

# Canadian GamingLawyer

SHAPING THE FUTURE OF CANADIAN GAMING LAW

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## A WORLD OF CHANGE

### THE FUTURE OF GAMING REGULATION

Responsible Gaming in Canada  
eSports and Gaming Convergence  
IMGL Events for 2016

## MESSAGE FROM THE PRESIDENT



As the incoming President of the IMGL, and on behalf of all IMGL members, I would like to express congratulations and gratitude to our immediate past president, Joerg Hoffman, for a job well done. During his two year term Joerg was a tireless promotor of the IMGL and its mission.

One of the main purposes of the IMGL is to be an educational organization. To that end two years ago Joerg introduced the IMGL Masterclass concept at ICE in London. The IMGL Masterclass Program is now held in connection with various gaming conferences around the world and enables conference attendees to hear from panels of experts on the latest developments in the gaming industry. These panels consist of leading gaming experts including gaming attorneys, regulators, members of the gaming industry, consultants and educators. The IMGL Masterclass concept has proven so popular that in 2016 the IMGL will be conducting Masterclasses in connection with G2E Asia; The Gaming Summit in Gibraltar; the i-Gaming Super Show in Amsterdam; the KPMG e-Gaming Summit on the Isle of Mann; the I-Gaming Seminar in Malta; the Eastern European Gaming Summit in Sofia, Bulgaria; the European Associates for the Study of Gaming; and the IAGR Conference in Sydney, Australia. As a result of the popularity of the Masterclass concept, our leadership is currently reviewing additional requests for holding Masterclass programs at other gaming conferences and events around the world. Stay tuned for further details.

In February the IMGL co-sponsored the American Bar Association's Gaming Law Minefield program which was well attended and had an outstanding group of panelists.

The IMGL spring conference was held in San Francisco at the Fairmont Hotel in April. The panels included Daily Fantasy Sports from both the industry and relations perspective, with a duel track agenda with one track dedicated to Indian gaming and featured speakers were the Honorable Willie Brown, former Mayor of San Francisco, and Bill Romanowski, the San Francisco Forty-Niners NFL football legend. Many thanks to the co-chairs John Maloney, Marc Ellinger and John Roberts for their commitment in organizing the conference.

IMGL's fall conference will be held in Dublin, Ireland, this year on October 23-25. The conference will be held at the Shelbourne Hotel, one of Dublin's oldest and most elegant hotels located on St. Stephen's Green. More details to follow.

As part of the IMGL's educational mission we now have six major publications: European Gaming Lawyer; American Gaming Lawyer; Canadian Gaming Lawyer; Asian Gaming Lawyer, Indian Gaming Lawyer, and La Ley Del Juego, which is published in the Spanish language and focuses on all Spanish speaking jurisdictions in Europe, Central and South America. These publications have become a valuable source of information on the latest legal and industry developments in the gaming industry. I encourage all of our members to contribute content to these publications.

Our membership continues to grow and our receptions at ICE and G2E Asia continue to be great networking and relationship building events. The IMGL reception at G2E Asia will be held on May 18th at the Venetian Macau. I encourage any members who travel to Macau for G2E Asia to attend the reception. As evidenced from the many IMGL events around the world, 2016 looks to be a busy year for the IMGL and its members, and I look forward to seeing and working with you to further promote the IMGL brand.

*Michael E. Zatezalo*  
President

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BY ILKIM HINGER

# The Future of Gaming

The challenge of regulation in a world of change





*“The only thing that is constant is change.” - attributed to Heraclitus of Ephesos, 500 BC*

Imagine a spectacular sports and entertainment stadium, filled to the rafters with boisterous fans cheering on their favourite competitors. Picture the players in the arena locked in head-to-head competition, focussed on winning all the while soaking in the adoration of their loving fans. While some players are young up-and-comers, others have reached stardom and financial success, basking in the glow of celebrity and sponsorships by major brands. Perhaps you're imagining an NBA game, with all the usual pomp and pageantry, or a battle of the Original Six NHL rivals. Now imagine something else – where skilled video game players compete in multiplayer online battle games, such as Call of Duty and StarCraft II. The phenomenon is eSports and its tournaments have played to sold out crowds in New York Madison Square Garden and LA's Staples Center. Major corporate sponsors — Coca Cola, Dr Pepper, Intel, Red Bull, Doritos — sponsor the events, which are also streamed on the internet. The top video game players — often in their late teens and early 20s — earn hundreds of thousands of dollars or more a year. Estimates suggest over 70 million watch eSports every month and it is expected to generate billions in revenue in the next two years. Is this the future of gaming? Are there implications related to wagering? Are these games tantamount to amusement games or games of pure skill? Is anyone hazarding money or money's worth? Are bets being accepted on the outcomes of these games and tournaments? Is it lawful? Should it be regulated?

