES IN THE CANADIAN MARKET

Offshore Gaming
Changing the Criminal Code
Sports Betting in Canada
Canada's Online Gambling Industry

MESSAGE FROM THE PRESIDENT

At the beginning of the year I remember setting ourselves the goal of continuing to shape the future of gaming law.

So far I must say that I am happy with the way this first half of the year has turned out. It has been most productive and we have continuously been working on the further development of our educational offer by introducing the Asian Gaming Lawyer to our series of IMGL publications, hosting an outstanding IMGL Spring conference in St. Thomas and some very successful IMGL Masterclasses at ICE in London, the KPMG Gibraltar eSummit and the iGaming Supershow in Amsterdam. I therefore dare say that we are living up to our claim of being the pre-eminent global gambling law networking and educational organization.

This is even more so when looking at what lies ahead. I am happy to currently be able to announce five more upcoming IMGL Masterclasses for 2015: the IMGL Masterclass at G2E Las Vegas on 28 September, the IMGL Masterclass at the OFXG AND AFFILATLV conference in Tel Aviv on 1 November 2015, the IMGL Masterclass at the Isle of Man eGaming Summit on 10/11 November 2015, the IMGL Masterclass at MiGS Malta i-Gaming Seminar on 16/19 November 2015 and the IMGL Masterclass at the Eastern European Gaming Summit in Sophia on 23/24 November 2015. This clearly demonstrates that there is a demand for our IMGL Masterclasses and that they are very well received. Judging from the incredible feedback we have been getting on the quality of the speakers and the interesting selection of most current topics of the gaming world at our IMGL Masterclasses and the obvious demand for them, I am confident that the IMGL Masterclasses will continue to be a successful conference format in the future.

If you have not done so already, I urge you to please mark your calendars for our IMGL Autumn Conference which will take place on 14-16 October in Lima, Peru. This year's Autumn Conference will be especially interesting as it will be jointly held with the International Association of Gaming Regulators (IAGR). It will be our first ever conference in South America.

As you can tell, I am very happy with the progress our organization has made during the course of the year so far. None of this would of course be possible without the commitment shown by our IMGL management team. I would especially like to thank our current Executive Director, Sue McNabb, and our Director of Education and Association Development, Morten Ronde, for their dedication and support and for doing an excellent job in learning the ropes and renewing our management structure.

I would also like to take this President's Message as an opportunity to thank our loyal sponsors for their continued support at our conferences and the organization in general. I appreciate your ongoing support as an acknowledgement of the high-level of quality the IMGL endeavors to achieve at conferences. In order to continue striving to pre-eminence I would like to invite each and every member of the IMGL to actively participate in finding sponsorship opportunities, taking over responsibilities in the organization of the conferences, making suggestions as to their content and of course attending many conferences and IMGL Masterclasses in order to maintain the same level of excellence in our future conferences.

We move forward – together!

Joerg Hofmann
President

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BY MICHAEL D. LIPTON AND KEVIN J. WEBER

PROVINCIAL LAWS PROHIBITING OFFSHORE iGAMING

Provincial authorities in Canada have gone on record on numerous occasions declaring the unlawful nature of offshore online gaming ("iGaming") that accepts Canadian-based customers. Today, some twenty years after the first iGaming websites opened for business across the world, not a single offshore iGaming enterprise has been prosecuted for the act of accepting Canadian bets and wagers. The only prosecutions on record impugned those activities which took place within Canada in support of iGaming operations.

The result of this provincial inaction has been to leave Canadians unclear as to the legal status of offshore iGaming. The Canadian Broadcasting Corporation earlier this year saw fit to devote an entire article to confirming that such activity is unlawful, a fact which by itself speaks to the public confusion on the issue.[1]

The Criminal Code ("Code") provisions clearly set out that gaming in Canada that is operated on or through a computer or video device may only be lawfully conducted and managed by the provincial governments.[2] Any entity acting outside the express exemption created for provincial governments is subject to a wide array of criminal prohibitions for so doing.[3] Numerous obstacles exist with respect to initiating and maintaining a prosecution under the Code against an accused party who is entirely outside Canada. The evidence necessary to allow the prosecution to survive the preliminary inquiry stage will be found in foreign jurisdictions. Even where Canada has a treaty with such foreign jurisdictions mandating cooperation in law enforcement investigations, there may be considerable resistance to extending assistance where the target of the investigation is an entity licensed to conduct iGaming by the host government.

As well, most of the gaming prohibitions in the Code are "indictable offences," and an accused who is charged with an indictable offence may request that a preliminary inquiry be held.[4] To survive the preliminary inquiry stage, law enforcement authorities will be required to gather sufficient evidence to convince a judge of the probable guilt of the accused. Evidence that raises a mere possibility or suspicion that the accused is guilty will not be sufficient.

