

A big win for Ontario: Court of Appeal decision allows international “pooled liquidity” in online gaming

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What you need to know

- On Nov. 12, 2025, in one of the most consequential cases in the Canadian gaming sector in decades, the Court of Appeal for Ontario (the Court) released its long-awaited decision on Ontario’s reference question regarding international “pooled liquidity”.
- A strong majority of the Court (4:1) ruled in favour of Ontario’s position and agreed that legal online gaming (or iGaming) would remain lawful under the [Criminal Code](#) if Ontario residents were permitted to participate in games and betting involving individuals outside of Canada.
- This ruling opens the door for Ontario to expand its iGaming market beyond national borders to build a bigger and more global online community for peer-to-peer pooled iGaming activities like poker and daily fantasy sports (DFS). The larger and more competitive international pools should also help to bring Ontario consumers back into a legal and regulated marketplace in Ontario.
- While the push is on for Ontario to implement a “pooled liquidity” system for online gaming as soon as possible, there is much uncertainty currently as to how and when it will be structured and implemented and whether the other provinces will sign on with Ontario to allow their residents to avail themselves of the same benefits and opportunities that would be afforded to Ontario residents if and when this structure is put in place.
- BLG was proud to represent NSUS Group Inc. and NSUS Limited, in their capacity as intervenors in favour of Ontario’s position on the reference question - which should herald in a new era of internationally connected online gaming.

Background

Policy context

Since the advent of iGaming Ontario in 2021 which gave birth to a modernized and regulated marketplace for private operators to begin offering their games to players in

Ontario, the province has made significant advances in transitioning Ontario iGaming consumers away from unregulated iGaming sites and into a legal, regulated market. However, it is estimated that approximately 20 per cent of all online gaming in Ontario continues to be conducted on sites which are not regulated in Ontario.

A key restriction on Ontario's ability to transition this remaining 20 per cent has been its inability to offer international "pooled liquidity" via its regulated iGaming sites. Without the ability to permit players in Ontario to participate in online games and betting with major international jurisdictions, Ontario's regulated operators are only able to "pool" (*i.e.* liquidity) funds of players physically located in Ontario. Unregulated black market operators offering peer-to-peer games in Ontario do not restrict their "pooling" accordingly, nor are they subject to Ontario's strict regulatory regime.

As a result of the limited "pool" sizes in Ontario, it has not been economically viable for certain regulated operators to offer popular peer-to-peer games (*e.g.* Poker, Daily Fantasy Sports, etc.) in Ontario. This of course has left a gap in the market that unregulated operators have filled.

Legal context

Gaming activities in Canada are generally prohibited by the *Criminal Code*, with certain exceptions, including that each provincial government may "conduct and manage a lottery scheme" in its province pursuant to s. 207(1)(a) of the *Criminal Code*. In reliance upon this exception, on Apr. 4, 2022, Ontario's iGaming market opened to private gaming operators through a model whereby such operators are required to register with the Alcohol Gaming Commission of Ontario ("AGCO") and execute an operating agreement with iGaming Ontario, who conducts and manages iGaming in Ontario pursuant to the terms of these contractual arrangements. Through this oversight by iGaming Ontario, the province has ensured a competitive marketplace with strong consumer protections, marking a key step in the modernization of Canadian iGaming. However, under the current regulatory construct, registered operators must ensure that only players physically located in Ontario can access their offerings, and they must actively block traffic from outside the province. This means that Ontario operates as a closed-liquidity market, whereby player pools, wagers, and outcomes are contained entirely within Ontario's borders, rather than shared with other jurisdictions. As noted above, this restriction has made peer-to-peer games less appealing to Ontario consumers and has exacerbated the province's channelization efforts to combat the grey and black market operators in Ontario.

In light of the foregoing, on Feb. 2, 2024, the Province of Ontario filed a reference (the Reference) with the Court to clarify whether it would remain lawful under the *Criminal Code* to permit users to participate in online games and betting involving players located outside of Canada, as described in the Schedule to the Order in Council (the Proposed Model).

The Proposed Model would allow Ontario players to access peer-to-peer games (*e.g.* Poker, Daily Fantasy Sports, etc.) with international participants via a private sector operator's iGaming application or website available in Ontario, while maintaining strict oversight of Ontario-based activity through such iGaming websites. Players outside of Canada would not be subject to iGaming Ontario's conduct and management regime

but would instead fall under the legal and regulatory frameworks of their respective jurisdictions.

The Reference was heard by the Court over three days of hearings in November 2024.

BLG was proud to represent NSUS Group Inc. and NSUS Limited, in their capacity as intervenors in the Reference.

The Court's decision

Majority decision

On Nov. 12, 2025, by a strong 4-1 majority, the Court concluded that the Proposed Model, allowing players in Ontario to participate in peer-to-peer games and sports betting with players outside Canada, would be lawful under s. 207(1)(a) of the [Criminal Code](#). In doing so, the Court helped breathe life into the antiquated provisions of the [Criminal Code](#) on gaming - keeping this statute relevant in an era of rapid technological change and convergence to online gaming.

Applying the modern principle of statutory interpretation, the Court found that the province's power to conduct and manage a gaming scheme under the [Criminal Code](#) should be broadly construed. The Court emphasized that the legislative history demonstrated that Parliament favoured provincial regulation of gaming as unregulated gaming lacks provincial safeguards and is harmful to society, increasing the risks of crime, fraud and addiction. Accordingly, the Court accepted that leaving extraterritorial online gaming unregulated in Ontario would foster those harms.

The majority's opinion rested on assumptions embedded in the Reference:

1. Ontario's current iGaming scheme is lawful;
2. players in other Canadian provinces will remain excluded absent interprovincial agreements; and
3. iGaming Ontario, through its agents, will continue to conduct and manage the Ontario-facing platforms.

While many operational details regarding the Proposed Model are still to be determined, the Court accepted that iGaming Ontario would continue to have oversight over players located within the province, while leaving foreign operators and players subject to regulatory schemes in their own local jurisdictions.

Ontario will choose which jurisdictions and/or international operators are allowed to participate in the Proposed Model and will put in place contractual restrictions on their participation.

Takeaways

While it remains to be seen whether Ontario will push to implement a "pooled liquidity" system for online gaming in the near future, this decision sets the stage for the province to capitalize on access to international markets and enhance the iGaming offerings

available to its residents. Despite this, there remains much uncertainty currently as to how such a scheme will be structured and implemented and whether the other provinces will sign on with Ontario to allow their residents to avail themselves of the same benefits and opportunities that would be afforded to Ontario residents if and when this structure is put in place. The timing for any roll-out of the new model could also be impaired by any subsequent appeal of the decision to the Supreme Court of Canada, which remains a possibility for the 30-day window following the decision.

Our [National Sports & Gaming Law team](#) will be actively monitoring and advising on all new and notable developments related to this matter and, as always, stands ready to help you navigate all aspects of Canadian gaming law, including, but not limited to, regulatory, corporate, securities, AML compliance, payments, financing, IP, privacy and tax related matters.

For more information reach out, reach out to the key contacts below.

The authors would like to thank [Alex Caron](#) for his contribution in writing this article.

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