Similar questions could be raised about Daily Fantasy Sports or DFS. Indeed, perhaps more has been written about DFS than any other form of gaming entertainment recently. In DFS, participants select imaginary rosters of athletes from professional sports leagues

referendum. One thing is clear, billions and billions of dollars are at stake.

Stating the obvious, we are living in an era of unprecedented pace of technological change. The internet, broadband, wi-fi, automatic identification, virtual currency, robotics,

Gaming will no doubt morph into something new thanks in no small part to the convergence of technology and entertainment. That new iteration may be somewhat predictable, manifesting as a result of a series of natural progressions from what exists today; or it may catch us by surprise, defying expectations and commonly held beliefs.

The challenge is that existing Canadian law, most notably “Disorderly Houses, Gaming and Betting” provisions set out in Part VII of the Criminal Code (the “Code”), are clearly more easily relatable to traditional, land-based operations and realities. Gaming law itself in Canada has historically been “a patchwork of fossilized law”, largely prohibitive and a carry-over from English statutes. As one commentator notes, Canadian legislation has its roots in a 1338 statute, “passed when the monarch feared losing all his skilled archers to ‘idle’ games of chance.” The first Canadian Criminal Code of 1892 captured a number of gaming prohibitions, re-enacting a general statute relating to lotteries and gaming. For many years following Confederation, a series of ad hoc seemingly minor amendments were the only changes to the law.

As over time in Canadian society the public perception and acceptance of gaming evolved from unacceptable behaviour to a form of generally accepted entertainment, there also evolved an appreciation by government that an overly prohibitory approach did not necessarily protect the public as well as a more flexible, regulated approach would. How Canadians were permitted to participate in gaming began a process of decriminalization and regulation. In 1969, the Code was amended to permit the Government of Canada to conduct lotteries and to permit the provinces to conduct lottery schemes. After a series of developments and challenges in 1979, the federal government and the provincial governments agreed that the federal government would no

*A successful, consumer focused industry must take into account the expectations of players with heretofore never seen ease of access to entertainment options; and those wants, demands and expectations are evolving at a remarkable pace.*

like the NFL and compete based on the real life performances of those athletes. It is an industry that is approximately five years old and is estimated to generate over \$14 billion in entry fees by 2020. Does DFS fall under the category of illegal gambling? In Canada, where there is no equivalent to the American Unlawful Internet Gambling Enforcement Act carve-out, the question might rest on whether the activity is tantamount to a game of skill or a game of mixed skill and chance. The US has witnessed heated legal activity about the status of this phenomenon. Virginia recently became the first state to formally regulate DFS. In New York, the DFS companies, like DraftKings and FanDual have been told to cease and desist by the New York Attorney General, while enforcement actions continue. In Maryland, the state is considering becoming the first state to let voters decide the legality of DFS via

wearables, smartphones, tablets, social media, modern miniaturized electronics – the nearly endless aspects of technology – have transformed almost every facet of our lives, from how we communicate with our loved ones and colleagues, to how businesses are run; from how and what we consume, and when, to how we socialize and connect; from how we make travel plans to how we enjoy entertainment. The gaming industry is obviously not immune to any of this. In fact, gaming by its very nature is a form of entertainment particularly prone to impacts from technological innovations. A successful, consumer focused industry must take into account the expectations of players with heretofore never seen ease of access to entertainment options; and those wants, demands and expectations are evolving at a remarkable pace. What “gaming” looks like today will be different a year from now, maybe sooner.

longer be involved in the operation of lotteries. This agreement was formalized in 1985, and since then gaming (other than pari-mutuel horse racing) has been a provincial undertaking, within the limits established in Part VII of the Code. Accordingly, each province has enacted its own provincial gaming control legislation and established their own regulatory scheme, offering gaming under the rubric of “conduct and manage” through a variety of operational models. The provinces’ objectives may vary slightly, but universally involve: (i) the enhancement economic development; (ii) the generation of revenues for the province; (iii) the promotion of responsible gaming, and (iv) ensuring that gaming is conducted lawfully, for the public good and in the best interests of the province.