At the preliminary inquiry, the prosecution must lay its evidence before the judge and defend its admissibility against challenges brought by counsel for the accused. The judge must determine whether there was any admissible evidence, whether direct or circumstantial, which if believed by a properly charged jury acting reasonably would justify a conviction. Only if an affirmative answer to the question is reached will the accused be committed to stand trial on the charges. The judge does not determine the guilt or innocence of the accused; he or she must, however, find that there is more than a mere possibility or suspicion that the accused is guilty. Generally, before the judge orders an accused to stand

trial, the evidence must be such as to cause the judge to form the opinion that the accused is probably guilty.[5]

The Code is an enactment which sets out federal offences. Provincial offences, by comparison, are not subject to preliminary inquiry requirements. As such, a trial date for a provincial offence will be set without the need for a judge or justice of the peace to first assess the strength of the case. Moreover, where the gaming prohibitions in the Code require the prosecution to prove the accused committed both the physical and mental elements of the offence beyond a reasonable doubt, most provincial offences are adjudicated according to the standard of "strict liability". A strict liability offence requires the prosecutor to prove beyond a reasonable doubt that the accused committed the act with which he, she or it is charged, but no mental element need be proven. The "due diligence" defence is available in a strict liability offence where the accused can prove on a balance of probabilities that he, she or it took all reasonable steps to avoid the impugned act or that he, she or it reasonably believed in a mistaken set of facts which, if true, would have rendered the act innocent.[6]

A number of provincial gaming regulatory statutes include offences which could be used to prosecute offshore iGaming. The *Manitoba Gaming Control Act* in 2014 was repealed and replaced by a new statute, the *Liquor and Gaming Control Act*, which contains the following offence that was not part of the repealed statute:

"Except as authorized under this Act or another Act or by the Lieutenant Governor in Council, a person must not

(a) conduct, manage or operate a lottery scheme; or

(b) advertise, promote or hold himself or herself out as someone authorized to conduct, manage or operate a lottery scheme."[7]

A corporation found guilty of this offence is liable on summary conviction to a fine of up to $250,000; an individual, to a fine of up to $50,000 and/or imprisonment for up to six months.[8]

A similar provision exists in the British Columbia *Gaming Control Act*, which states:

"A person, other than the government or a person authorized under this Act, must not

(a) conduct, manage or operate a lottery scheme,[9]

(b) promote or hold himself or herself out as someone authorized under this Act to conduct, manage or operate a lottery scheme, or

(c) negotiate with a municipality, regional district, first nation or any other person respecting the conduct, management or operation of a lottery scheme."

A corporation found guilty of this offence is liable to a fine of between $5,000 and $100,000 in the case of a first conviction, on each subsequent conviction, to a fine of between $10,000 and $200,000. An individual found guilty of this offence to a fine of up to $50,000 and/or imprisonment for up to six months in the case of a first conviction, and to a fine of up to $200,000 and/or imprisonment for up to twelve months on each subsequent conviction.[10]

The Alberta *Gaming and Liquor Act* provides that:

"[n]o person may conduct or manage a gaming activity unless the person holds a gaming licence that authorizes the activity…"[11]

A corporation found guilty of this offence is liable to a fine of up to $50,000; an individual is liable to a fine of up to $10,000 and/or imprisonment for up to six months.[12]

Given the lower prosecutorial burden involved in these offences when compared to offences under the Code, it is something of a mystery as to why the provincial authorities with access to the above provisions have not brought forward a prosecution. If provincial governments truly wish to bring pressure to bear against offshore iGaming operators, they should consider whether it is possible to gather the evidence necessary to establish beyond a reasonable doubt that particular offshore iGaming operators are accepting customers from within their provincial boundaries. There is at least a chance that the initiation of such a prosecution will cause the accused iGaming operator, and others in a similar position, to abandon those provincial markets rather than suffer the stigma of a judicial finding that they have been acting unlawfully. **CGL**

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1. http://www.cbc.ca/news/business/online-gambling-is-it-even-legal-1.3006380
2. Code, s-s. 207(4)(c).
3. See e.g. the Code, ss. 201, 202, 206, 207(3).
4. Code, ss. 535, 536 and 555.
5. Salhany, R.E., Canadian Criminal Procedure, 6th ed. (Toronto: Canada Law Book, 2009), pp. 5-21 and 5-22.
6. R. v. Sault Ste. Marie, [1978] 2 S.C.R. 1299 at 1325-1326.
7. C.C.S.M. c. L153, s. 101.
8. C.C.S.M. c. L153, s. 149.
9. SBC 2002, c 14, s. 88.
10. SBC 2002, c 14, ss. 97-98.
11. RSA 2000, c. G-1, s-s. 36(1).
12. RSA 2000, c. G-1, ss. 117-118.

