A winning hand? Combined changes to gambling industry could end Canada's drift

January 19, 2021

In a landmark announcement, the federal government has signalled the birth of a modern sports betting industry in Canada. New legislation has the potential to unlock the billions in gaming revenue currently being generated in the "grey market".

What you need to know

- After a decade of calls for gaming law reform, the federal government has proposed to decriminalize single event sport betting which, if passed, would permit provinces and territories to regulate and license single event sport betting in Canada.
- The Ontario Government has announced plans to launch a regulated online gaming/gambling marketplace. Under these plans, a newly formed subsidiary of the Alcohol and Gaming Commission of Ontario would be granted authority to manage and regulate online gaming sites operated by private third parties.
- The combined effect of decriminalization and online regulation provides an unprecedented opportunity for gaming industry stakeholders to potentially unlock the billions in "grey market" gaming revenue currently being generated through facilitating a legal and regulated online gaming marketplace for all types of single event sports betting in Ontario.

Current regime

Currently, Canadians may only legally wager on the outcome of a sporting event by way of parlay betting, which involves placing a bet on the outcome of multiple sporting events at once. Despite numerous calls for reform by gaming industry stakeholders over the past decade, single event sports betting in Canada has remained prohibited under Section 207(4)(b) of the *Criminal Code.*[1] This has led to the creation of an enormous "grey market" for single event bookmaking, with nearly $10 billion wagered annually in Canada[2] and an additional $4 billion[3] wagered annually through offshore online sports wagering websites and applications. Notwithstanding the tremendous revenue opportunity being missed by the provincial and territorial governments across Canada, and the great success witnessed in the United States through the rapid legalization of

single event sports wagering, Canada has remained a laggard to the disappointment of many, until now.

Proposed change 1: Decriminalization of single event sport betting

On November 26, 2020, Federal Justice Minister David Lametti introduced legislation to decriminalize single event sport betting in Canada. If passed, Bill C-13, *An Act to amend the Criminal Code (single event sport betting)*, would give provinces and territories the power and discretion to manage, regulate and license all types of single event sport betting on any sporting event, except horse racing, in their respective jurisdictions.[4]

Under the new regime, provinces and territories could choose to adopt a private operator model for single event sport betting. Private businesses operating under licence would be able to bring competitive sports betting products to market – either online or in physical facilities. This serves as a long awaited and landmark proposal by the federal government that has the potential to create a new industry, offering Canadians an opportunity to place bets in a legal and regulated marketplace.

Bill C-13 is particularly notable in that it marks the first time that decriminalization of single event sports betting in Canada has been proposed under a government bill, which by its nature requires support from a Minister or Parliamentary Secretary (in this case, the Minister of Justice), thereby bolstering its chances of becoming law. All prior proposals over the past decade have been introduced by way of a private member's bill which lacks the same level of governmental support and, in turn, likelihood of being passed.

Proposed change 2: Regulated online gaming marketplace

On November 5, 2020, the province of Ontario published the latest budget detailing plans to launch a regulated online market place for online gaming/gambling. Under these plans, the Ontario government is proposing to create a subsidiary of the Alcohol and Gaming Commission of Ontario which would be granted authority to manage and regulate online gaming operated by private third parties. At present, the Ontario Lottery and Gaming Corporation is the only operator approved to offer online gambling in the province. The new model is expected to be developed over the coming months, and if passed, will provide an unprecedented opportunity for gaming industry stakeholders to potentially unlock the billions in "grey market" gaming revenue currently being generated through facilitating a legal and regulated online gaming marketplace for all types of single event sports betting in the province.

Growth of U.S. legal sports gambling market

The proposals announced by both the federal and provincial governments follow similar efforts to decriminalize single event sports wagering in the United States which have culminated in tremendous success.

In May 2018, a United States Supreme Court decision overturned a federal law prohibiting states from authorizing sports gambling (the PASPA decision)[5] on the basis that such law was unconstitutional, thereby clearing the way for the legalization of single event sports betting in the United States.

In the two-and-a-half-years since the PASPA decision, 26 states have either launched legal sports betting or passed legislation and are waiting to launch[6]. In addition, more than $20 billion has been unlocked from the "grey market" and wagered on legal U.S. sportsbooks.[7]

Investor response

The proposed federal and provincial changes are timely in recognizing the desire for increased consumption of online sports and e-gaming products.