Given its pervasiveness in our lives, it may perhaps be somewhat of a stretch to include “the internet” in the category of emerging technology. However, without belabouring the point or delving into the socio-technological reasons why, it is now (virtually) ubiquitous. It has transformed almost every aspect of our lives and brought with it the promise of seamless interconnectivity. Concurrently, it has given rise to a number of legal and risk mitigation issues (e.g. security, privacy, intellectual property protection, competition). It also unquestionably challenges traditional concepts of boundaries, arguably rendering them obsolete. Perhaps the most obvious application to the gaming world is online gaming. What could be more natural for someone in 2016 to expect to be able to use their smartphone and have instant access to gaming options? Especially if that person is accustomed to having easy and speedy access on their mobile device to virtually anything he or she can think of – from internet banking to online shopping to streaming their favourite TV shows.

The definition of “lottery scheme”, which was introduced by the Parliament

of Canada as part of the 1985 amendments to the gaming provisions of the Code, has been interpreted and applied so as to only permit provincial governments to “conduct and manage” lawful internet gaming. This is not because the Code specifically refers to the internet – in fact the word “internet” or any variation thereof does not appear anywhere in Part VII of the Code; rather it is because of the application of the Code provision that a provincial government (alone or in conjunction with other provincial governments) may conduct and manage gaming “that is operated on or through a computer, video device or slot machine.” Therefore, a private sector gaming operator could not itself simply offer a lottery scheme through the internet as that would be gaming “that is operated on or through a computer”,

*Due to the very nature of the internet, online gaming offerings clearly challenge traditional notions of boundaries, and Canadians continue to play on sites offered by organizations located in other jurisdictions.*

just the same way as such private sector gaming operator could not by itself establish a bricks and mortar casino and directly open the doors of the gaming venue to Canadians. However, a province can itself do so under its “conduct and manage” power under section 207(1). Currently in Canada, several provinces including British Columbia, Ontario and Québec offer gaming to their residents through the internet at their unique websites. Above and beyond the relatively

small gaming offerings of these provincial lottery and gaming corporations’ sites, many unregulated sites are accessible by Canadians. The global online gaming industry is currently estimated to be \$50 billion.

Due to the very nature of the internet, online gaming offerings clearly challenge traditional notions of boundaries, and Canadians continue to play on sites offered by organizations located in other jurisdictions. To date, there have only been a handful of prosecutions against private sector gaming operators that have attempted to offer gaming through the internet. None of these prosecutions proceeded to trial. Each of these involved organizations establishing businesses and operations in Canada with a view to offering gaming through the internet to Canadians (but not necessarily only

to Canadians). A different scenario wherein an organization with operations established outside of Canada providing online gaming offerings to players physically located in Canada from a jurisdiction where it is lawful to operate is a question that has yet to be addressed by any court in Canada.

In 2010, approximately three years after Loto-Québec began offering online gaming to its residents on the Espacejeux website, the Québec government created

a Working Group on Online Gambling, created by Québec's former Minister of Finance Raymond Bachand and chaired by Dr. Louise Nadeau. The report is very timely in that it specifically examined the challenges of applying land-based regulatory and operational philosophies to the realities of the internet. In fact, the title of the report is telling: "When The

regulations that had served Québec well in respect of land-based gambling had become obsolete and could not work in the same manner on the Internet."<sup>ii</sup>

After an analysis which included a review of models and approaches adopted by other jurisdictions, including the UK's licence, tax and regulate model, the Working Group reached the conclusion

*In what could have significant implications for what licensed charities can offer, the amendment can be seen as a recognition that a regulated licensing scheme that permits the use of modern technologies will enable efficiencies . . . with a view to generating increased revenues for worthy causes.*

Reality of the Virtual Catches Up With Us." The focus of the analysis was the protection of the public: the same public policy behind the very existence of the Crown lottery and gaming corporations. It is noteworthy that the Working Group commented on the ease of availability to Canadians consumers of non-government, unregulated gaming websites: "[t]he number of websites accessible to Canadians ranges between 2171 and 2235, of which over 500 have a gaming platform in French". Indeed, the Working Group stated that: "it became obvious to the Working Group that with the Internet, certain controls and

that "to control the online gambling market, protect consumers and generate revenues for the government, the best solution for the 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." Included in its recommendations was the amendment of the Code and subsidiary steps designed to protect the public while leveraging the benefits of technological innovation.