BY JACK I. TADMAN AND NIC SULSKY

Daily Fantasy Sports Contests:

Opportunities in the Canadian Market

Fantasy sports contests have become a mainstream social activity and an integral part of North American sports culture. It is estimated that, in 2015, there were 56.8 million players who spent nearly $26.5 billion dollars (USD) on entry fees and materials related to fantasy sports.[1]

Two major developments in the (brief) history of fantasy sports have been instrumental in shaping the current fantasy sports landscape. The first development was the formation of Rotisserie League Baseball in 1980 by magazine writer Daniel Okrent. Rotisserie League Baseball was not the first fantasy sports contest, but because of Okrent's position as a member of the media and his relationships with sports journalists, fantasy sports contests received, for the first time, mainstream media exposure and the popularity of fantasy sports contests increased significantly.

The second major development was the passing of the Unlawful Internet Gambling Enforcement Act (UIGEA). The passing of UIGEA not only led to prominent online betting and gaming operators exiting the United States, but also exempted fantasy sports contests from the definition of "bet or wager," provided that fantasy sports contest operators complied with certain rules.[2]

This apparent clarification by United States lawmakers of the legal

status of fantasy sports contests has led to a proliferation of fantasy sports contest offerings, including the fantasy sports contest offering known as a daily fantasy sports (DFS) contest. Instead of a fantasy sports contest lasting the length of the sports season, which was how fantasy sports contests had typically been run, DFS contests generally last for one day.

DFS contests started to become popular in late 2008 when Fanball.com launched the game "Snapdraft." DFS began gaining momentum in 2012 and experienced a major increase in participants in September 2014 (coinciding with the beginning of the 2014 NFL season).

In addition to a major increase in the number of participants playing DFS contests, average spending by participants in DFS contests has increased from an average of $5 per person in 2012 to $257 per person in 2015.[3]

DFS contest operators have experienced a major increase with respect to investments. DraftKings and FanDuel, the two largest DFS contest operators, raised a combined $111 million dollars in the third quarter of 2014. FanDuel raised another $275 million dollars in the third quarter of 2015 and DraftKings announced a $250 million dollar raise with Disney that converted into a marketing arrangement. DraftKings has raised an additional $300 million dollars of funding in the third quarter of 2015.[4]

As venture capital investments have increased, so has the amount of money DraftKings and FanDuel have spent on marketing, estimated to be in the hundreds of millions of dollars.

Despite the billion dollar valuations of DraftKings and FanDuel, and hundreds of millions of dollars of investments, neither appears to be currently profitable. For example, in the fourth quarter of 2014, DraftKings and FanDuel generated just over $81 million dollars of cumulative revenue, yet their collective marketing spend was well over $100 million dollars.

DraftKings and FanDuel, which operate using a business-to-consumer (B2C) model, generate approximately 96+% of the revenues in the DFS space. The remaining 4% is generated by other DFS operators, meaning that gaming companies, including provincial lottery corporations, have had almost no impact in terms of generating revenue from DFS.[5] Perhaps the reluctance of North American gaming operators to enter the North American DFS market is related to the lack of a clear legal precedent stating that DFS is legal.

It is difficult for a new operator to enter the DFS space because of the importance of having liquidity and large prize pools to generate interest from existing and potential customers. A major obstacle facing North American gaming operators is that no DFS platforms or models currently exist that would allow operators to protect their databases, provide a base liquidity for operators to hit the ground running, and cater to operators' ability to integrate their own brand power and loyalty into the operator's DFS offering. Therefore, in our view, an opportunity exists for a company to monetize a business-to-business (B2B) model that caters to North American gaming operators.

In Canada, provincial lottery corporations are the entities responsible for conducting and managing all "gaming" and "betting" in Canada.

"Game," is defined in the Canadian Criminal Code[6] (the Code) to mean "a game of chance or a game of mixed chance and skill." By implication, this means that none of the offences relating to an unlawful "game" apply to a game of skill alone.

"Bet," is defined in the Code to mean "a bet that is placed on any contingency or event that is to take place in or out of Canada, and without restricting the generality of the foregoing, includes a bet that is placed on any contingency relating to a horse-race, fight, match or sporting event that is to take place in or out of Canada."

As of the date of this article, DraftKings and FanDuel offer DFS contests to players located in Canada. DFS operators claim that DFS contests are games of skill. As games of skill, DFS contests would not be subject to the gaming and betting provisions of the Code, and would not have to be conducted and managed by the provincial lottery corporations.

