2024 mid-year iGaming round-up

July 25, 2024

Ontario's reference on international play, Alberta poised to open a new market and more.

What you need to know

- **Ontario's reference on international play.** The Court of Appeal for Ontario (the Court) is expected to hear arguments in November 2024 regarding whether permitting individuals in Ontario to participate in online games and betting, including peer-to-peer online poker, involving players located outside of Canada is consistent with the *Criminal Code* (the Code).
- **Alberta's new market.** Speaking at the Canadian Gaming Summit on June 20, 2024, Dale Nally, Minister of Service Alberta and Red Tape Reduction, announced the province's intention to open a regulated, competitive iGaming market inspired by the current market in Ontario. While no timeline for market launch has been announced, some experts are predicting the market to launch in 2025.
- **Deloitte report demonstrates continued strength of Ontario's iGaming market.** Deloitte's *Economic Contributions of Ontario's Regulated iGaming Market – Year 2* report, published by iGaming Ontario on June 19, 2024 (the Deloitte Report), confirmed that Ontario's iGaming market hit or almost reached many of Deloitte's five-year projections, including with regards to revenue generation and employment generation, in only the market's second year of existence.
- **AGCO restriction on athlete and celebrity iGaming endorsements comes into force.** On Feb. 28, 2024, the Alcohol and Gaming Commission of Ontario (AGCO) implemented amendments to its marketing and advertising standards to prohibit the use of certain public figures and athletes (except for the exclusive purpose of advocating for responsible gambling practices) in iGaming advertising and marketing in Ontario.
- **Ontario iGaming model holds up to judicial scrutiny.** On May 13, 2024, the Ontario Superior Court of Justice confirmed the validity of Ontario's iGaming market model in its ruling in *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, which affirmed that the model does not frustrate and is not in conflict with the relevant provisions of the Code.
- **Potential national framework for sports betting advertising.** In June 2024, Bill S-269, the *National Framework on Advertising for Sports Betting Act*, was

discussed in two federal Senate committee meetings. The Bill proposes measures such as restricting non-broadcast iGaming advertising and limiting celebrity endorsements.

- **Sports integrity remains top of mind.** Professional sports leagues, regulators and law enforcement are responding to a rash of recent gambling related scandals involving athletes, including the Jontay Porter NBA betting scheme which came to light in March 2024.

Ontario reference case on international play

On Feb. 2, 2024, the Province of Ontario filed a reference with the Court to clarify whether permitting people in Ontario to participate in online games and betting involving players located outside of Canada would be consistent with the provisions of the Code.

Specifically, the Order in Council requested that the Court answer whether legal online gaming and sports betting remains lawful under the Code if Ontario users were permitted to participate in games and betting involving individuals outside of Canada (as described in the Schedule to the Order in Council).

The Court is set to hear arguments regarding this question in November 2024. Should the Court affirm the lawful nature of international play, as described by the province in its reference, and assuming a scheme for international play is then implemented by the province, Ontario iGaming operators and consumers would stand to benefit significantly from shared liquidity with international markets. We note that any decision of the Court could potentially be subject to additional review by the Supreme Court of Canada.

Alberta passes Bill-16 to conduct and manage gaming

Alberta is following Ontario's footsteps. In May 2024, the Government of Alberta passed Bill 16, the *Red Tape Reduction Statutes Amendment Act,* which included amendments to the *Gaming, Liquor and Cannabis Act* to recognize that, in addition to the Alberta Gaming, Liquor and Cannabis (AGLC), the provincial government also has the authority to conduct and manage gaming in the province.

The passing of Bill 16 gave fodder to industry stakeholders awaiting a public announcement regarding the potential for a new regulated and competitive iGaming market in Alberta.

On June 20, 2024, the big announcement came when, in speaking at the Canadian Gaming Summit, Dale Nally, Minister of Service Alberta and Red Tape Reduction, announced the province's intention to open a regulated, competitive iGaming market inspired by the current market in Ontario.

Alberta's strong consumer base makes the prospect of a new iGaming market in Alberta an important development for iGaming operators and suppliers both domestic and abroad. As noted by Canadian Gaming Association President Paul Burns at a recent SBC Summit North America panel, Alberta has had some of the highest per-capita spending on gambling in Canada for many years, which makes it a very interesting option for prospective operators.

While no timeline for market launch has been announced, some experts are predicting the market to launch in 2025. BLG's national Sports & Gaming Law team remains on top of the latest developments in Alberta and we encourage all interest iGaming operators and suppliers to reach out with any questions as you consider future plans.

Deloitte report demonstrates strength of Ontario iGaming market

The Ontario iGaming sector is gaining international recognition for its success and leadership in the iGaming space. It is not only generating employment opportunities for Ontarians, it is also contributing significant government revenue, further benefiting the residents of Ontario.

According to the Deloitte Report, in its second year, Ontario's iGaming market sustained almost 15,000 jobs, an increase of 2,800 full-time equivalent jobs (up 24 per cent) from its first year of operation (excluding iGaming products offered by the Ontario Lottery and Gaming Corporation).

In its second year, Ontario's iGaming market generated a combined $1.24 billion to federal, provincial, and municipal government revenues. Of this total, $790 million supported provincial government revenues, $380 million went to federal revenues, and $75 million went to municipal revenues. Since its inception, the Ontario iGaming market has contributed over $2 billion in government revenues.