While Part VII of the Code has not been materially "modernized" since 1985, some noteworthy updates to the

law have taken place. For example, amendments in 2014 to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ushered in perhaps the most significant regulatory changes since the introduction of casino disbursement reporting in 2009. These 2014 amendments made significant changes to the definition of "casino" and clarified that "internet gaming" conducted and managed by provincial lottery corporations will be subject to AML requirements. Also in 2014, an amendment to subsection 207(4) of the Code created an exception to the general prohibition preventing licensed charitable or religious organizations from offering gaming "on or through a computer". The new subsection 207(4.1) now permits the "use of a computer" for "the sale of a ticket, selection of a winner or the distribution of a prize in a raffle, including a 50/50 draw", whereas before the amendment, thanks to the interplay between the definition of "lottery scheme" in 207(4) (c), s.206, and the s.207(1)(a) provincial government "conduct and manage" exception, only provincial governments could operate lottery schemes "on or through a computer". In what could have significant implications for what licensed charities can offer, the amendment can be seen as a recognition that a regulated licensing scheme that permits the use of modern technologies will enable efficiencies (until now, charities had to rely on costly, outdated, labour-intensive manual processes) with a view to generating increased revenues for worthy causes.

In light of the foregoing, can we say that our gaming laws have kept up with the torrent of technological transformation? Should the Code's gaming provisions be modernized? Are there approaches to "conduct and

i. See J.A. Osborne & C.S. Campbell, *Recent Amendments to Canadian Lottery and Gaming Laws: The Transfer of Power Between Federal and Provincial Governments*, 26 *Osgoode Hall L.J.* 19 (1988).

ii. See L. Nadeau, M. Dufour, R. Guay, S. Kairouz, J.-M. Ménard and C. Paradis, *Online Gambling: When the Reality of the Virtual Catches Up With Us*. Montréal, Québec, Working Group on Online Gambling, 2014.

iii. See Donald Labriola, *Dissonant Paradigms and Unintended Consequences: Can (and Should) the Law Save Us from Technology?*, XVI *Rich. J.L. & Tech.* 1 (2009).

management” of gaming that would enhance the capacity to realize the public policy objectives of the provinces? Are we prepared to address the challenges and recognize the opportunities of DFS, eSports, interactive games, sports betting and other innovations? Are we taking timely lessons from other jurisdictions? Since billions of dollars, economic development and the protection of Canadians are at stake, all of these difficult questions should be considered today. Canadians are currently consuming gaming entertainment in ways that might have once seemed unfathomable. No differently than in most places in the world, Canadian consumers are being exposed to new, technologically innovative and fun entertainment options at a remarkable pace. If the premise is that today in 2016 gaming is an entertainment option that is generally acceptable by Canadian society, and that over time as Canadian society changes, legislative and regulatory

frameworks must evolve concomitantly in order to meet society’s current needs, this leaves us in a bit of a conundrum. Most of our current laws and approaches to gaming in Canada have their origins in more traditional, land-based realities. We must decide whether we are sufficiently encouraging and leveraging technological innovation; we must decide whether our existing laws, practices and institutions sufficiently and efficiently protect Canadians while responding nimbly to modern demands; we must decide whether we are optimizing opportunities to generate increased revenue for social priorities that may otherwise continue to flow out of the country in a largely unrestrained, unregulated marketplace. New technologies spur economic growth and foster new patterns of innovation, commerce and social interaction. As one commentator notes, they also “spawn disruptive innovations that force established industries to forge

novel responses or risk falling by the wayside.”<sup>iiii</sup> What is clear is that we are living in a truly transformational era - where technology, entertainment, gaming, wagering, popular culture, big data, productivity and efficiency converge like never before. How we choose to offer and regulate gaming to Canadians must also be in the mix and we must evolve and respond to the realities of modern, emerging and disruptive technologies to provide the clarity, opportunities and protection to Canadian consumers that may have so far eluded them. **CGL**