There has not been a definitive pronouncement from a Canadian court regarding the legality of fantasy sports. Accordingly, whether DFS contests are considered bets, games of chance, games of mixed chance and skill, or games of skill, is not settled law.

If a B2B DFS operator were interested in marketing its product to existing Canadian gaming and betting operators, the provincial lottery corporations would be the obvious customers. If DFS contests were considered gaming or betting, the B2B DFS operator would have to structure the DFS contest so that it complies with the conduct and manage obligations under the Code. Essentially, the B2B DFS operator would supply the B2B solution to the provincial lottery corporation and the provincial lottery corporation would have to be the guiding mind of the player-facing DFS operation.

If DFS contests are considered a game of skill and therefore not

gaming or betting, a B2B operator would be free to enter into an agreement with a provincial lottery corporation and would not be subject to any requirements under the Code or private entities.

The DFS industry is in its relative infancy; of the 56.8 million fantasy sports contest participants in North America,[7] only 5% play DFS. However, in the fourth quarter of 2014, specifically around the time of the beginning of the NFL season, there was a large increase in the number of players playing DFS contests.

The DFS industry will continue to grow, and will get a boost from the 2015 NFL season. However, at the time of writing this article, there is still no B2B service provider working with North American gaming operators. From a Canadian perspective, whether DFS contests are considered games of skill will colour the types of agreements in which provincial lottery corporations are able to enter. The provincial lottery corporation would be best served by a B2B solution that would allow provincial lottery corporations to protect their databases, provide a base liquidity to hit the ground running, and cater to provincial lottery corporations' ability to integrate their own brand power and loyalty. **CGL**

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Nic Sulsky is a sports media & technology expert and currently the Vice President, Fantasy Sports for Sportech Inc.

1. *Fantasy Sports Trade Association: Industry Demographics, retrieved August 5, 2015 from http://www.fsta.org/?page=demographics.*
2. *31 U.S.C. §§ 5361-5367.*
3. *Fantasy Sports Trade Association: Industry Demographics, retrieved August 5, 2015 from http://www.fsta.org/?page=demographics.*
4. *DraftKings Secures $300MM In Funding From All-Star Lineup, retrieved August 5, 2015 from http://www.prnewswire.com/news-releases/draftkings-secures-300mm-in-funding-from-all-star-lineup-300118906.html.*
5. *Amaya Gaming has announced plans to enter the DFS space in the fall of 2015 in time for the NFL season.*
6. *R.S.C., 1985 c. C-46.*
7. *According to the Fantasy Sports Trade Association http://www.fsta.org/?page=demographics*

BY TROY ROSS

Changing the Criminal Code:

The Case for Immediate Action

In 1985, the state of the art in personal computing was the 8-bit Commodore 64. That year also saw the rollout of the first commercially available mobile phone, the brick-sized Motorola DynaTAC costing a cool $4000 US.

Today, no rational person would consider this technology relevant in our modern world. However, the sections of the Criminal Code that govern gaming in Canada (particularly the sections that deal with gaming on or through a computer) were written at that time. Yet unlike newer versions of technology that update, disrupt and ultimately supersede previous iterations, the Code remains substantively unchanged.

Our Criminal Code is to gaming today what 1980s programming languages are to contemporary computing: outdated, inefficient and restrictive. Two recent developments in the Canadian gaming industry highlight the pressing need to modernize the Criminal Code and to truly delegate the legal, public policy, and business operating authority of gaming, to the provinces.

The first is the failure of the Canadian Senate to pass Bill C-290, which would allow for single-sports wagering in this country. The Bill was unanimously supported by all parties in the House of Commons, and was sent to the Senate in March 2012.

At Senate committee hearings on C-290 a number of professional

sports leagues suggested that sports wagering would impact the integrity of their games. Perhaps the leagues are truly concerned about the integrity of sport. Perhaps they are motivated to protect their lucrative agreements with fantasy sports providers. Fantasy sports revenues would likely suffer if Canadians had the option to wager on sporting events. Whatever the reason, the Senate refused to vote on the Bill and it died on the Order Paper when the election was called.

The point is the public supports sports wagering, provincial governments unanimously supported the Bill, the House of Commons voted in favor of it and legalized single sports wagering would greatly reduce the involvement of organized crime.

Gaming legislation, like Bill C-290, should not require approval of the federal government in the first place. A modified Criminal Code, one that clearly provides the provinces the option to license and regulate private gaming operators, if they so choose (as contrasted with the existing and ambiguous language of "conduct and manage") would remove the need for federal parliamentarians to manage and respond to every new development in the gaming industry.