AGCO changes gambling advertisement standards

As described in our previous bulletin, on Aug. 29, 2023, the AGCO released amendments which restrict the use of athletes (both active and retired) and social media influencers (among other public figures) in advertisements, marketing materials and communications for iGaming in Ontario.

The final amendments became effective as of Feb. 28, 2024, and include the following restrictions, amongst others:

- restriction of the use of both active and retired athletes in iGaming advertisements, except for the exclusive purpose of promoting responsible gambling practices; and
- restriction of the use of cartoon figures, symbols, celebrities, role models, social media influencers, or entertainers who would likely be expected to appeal to minors.

Ontario iGaming model holds up to judicial scrutiny

On May 13, 2024, the Ontario Superior Court of Justice confirmed the validity of Ontario's iGaming market model in its ruling in *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, which affirmed that the model does not frustrate and is not in conflict with the provisions of the Code.

In responding to claims to the contrary made by the Mohawk Council of Kahnawà:ke (MCK), the Court determined that iGaming Ontario is properly conducting and managing Ontario's iGaming market in compliance with the Code.

The main legal issue was the interpretation of the phrase "conduct and manage" under section 207(1)(a) of the Code. The MCK argued that two legislative provisions enabling Ontario's iGaming framework were inoperative because they allowed private operators, rather than the provincial governments, to conduct and manage gaming and gambling offerings. However, the Court determined that iGaming Ontario is the "operating mind" of the gaming market as it retains control over which games may be offered, has control rights over the use of gaming data, maintains decision-making authority on key aspects of the scheme including advertising methods and content, exercises significant control over the operators in many areas, and oversees customer care and dispute resolution.

The ruling was an important affirmation of the lawful structure of Ontario's iGaming market. In a statement issued by iGaming Ontario in the wake of the decision, Martha Otton, Executive Director of iGaming Ontario, rightly noted that, "Ontario's model meets the requirements and contributes to the public good by protecting players, their data and their funds, while helping to fund priority public services in Ontario, and bringing well-paid, high-tech jobs and economic development to Ontario."

The MCK has publicly stated that it will not appeal the Court's decision in this case.

Senate discusses Bill S-269 to regulate sports betting advertising

In June 2024, the *National Framework on Advertising for Sports Betting Act* (Bill S-269), was discussed in two Senate Committee meetings, with input being provided from key stakeholders including Canadian Senators, Sport Canada, the Centre for Addiction and Mental Health, and the Canadian Lottery Coalition.

Introduced by Senator Marty Duncan, Bill S-269's stated aim is to create a national framework for regulating sports betting advertisements based around "reasonable limits." The central concern motivating Bill S-269 is the perceived harm caused by gambling advertising to vulnerable groups.

While Bill S-269 has now passed second reading in the Senate, it will need to continue its progress through the Senate and make its way through the House of Common prior to the next federal election or else it will have to start its legislative process anew in the next Parliament.

Senator Deacon believes Bill S-269 must reach the floor of the House of Commons by Christmas 2024 if it is to be passed by the current Parliament, but she says there is "general support" for the legislation.

BLG's national Sports & Gaming Law team continues to actively monitor the progress of Bill S-269.

Gambling scandals shake pro sports leagues

Recently, professional sports leagues have been dealing with a series of gambling-related scandals which have sparked important conversations amongst professional sports leagues, regulators and law enforcement as well as corresponding actions.

On Dec. 1, 2022, the AGCO ordered registered entities to stop offering and accepting wagering on the Ultimate Fighting Championship (UFC) due to non-compliance with AGCO's betting integrity requirements. This decision came after possible betting by UFC insiders and reported suspicious betting patterns on fights. However, following updates made to the UFC policies and procedures, the AGCO announced on Jan. 19, 2023, that regulated sport and event betting operators in Ontario could resume offering bets and betting related products on UFC events.

More recently, in April 2024, Jontay Porter from the Toronto Raptors was banned for life from the NBA for alleged insider betting and match-fixing. Jontay Porter was later charged in July 2024 with a federal felony in the U.S. in connection to the gambling scandal. The AGCO noted that this very serious case was identified because regulated markets, like Ontario's, require online gaming companies and independent integrity monitors to actively monitor and report suspicious betting, which enables sports leagues, regulators, and law enforcement to respond appropriately.

With increased accessibility to online gaming and gambling, professional sports leagues, regulators, and law enforcement are facing more frequent challenges like those described above and we expect that sports integrity will continue to be a forefront issue for all iGaming stakeholders in the near term.

Takeaways

It has been a busy year so far in Ontario's iGaming market and the second half of 2024 promises even more developments, with the Ontario reference case hearing in November being of particular importance.

As current and prospective operators and suppliers look to capitalize on the prospect of international play and the promise of Alberta's new iGaming market, we encourage them to engage with local counsel to assist with maneuvering through this rapidly evolving regulatory and commercial space.

Our national Sports & Gaming Law team stands ready to help you navigate all aspects of Canadian gaming law, including, but not limited to, regulatory, corporate, securities, financing, IP, privacy and tax related matters.

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

The authors wish to thank Alex Caron, summer law student, for his assistance with this article.

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