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BY HUGO LUZ DOS SANTOS

# Responsible Gaming In Canada:

## The Nova Scotia Legal Framework As A Model For The World?

*Gaming and betting contracts are a practical expression of homo ludens: they symbolize a desire for entertainment, a ludic desire. That ludic desire of the player, symbolizing an eminently personal need, does not have enough material foundation to merit the right to legal protection, because it lacks economic interest.*

For this very reason there is a widespread hesitation in legalizing gambling as a ludic activity; the grounds for these concerns are easily recognized and, thus, can be straightforwardly pointed out: gambling, as a whole, constitutes a potentially disruptive activity; therefore, governments (just think of Taiwan, South Korea, and, in a certain way, Singapore) are comprehensibly

reluctant in legalizing gambling as an economic activity, because, as profitable and as dazzling as it may be, its core invariably underlies a social disruption.

Hence, the Canadian Government, namely the government of Nova Scotia, endorsed a vast array of apposite social measures in order to avoid or prevent harm to the gamblers, chiefly to the deemed problem gamblers.



The assortment of social measures enacted by the government of Nova Scotia, deserve widespread application in gaming jurisdictions around the world, because these measures, which are cutting edge, have shifted the paradigm from the problem gambler to the society as a whole: problem gambling in Canada, mainly in Nova Scotia, is now a public health issue.

The roots of the success of this model are deeply enshrined in a rather understandable reason: the issue of problem gambling ought to be addressed in a voluntary way rather than a mandatory one. No Problem Gambling model whatsoever can

override the adhesion of the problem gambler. The problem gambler's input is essential, rather than ancillary, for the success of any problem gambling policy.

No matter how perfectly shaped the problem gambling may be, or even squarely aligned with public goals, if the problem gambler does not adhere to the program, its foundations will surely collapse, and everyone's time and efforts would be regrettably wasted. As a result, the problem gambling policy would not be more than a statement of good intentions.

But first things first. How can one outline an accurate definition of problem gambling or problem gambler?

Despite the existence of problem gambling, there have been ongoing difficulties in finding a widely accepted definition. Conversely, despite being widely used, the terms "responsible gambling" and "responsible provision" are also poorly defined. At the same time, it is important to note that differences in definition are quite important as they impact on solutions provided to overcome the problem<sup>1</sup>.

For example, the Australian Productivity Commission (1999) included a vast range of definitions of problem gambling that variously emphasized either symptoms (e.g., loss of control, chasing debts) or effects (e.g., disruption and damage to personal, family or work life). One widely accepted definition is that adopted by the Victorian Casino and Gaming Authority (VCGA) which states that problem gambling occurs "where a person's gambling activity gives rise to harm to the individual player, and/or to his or her family, and may extend into the community"<sup>2</sup>.

Conversely, "Problem Gambler", as far as the Canadian doctrine is concerned, is broadly defined as any person whose ability to resist the impulse to gamble has been impaired, or whose gambling has compromised, disrupted, or damaged personal family, or vocational pursuits<sup>3</sup>.

Having this definition very firmly in mind, and as stated above, Nova Scotia put forth a responsible gaming policy that constitutes, in many ways a model for the gaming jurisdictions around the world, given its cutting-edge nature.

Thus, when it comes to engaging responsible gaming matters, the relatively small province of Nova Scotia stands out as one of the world's most progressive gaming jurisdictions. In contrast to gaming jurisdictions that have relied primarily upon social or political pressure to dictate decisions, Nova Scotia has focused on collaborative research to test the efficacy of policy. It is fair to say that Nova Scotia is a jurisdiction with which the world's gambling researchers have become quite familiar - as a test tube of sorts, watched closely by those interested in addressing key policy decisions through research-based approaches<sup>4</sup>.

The key features of the problem gambling carved out by Nova Scotia can be thoroughly summarized as follows.

Based on prior research conducted by Schellinck and Schrans (2002), four responsible gaming features have been set out: on-screen permanent clocks, cash displays (as opposed to credit displays), pop-ups reminders (indicating for instance, how much time the gambler had played), and mandatory cash out requirements.