In 1985 the federal government delegated all gaming authority to the provinces with the intention of departing the gaming industry. Yet, it was far from a clean exit. Every few years, provincial governments have to go cap in hand to ask the federal government to tinker with the Code to allow some new form of gaming, or to clarify elements of the Code.

In the late 1990s it was to ask for a change to allow dice games. More recently it was asking for clarity on charitable gaming, and the use of computer technology (amended in the 2014 federal budget). Most recently and egregiously, it was allowing for single sports wagering through C-290.

The second major recent development that should give rise to a serious discussion about modifying the Code was the publication of a report on online gambling established by the Government of Quebec. The report is the most comprehensive analysis of the regulatory and socio-economic context of iGaming ever undertaken in Canada. The report—dubbed the 'Nadeau Report' after Chair Dr. Louise Nadeau—was the culmination of a three year enquiry led by five highly qualified and objective researchers that resulted in a remarkable assembly of quantitative and qualitative data.

The report, published in November 2014, recommended "in order to control the online gambling market, protect consumers and generate revenues for the government, the best solution for the [federal] government is to establish clear rules and open up the online gambling market to private operators. In fact, the best solution is to establish an online gambling licensing system."

This was not an isolated call-to-action motivated by vested interests. This was, and remains, the clearest analysis to date of the merits of modifying the Code to allow Canadian provinces the discretion to make their own decisions about whether it is in their best interests to "conduct and manage" gaming, to license, regulate and tax the industry, or to pursue a hybrid of these two models.

The public is already well ahead of the governments which purport to safeguard their interests when it comes to their acceptance of and participation in online gambling. An April 2010 Ipsos survey found 71% of Canadians do not believe that gambling on the Internet is illegal. That same survey showed 55% of Canadians support legalizing online gaming as long as government regulation is in place.

Fortunately, we have knowledgeable and effective gambling regulatory regimes here in Canada. Our regulators have the right policies in place with respect to transparency, integrity, problem gaming, and youth prevention strategies to ensure a robust licensing regime.

It is high time to amend the Code and adopt the Nadeau Report recommendation to establish a government-controlled and regulated online gaming sector. It is time to finally delegate all gambling responsibilities to provincial governments and allow them to decide how to operate those businesses. A licensing model would maximize consumer choice; deliver enhanced consumer protections and responsible gaming measures. A well regulated online gaming marketplace would also encourage investment in R&D and infrastructure, and increase government revenues through a tax regime.

Having worked as a political staffer, a regulator, and consultant to industry over the past two decades, I am well aware that changing the Criminal Code will not be easy, but it is entirely necessary. It is the right public policy for Canada, and the only long-term, sustainable solution to the ever-evolving public appetite for sports wagering and digital based gaming products and the technology that enables them. **CGL**

Troy Ross is the President of TRM Public Affairs, a consulting firm specializing in the gaming industry in Canada. Troy can be reached at troy@trmpublicaffairs.com

BY DANIELLE BUSH

Sports Betting in Canada

The overarching legislation that governs gambling activity in Canada is the federal Criminal Code (the "Code"). Sections 201 through to and including s. 206 make all types of gambling, betting and lotteries illegal throughout Canada. As a result of an agreement in 1985 between the federal government and the provincial governments, the Code was amended to reflect the fact that gaming was henceforth to be within the exclusive purview of the provincial governments.

Section 207 of the Code permits each provincial government to provide lottery schemes (which term includes bookmaking and the provision of other betting services) to its residents, to join forces with other provinces to provide lottery schemes in common to their collective residents, and to grant licences to charities to provide gambling activities for charitable purposes. Today, legal gaming, whether land-based or online, is provided by provincial government monopoly operators which are typically called 'Lottery Corporations' (e.g. British Columbia Lottery Corporation, Atlantic Lottery Corporation, Western Canada Lottery Corporation).

The operation of sportsbooks and other betting services are activities that constitute gambling unless they fall within one of the few exceptions in the Code. This is true whether the activities are provided in brick and mortar facilities or virtually (including online).

Provincial governments, alone or in concert, are permitted to provide any online gambling activity that they desire, subject only to the restrictions found in s. 207(4). This section provides that permitted lottery schemes (that is, those that a provincial government may offer) do not include the activities of "bookmaking, pool selling or the making or recording of bets ... on any race or fight, or on a single sport event or athletic contest". Legal sports betting (online or otherwise) therefore does not include betting on single games or other types of sporting events.