The disruption caused by COVID-19 has further fuelled the pre-existing trend of sports consumption moving from traditional in-person gatherings to online virtual experiences. Sports betting and e-gaming in particular have benefitted from this online shift.

In March 2020, during the first wave of closures associated with COVID-19, New Jersey, Delaware, Nevada and Pennsylvania – the four U.S. states with legal online poker sites – all reported record-high online gaming revenues.[8] Further, New Jersey gamblers wagered more than $931 million on sports in November, the latest in a series of all-time monthly highs reported in 2020.[9]

Online bookmakers such as DraftKings and Bet365 have sought to capitalize on these trends by offering an appeal to sports bettors seeking new opportunities through products related to e-sports specifically while traditional sports struggle to provide consistent offerings. Las Vegas and the casino industry have followed with the Nevada Gaming Control Board approving sportsbooks to take wagers on the ESL One: Dota 2, DreamHack Masters Spring, League of Legends European Championship, Overwatch League, FIFA League etc.[10]

In response, the capital markets have warmly accepted a series of offerings from sports industry players with an online focus:

- In April 2020, DraftKings, a daily fantasy sports company, completed a $3.3 billion reverse merger with a special purpose acquisition company to bring the company public and began trading on the NASDAQ. As of January 12, 2021, the company's stock price had surged from $19 on its first day of trading to $53, a clear sign of investor enthusiasm and support for the company and the sector more generally.[11]
- In September 2020, payments company Nuvei Corp. closed the Toronto Stock Exchange's largest tech IPO ever in raising $805 million in gross proceeds. Nuvei Corp. has already earned approvals allowing it to serve sports betting industries in Colorado, Indiana and West Virginia.
- In December 2020, Score Media and Gaming Inc. (theScore), which operates its own digital sports media and sports betting products, closed a bought-deal offering for gross proceeds of $40 million. Net proceeds are to be used, in part, to

grow and expand theScore's sports betting application's operations in both the U.S. and Canada.

It is expected that further such offerings will continue to be embraced by the capital markets as COVID-19 continues to push industry participants online and as the proposed federal and provincial changes move forward.

Takeaways

After decades of waiting, the Canadian gambling industry has finally been dealt a winning hand. In the weeks that follow, Bill C-13 will face a second reading, followed by committee review, and a third reading, before it is able to be considered and potentially passed by the House of Commons and Senate. We will continue to monitor the progress of Bill C-13 and Ontario's new online model and will continue to keep interested gaming industry stakeholders apprised of new developments.

To capitalize on the potential of the proposed changes, gaming industry businesses, service providers and entrepreneurs need an effective engagement strategy with provincial regulators. Our experts in gaming, governmental affairs and corporate and securities laws can help to navigate the complex regulatory landscape of gaming to identify opportunities and strategies in connection with this potential unlocking of the billions in gaming revenue currently being generated in the "grey market".

[1] *Criminal Code* (R.S.C., 1985, c. C-46), Section 207(4)(b).

[2] Canadian Gaming Association, *Canadian Gaming Association Calls on All Party Support For Single-Event Sports Betting, 2019.*

[3] *Ibid*.

[4] Horse racing remains regulated and supervised by the Canadian Pari-Mutuel Agency.

[5] *Murphy, Governor of New Jersey, et al. v. National Collegiate Athletic Association et al*., 2018 584 US.

[6] Nevada was the only state already permitted to conduct legal sports betting. The District of Columbia also launched an online sport gambling platform for its residents in June 2020.

[7] David Pardum, *Sports betting's growth in U.S. 'extraordinary'*, online ESPN, May 2020.

[8] Financialmorningpost.com, *How Sports Betting is Thriving Despite COVID-19 Lockdowns*, online PR Newswire, July 2020.

[9] Wayne Parry, *Another month, another sports bet record in NJ: $931M in Nov*, online Associated Press, December 2020.

[10] Hanjoong Kim, *The Rise of Esports Betting*, online National Law Review, August 2020.

[11] Based on closing price (USD) on January 12, 2021.

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