Specifically, once they began, players had the option to ignore the responsible gaming features offered, or to use any or all of the features; in these circumstances, one can see that the voluntary nature of the responsible gambling outlined by the Nova Scotia is markedly present.

This consideration is no small one, as previous responsible gaming mechanisms have forced patrons to use them, raising concerns about personal responsibility and consumers' right to choose whether they participate in gambling or not<sup>5</sup>.

The "My Account" feature is in essence a summary statement of the player's wins and losses over the course

of the past day, week, month, and/or year. This is a common feature in a number of loyalty card programs in other gaming jurisdictions which often offer printouts summarizing the same kinds of information. This feature

gambling. For example, players could self-exclude on specific days (such as payday, or on a spouse's birthday), or for more extended periods of time. In the latter case, this feature begins to look much like the self-exclusion programs

were sure they wanted to proceed – so that gamblers were not accidentally self-limiting when they did not want to do so. When gamblers reached a monetary or time limit that they had imposed upon themselves, the games would shut down and the gamblers would be told to remove their cards. If they attempted to put the card back into the machine or into any other machine, they would be denied and informed of the date when they could gamble again<sup>6</sup>.

Overall, the responsible gambling features shaped by Nova Scotia meet both the interests of the problem gamblers (protecting the problem gamblers from themselves) and the goals of the entire community as whole, in that they provide an effective mechanism to prevent social harm. As stated by the Supreme Court of Canada, these goals should be a “minimal impairment test of the protected rights” and “the least restrictive alternative”<sup>7/8</sup>. **CGL**

*Overall, the responsible gambling features shaped by Nova Scotia meet both the interests of the problem gamblers . . . and the goals of the entire community as whole, in that they provide an effective mechanism to prevent social harm.*

allows an on-screen display of this information.

The “My Money Limit” feature allows players to set budgetary limits for their gambling. For example, gamblers could set a limit of \$50 for a particular day of gambling activity, and the device would enforce that limit. Importantly, these limits did not apply to winnings, so if the player with \$100 in the machine set a \$10 daily loss limit and then immediately hit a \$75 jackpot, the limit would be reached if the player lost money from that point onward.

The “My Play Limit” feature allows players to set time limits for their

that are familiar in many jurisdictions around the world – enforced via the machine, rather than “at the door” or elsewhere in brick-and-mortar gaming operation. Moreover, players could not return and change their mind once they had excluded themselves from playing for certain periods.

Inextricably linked with this feature, is the “48 Hour Stop” feature. This feature essentially allows for a “cooling off” period whereby the player is excluded from the system for a period of 48 hours.

When making decisions to limit their play, gamblers were asked whether they

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1. In this sense, in the Australian doctrine, HELEN BREEN/JEREMY BUULTJENS/NERILEE HING, “The Responsible Gaming Code in Queensland, Australia: Implementation and Venue Assessment”, in: *UNLV Gaming Research & Review Journal*, Volume 9, Issue 1, (2005), p. 44.

2. See BREEN/BUULTJENS/HING, *id.*, p. 44.

3. In this sense, in the Canadian doctrine, WILLIAM V. SASSO/JASMINKA KALAJDZIC, “Do Ontario and Its Gaming Venues Owe a Duty of Care to Problem Gamblers”, in: *Gaming Law Review and Economics (GLR&E)*, Volume 10, Number 6, (2006), p. 552.

4. In this sense, in US doctrine, BOJ. BERNHARD/ANTHONY F. LUCAS/DONGSUK JANG/JUNGSUN KIM, *Responsible Gaming Device Research Report*, University of Nevada, Las Vegas International Gaming Institute Responsible Gaming Device Research Report, Las Vegas, (2006), p. 6.

5. See BOJ. BERNHARD/ANTHONY F. LUCAS/DONGSUK JANG/JUNGSUN KIM, *id.*, p. 13, that we will follow very closely from this point onward.

6. See BOJ. BERNHARD/ANTHONY F. LUCAS/DONGSUK JANG/JUNGSUN KIM, *id.*, p. 14, whose research we have been following very closely.