Since at least as early as 1990, various Lottery Corporations have been taking bets on sports games on a regular basis. A number of provinces use a sports betting platform known as Sports Direct which provides three types of betting services. Pro-Line is the best known, offering parlay betting on most major league sports as well as U.S. college football and basketball.

The Lottery Corporations that presently provide sports betting services are predictably finding that it is very difficult to draw their residents away from private online sportsbooks. The reasons for the lack of traction of the provincial offerings range from the inability to bet on a single game (as parlay betting is the only legal form of sports betting) to the very high vig (or percentage) taken by the Lottery Corporations as compared to the reputable online sportsbooks.

In order to attract more players, the provincial governments may consider actively lobbying the federal government for an amendment to the Code to permit single event sports betting. The private member's bill that would have made that change recently died in the Senate after lobbying against the Bill by, amongst others, representatives of major league sports associations.

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MATCH-FIXING – CANADIAN ENGAGEMENT

Match-fixing is generally considered to be one of the most pressing issues facing sports, both amateur and professional, in decades. In countries such as England and Australia where the issues of match-fixing and probity in sports have been acknowledged and directly addressed by legislation, the involvement of three groups is seen as critical to the success of initiatives in this sphere: the sports leagues and players associations, the bookmakers, and all of the necessary levels of government. The engagement of those three groups in Canada is reviewed below.

(i) Lottery Corporations

As the provincial governments (through the auspices of their respective Lottery Corporations) are the country's only

legal bookmakers, one would expect them to take an active interest in the sports betting industry and the nexus between sports teams and players, bettors and sportsbooks. That interest should inevitably include concern with regard to the integrity of sports in Canada and the pressing issue of match-fixing along with a commitment to address the issue through legislation. To date, there is no indication that the Lottery Corporations are engaged in a consideration of these issues. This may be explained at least partially by the belief that so long as they only provide parlay betting, individuals planning to profit by fixing matches will not be placing their bets on Lottery Corporation books. This appears to be a short-sighted approach. As the nation's only legal bookmakers, they may be held responsible, justifiably or not, if incidents of match-fixing occur during games played in Canada and upon which people were betting on Pro-Line. Finally, the issue needs Canadian champions and, given the void in that respect to date, it would be very much to the advantage of the Lottery Corporations to be seen as moral standard-bearers on this subject.

(ii) Sports Leagues and Players Associations

To date, the only indication of concern on the part of sports leagues in Canada was demonstrated by their belated lobbying against the single-event sports betting bill in front of the Senate for the past two years. The leagues took the position that single event sports betting would lead to match-fixing and generalized corruption in sports. This point is, unfortunately, moot as online single event sports betting is a billion dollar industry that will not be disappearing in the foreseeable future. We are therefore already dealing with the fall-out from single event sports betting in Canada. Blocking passage of the Bill, rather than supporting legalization of single event betting along with legislation to address match-fixing, merely perpetuates the unacceptable status quo. Leagues and players in Canada must own the problem as they have done in other jurisdictions and either initiate action or actively support government initiatives to promote integrity in sports and penalize match-fixing and other forms of fraud in this arena.

(iii) Federal and provincial governments

Canada is one of the few developed nations left with virtually no laws addressing match-fixing or integrity in sports. This is a cause for national embarrassment, given how seriously all of the major trade partners are taking the matter. Certainly if there is any thought given to bidding for the Olympics, let alone the World Cup, the organizers will enquire closely about this glaring omission. It is therefore incumbent on the federal government, as the only level of government capable of passing criminal legislation, to take the lead on this issue.

THE AUSTRALIAN MODEL

Australia presents Canada with a blueprint for advancing the match-fixing agenda as its structure mirrors that of Canada (i.e. a federal government as well as state and territory governments).

In 2011, Australia established a National Policy on Match-Fixing in Sport. That policy was stated to represent "a commitment by the federal, state and territory governments to work together to address the issue of inappropriate and fraudulent sports betting and match-fixing activities with the aim of protecting the integrity of sport". The Policy states: "While it is recognised that betting is a legitimate pursuit, illegal or fraudulent betting is not. Fraudulent betting on sport and the associated match-fixing is an emerging and critical issue globally, for sport, the betting industry and governments alike. It has the potential to undermine public confidence in the integrity of sport, sporting events and the products offered by betting agencies. Left unchecked, this corruption will devalue the integrity of sport and diminish the acceptability and effectiveness of sport as a tool to develop and support many aspects of our society."

As a first step towards the governance of sports integrity, Canada's federal government should work with the provincial governments (because of their dual role - enforcers of match-fixing laws and monopoly bookmakers in their respective jurisdictions) to adapt and adopt a Canadian equivalent to Australia's National Policy on Match-Fixing in Sport. This would be followed by (i) new federal legislation that could be fashioned to a significant extent on the criminal match-fixing legislation passed by the majority of Australian states and (ii) the establishment of an equivalent to Australia's National Integrity of Sport Unit to provide national oversight, monitoring and coordination of efforts to protect the integrity of sport in Canada from threats of doping, match-fixing and other forms of corruption. Finally, in order for these initiatives to succeed, the leagues, the teams and the players themselves must be actively engaged in the process since match-fixing will only take place where there are players and referees who are available to be bought.

In conclusion, it is beyond time for Canada's federal and provincial governments to acknowledge their responsibilities in this area, engage the sports leagues, teams and players, and start building a robust legal and regulatory framework to protect the integrity of sport in Canada. CGL

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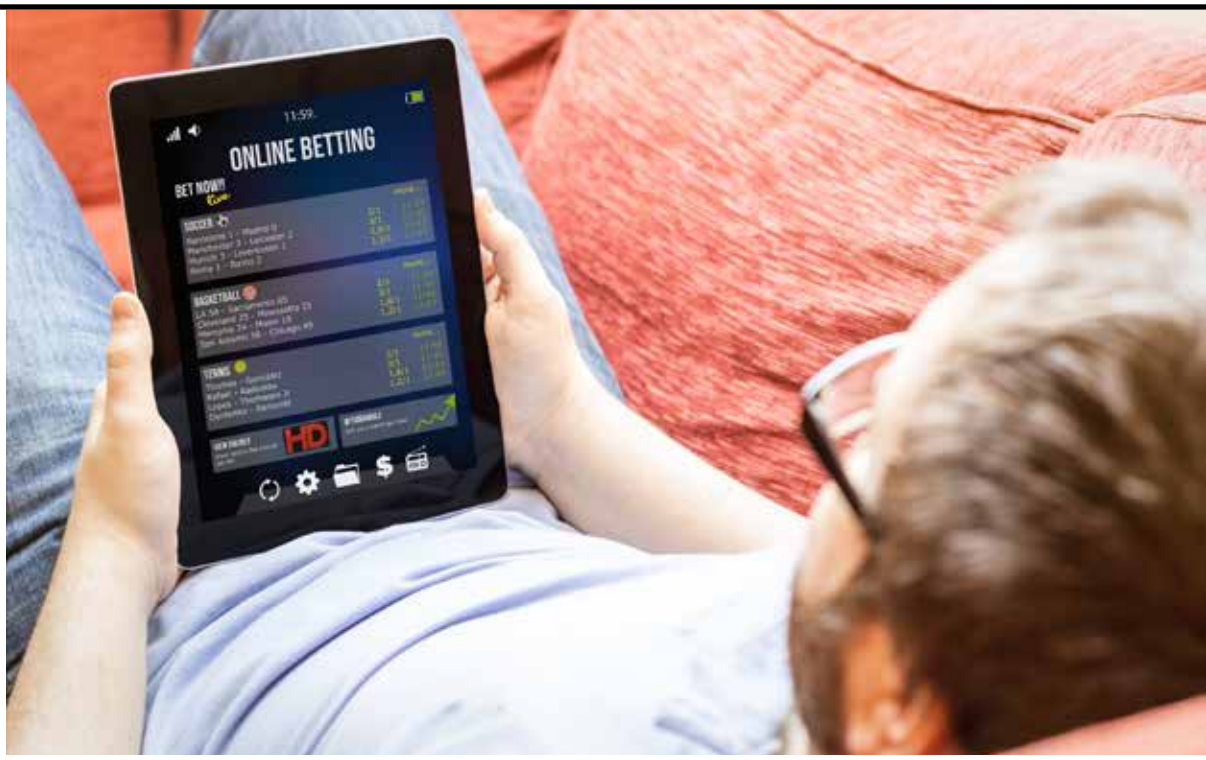
BY CORY R. LEVI



Canada's Online
Gambling Industry

The law in Canada, as it relates to online gambling, is somewhat grey. While there does not exist actual language that specifically governs the legality of online gaming websites, Canadian authorities have loosely interpreted the relevant language found in the Criminal Code of Canada to apply to them, and in this regard, the law is quite clear – only provincial governments can legally manage and operate gaming houses, whether land-based or online; this extends to poker, casino and/or sportsbooks alike.

So how can it be, therefore, that "offshore" operators accept Canadian facing business without suffering any legal consequences unlike several of them did a few years back in the United States? The answer is simple – by way of the "Foreign Operators Principle". The Foreign Operators Principle provides that as long there are no substantial links with Canada, whatsoever, (referred to as a "nexus" by Canadian courts), Canadian authorities have no jurisdiction over these offshore operators, and therefore, cannot enforce Canadian law, permitting them to continue to operate and earn revenues that, in the eyes of the various provincial governments, are revenues that belong to Canada.