7. In this respect, the jurisprudence of the Canadian Supreme Court, *RJR-MacDonald Inc v. Canada (A.G.)*, (1995), 3 S.C.R. 199, 342-343 (Can.) (McLachlin J.) (emphasizing also that “the law must be carefully tailored so that rights are impaired no more than necessary”), acknowledging that “a range of reasonable alternatives may exist”, but indicating that “if the government fails to explain why a significantly less intrusive and equally effective measure was not chosen, the law must fail”).

8. In the same sense very recently, in the jurisprudence of the Canadian Supreme Court (Canadian Supreme Court), *Charkaoui v. Canada*, 2007, SCC 9, (2007), 1 S.C.R. 350, §§ 85-87, (Can.) (finding procedures for the judge’s considering secret service evidence with no access to the respondent or one acting for him failed the minimal impairment test, given the availability of alternatives such as security-cleared special advocates in use under other regimes in Canada and in the U.K.).



BY SALIM L. ADATIA



## Gaming Convergence ~~Optional~~ Mandatory!

*The other day, I asked a friend what he had planned for the weekend. He told me he planned to drive south of the border (we both live in Vancouver, BC) with some friends to watch an international tournament. He went on to explain it was an eSports tournament being held in Seattle for its fourth consecutive year and was expected to draw over 17,000 attendees. Despite his girlfriend sitting beside him rolling her eyes, this fascinated me.*

To those of you who are not aware, eSports are community-based competitions where the primary aspects of the tournament are facilitated by electronic systems. In other words, the input of participating players and teams as well as the output (i.e. event outcome) are mediated by human-computer interfaces and the

eSports system. Games usually span across different video game genres, but are most commonly in the form of organized multiplayer video game competitions. To place the size of eSports in perspective, some 188 million people played eSports in 2014, and the sector as a whole was estimated to be worth \$748 million

in revenues, according to market research firm Superdata<sup>1</sup>. The League of Legends Championship Final in 2015 drew an online audience of 36 million - more than the TV viewership of the NBA finals or the Stanley Cup<sup>2</sup>.

Daily Fantasy Sports (DFS) is another great example of where communities

of players gather both online and in person for the excitement that stems from competing with each other's ability to pick winning sports combinations. Player entry fees help fund prizes with a portion of the entry fee going to the provider as rake-off revenue. Although somewhat recently contentious, there's no arguing DFS can be credited for helping to improve television viewership and engagement with sports. In addition, it has proven to be a source of replacement revenue for bricks and mortar environments that host sections of their floors for the experiences.

How are these two linked? eSports and DFS represent the power and significance of the increasing pace of gaming convergence. This phenomenon is driven by changing consumer demographics and increased demand for novel and exciting gaming products and services that provide seamless and easy

channels of access. Gaming convergence across genres, technical mediums, distribution channels and sectors is growing at a faster pace than ever. I can tell you this confidently because in my role as VP over iGaming & Canadian Services at Gaming Laboratories International (GLI®), I am privileged to have firsthand experience in leading-edge concept demonstrations and submissions from both new and existing companies - small and large.

The age old "perfect" marketing mix of product, price, place and promotion has become even more vital in today's environment of rapidly changing consumer demographics and increased consolidation. I am not just speaking about company consolidations through mergers and acquisitions, I am also referring to product consolidations and convergence, some of which result from the former of course, but others

as a reaction to current market realities in the gaming space. The more I speak to the suppliers we work with, the more they reaffirm that in order to compete effectively and profitably in today's hyper competitive gaming market, a 360-degree approach to gaming offerings is necessary.

This is nowhere more evident than the changes we've seen in the online gaming space. In the late 1990's it used to be that as long as a company's real money gaming website had a fair mix of casino table games, slot games and a half-decent poker offering, the probability of success was reasonably good, and patrons weren't likely to migrate away. Around 2011, website operators figured out that having an excellent peer-to-peer (P2P) poker product and a range of lottery, keno, bingo, and bonus-based products gave them an edge over their competitors. Today, large scale mergers



*Pictured here, clockwise from top left: Robert W. Stocker II, Michael D. Lipton, Peter H. Ellsworth, Dennis J. Whittlesey*

*Robert W. Stocker II and Michael D. Lipton are Tier I gaming attorneys in Chambers Global and all four lawyers pictured here are listed in Best Lawyers.*

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and acquisitions demonstrate that a site offering the aforementioned plus much more (e.g. sports wagering, live-dealer, pari-mutuel and exchange betting, etc.) can help a business pull out ahead of the rest - at least for now.