GOVERNMENTS: ONLINE OPERATORS VS. ONLINE REGULATORS

Seeing the success that many of the world's largest gaming sites were experiencing, and without any ability to stop it or at the very least slow it down, several Canadian provinces sought out to run their own provincial online gaming websites – like the old saying goes, "if you can't beat them, join them", and in 2010, the Quebec government announced its plans to open the very first government-run online gaming site, www.EspaceJeux.com, in hopes of earning a piece of the multi-billion dollar gaming industry.

Despite their efforts in operating an online gaming platform, Canada's provinces continue to face three major problems:

As an operator, provincial governments compete with offshore entities that have been around for nearly two decades and that have far more knowledge, know-how, tools and experience, then they do, but above all else, have a large and unrestricted player base to draw from;

As an operator, provincial governments must "take the heat" for any and all complications arising from play on their site, rather than condemning a privately-run offshore operator thus avoiding any negative publicity; and

Even though they are operating as a business, at the end of the day, they are still a government, and therefore must operate within the confines of their budgets, whereas offshore operators, being private entities, do not have these same limitations. This results in far inferior marketing campaigns, and also in not being able to attract some of the industry's leading experts.

It is no surprise that Canada's provincial governments are well aware of the monetary benefits of online gaming; however, the billion dollar question remains as to whether they should recognize the legitimacy of this industry and strictly regulate it, or continue on as operators.

THE NEED FOR LEGISLATIVE CHANGE

Many Quebecers, including politicians, were against the launch of www.EspaceJeux.com as they felt it would only lead to societal issues. As a result, not really knowing much about online gaming, then Quebec Minister of Finance, Mr. Raymond Bachand, created the Working Group on Online Gambling tasked with the mandate of (i) examining the social impact that online gaming has in Quebec, (ii) analysing the measures used to block illegal gaming operations, and (iii) consulting with industry experts to learn more about the always-evolving online gaming industry, all to determine whether the online launch would be better or worse for the province – additional revenues and stricter responsible gambling programs vs. creation of new problem-gamblers.

Canada's federal government also realized there was a problem with offshore operators, but to them, it wasn't based on social concern, rather financial. In September of 2011, Senator Joe Comartin introduced Private Member's Bill C-290, which sought to abolish the "parlay-system"[1] and allow for "single-sport betting", to compete with the offshore operators that were operating pursuant to the Foreign Operators Principle; it was said that the Canadian provinces were losing out on approximately ten billion dollars worth of revenues that were being wagered offshore.

Unfortunately, Bill C-290 never made it past the goal line, and the provinces continue to compete with offshore sportsbooks.

In the summer of 2014, following the acquisition of Rational Entertainment Enterprises Ltd., the parent company of PokerStars and Full Tilt, by Montreal-based Amaya Gaming Group for $4.9B, rumors started circulating that Quebec was in fact leaning towards a regulated framework that would result in the issuance of several interactive gaming licenses to private operators. It wasn't until November of 2014, that these rumors started to look and feel more like reality, when Mr. Bachand's commission released their report, "Online Gambling: When the Reality of the Virtual Catches Up with Us",[2] wherein the most significant recommendation called for the Criminal Code of Canada to be amended to allow for the issuance of interactive gaming licenses to private operators, as well as the restriction of Loto-Quebec's mandate to the management of gambling operators, while leaving the oversight of public health and socioeconomic/legal questions to an autonomous body.[3]

Shortly after releasing the report, the Province of Ontario also stated that they too were suffering financial hardships with their online gaming website, www.PlayOLG.com, as a result of the presence of offshore operators, but would be waiting patiently on the sidelines to see if and how Quebec responds to the recommendations made by the Working Group on Online Gambling, before they take any such measures.

Whether or not Quebec and Ontario will lead the path for change in the way online gambling operates in Canada remains unknown. However, what is known is that without legislative change, the provinces will continue to face the same hurdles they've been facing since 2010, and continue to miss out on the continuously evolving billion dollar online gaming industry. **CGL**

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1. A "parlay" bet is where a person must bet on no fewer than 3 different sporting events, with the purpose being to protect the "integrity of the sport", by ensuring that no match-fixing could occur, whereas "single-sport" betting only requires a person to wager on one event.

2. http://www.groupes.finances.gouv.qc.ca/jeu (French version only).

3. A full list of the recommendations can be viewed at http://www.groupes.finances.gouv.qc.ca/jeu/pub/COMEN_20141106-groupe.pdf.

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