I suspect lotteries with an online presence have also realized the same. This is evidenced by an increase in tender requests, formal requests for proposals, and expressions of interest being published both here in Canada and in the US for new and compelling web-based and mobile content. Respondent companies that I am aware of include (but are by no means limited to) offerings for second chance lottery games, instant win games, mobile specific games, electronic raffle, sports and pool-based games and live-dealer products.

Moreover, both lotteries and real money gaming operators alike seem to have increasingly realized the appeal for community based gaming offerings that converge products and technologies for optimal gaming experiences. These offerings also help to bridge the divide between real-money gaming and desires for free or practice play. Hence, an offering of online social games, both free to play and 'freemium' as well as types of games that add the excitement and rewards of gambling to a mix of new and familiar video games, is increasingly considered by many as critical to capture discretionary income from Generation Y (aka Millennials). On one well known industry supplier's website, I read, "Developers keep making great video games, and casinos deliver the best possible entertainment experience for players, online and on site." As I read that, I thought to myself, what a great way to marry the two for enhanced success, and moreover, what a great example of gaming convergence.

Not surprisingly, land-based gaming operators are also looking to get in on the action, wanting to take advantage of gaming convergence in response to shrinking revenues in their bricks and mortar venues. As a multi-national corporation, we are fortunate to work with most of the gaming industry's venue operators, manufacturers and service providers. We've seen land-based operators expand their views of where successful content can come from to include online gaming companies with massive game libraries already appealing to the younger demographic. Concurrently, online gaming companies are becoming more and more aware of this and progressively pursuing revenue channels to include land-based gaming venues - both tribal and non-tribal. As a result of all this, we would also be hard pressed to find a traditional large scale operator that has not researched the feasibility of an online gaming arm or partnership of some form.

In-Venue Mobile Gaming is another poster child for gaming convergence in the land-based gaming arena. Currently, in some US state(s), patrons can wager at the race and sports book via devices, including cell phones, laptops and tablets, revolutionizing gamer experiences in casinos. I can see the draw of this form of gaming is not lost upon casinos either. Again, I saw this firsthand as I was taken on a one-on-one tour of a large-scale gaming venue renovation here in Canada. We came upon an area that looked like a cross between an upscale lounge and airport device charging area. When I asked what the plans for the superb new space was, I was told its planned use was to provide a community based, relaxing and fun atmosphere for gaming through portable devices. The thought being

that eventually it would be populated with Millennials who didn't fancy slot or table games, but felt like playing games or wagering in between drinks, dinner, and/or a show. Their vision was to offer highly secure, wireless gaming complete with a full portfolio of social (play for free) and/or real money wagering games for great gaming experiences.

In sum, today and tomorrow clearly holds both new and exciting opportunities as well as important challenges and considerations for all of us that work in this wonderful industry. One more thing...just in case you thought safeguarding the long-term sustainability of our industry stops with making sure Millennials are catered to from your list, think again. We'll need to begin preparing for the gaming audience of the future - Generation Z (aka iGeneration or Post-Millennials). They are already THE most comfortable generation with technology and interaction through social media websites for the vast majority of their socializing. I was personally reminded of this when I recently found my own two boys using their tablets to play chess through a website their chess club leverages to aid in learning. At age 6 and 8, they explained how they taught themselves to "friend" and "challenge" their fellow club members online. I don't know about you, but in grade 1 and 2 I did that sort of thing at the playground and around my neighborhood. I guess we could say they are doing the same, but now, our children's "playground" and "neighborhood" are more global and limitless. **CGL**

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1. eSports Market Brief Update 2015-2016, SuperData Research, October 2015  
 2. [http://www.lolesports.com/en\\_US/articles/worlds-2015-viewership](http://www.lolesports.com/en_US/articles/worlds-2015-viewership)  
 3. <https://gambliugaming.com>



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Macau

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June 9, 2016  
Amsterdam

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November 22-23, 2016  
Sophia

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September 8, 2016  
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#### IMGL Masterclass at European Association for the Study of Gambling

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#### IMGL Member Reception at G2E Las Vegas

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