Single-event sports betting clears another hurdle as Ontario's iGaming market takes shape

May 11, 2021

Bill C-218 passed by the House of Commons on third reading; legislation to be considered by the Senate.

What you need to know

- On April 22, 2021, the House of Commons passed private member's Bill C-218, the *Safe and Regulated Sports Betting Act*, on third reading. Bill C-218 has now moved to the Senate for reading and adoption.
- On April 30, 2021, Bill C-218 was introduced to the Senate and on May 4, 2021, debate began on second reading. With the Senate now adjourned until May 25, 2021, interested parties will look for Bill C-218 to be moved swiftly forward upon the Senate's resumption so as to be approved in the remaining few weeks of the current session.
- A recent report from PricewaterhouseCoopers estimates that legalizing single-event sports betting could unlock $2.4 billion in gross gaming revenue (GGR) from the grey market within two years.[1]
- The consultation process around Ontario's iGaming market continues to move swiftly, as the provincial government and Alcohol and Gaming Commission of Ontario (AGCO) outline their preliminary thinking on the new model.
- For full analysis of the implications of current federal and provincial proposals to modernize gaming laws, please also refer to our recent articles: "A winning hand? Combined changes to gambling industry could end Canada's drift" and "Full-court Press To Push Single Event Sports Betting In Canada Over The Line"

Bill C-218 faces its final legislative hurdles

As discussed in our prior updates, Bill C-218 proposes to amend and eliminate the long-standing prohibitions under section 207(4)(b) of the *Criminal Code of Canada* (Criminal Code) against "bookmaking, pool selling or the making or recording of bets ... on any race or fight, or on a single sport event or athletic contest." With this bill having now passed its third reading in the House of Commons, Canada is one step closer to ending

these decades-long prohibitions and bringing single-event sports betting (excluding horse racing) within the legal “conduct and manage” mandate of the provinces and territories of Canada. Pari-mutuel betting on horse racing will remain under the exclusive jurisdiction of the Canadian Pari-Mutuel Agency.

Ontario’s iGaming market takes shape

The Ontario government continues to move quickly on advancing its plans for designing and developing a modernized and competitive iGaming marketplace in the province. Should Bill C-218 become law, this will include regulating single-event sports betting. Key recent steps include the release of a discussion paper outlining the provincial government’s preliminary thinking on the structure and operation of the iGaming market, and the AGCO’s launch of a stakeholder engagement portal, which gives industry participants an opportunity to offer input on the Registrar’s Standards for Internet Gaming.

Key items emerging from the provincial government’s discussion paper include:

- **Legal framework**. The Criminal Code expressly prohibits the provision of gambling in Canada with certain limited exceptions, including lottery schemes that are "conducted and managed" by provincial governments. Historically, the conduct and manage role has been interpreted as being the "operating mind" of the lottery scheme being offered. This requires a more rigorous and complex framework for gambling in Canada than what operators may be used to in some other jurisdictions where gambling is permitted.
- **Regulatory framework**. The Ontario Lottery and Gaming Corporation (OLG) is currently the only provincial agency in Ontario authorized to conduct and manage gaming products, including lotteries and iGaming. This broad mandate includes conduct and management over land-based gaming, lottery, iGaming and components of charitable gaming. As previously discussed in our article, “A winning hand? Combined changes to gambling industry could end Canada’s drift,” the Ontario government has proposed establishing a new subsidiary of the AGCO to manage the iGaming relationship between the province and private operators. The OLG will continue to conduct and manage its own iGaming offering as part of the competitive market, while the AGCO's subsidiary will be responsible for the conduct and management of all other iGaming.
- **No cap on registrants.** Importantly, the province does not intend to place any cap or limits on the number of operators that can register in the market. Private operators would not be required to partner with land-based gaming providers – though such partnerships would be permitted – and land-based providers will not receive preferential treatment when it comes time to access Ontario’s new iGaming marketplace.
- **Commercial agreement.** Private operators will be required to sign a commercial agreement with the AGCO subsidiary in order to operate iGaming sites in Ontario. The agreement will address, among other things, financial terms, as well as provisions to demonstrate that the AGCO subsidiary has appropriate operational control to satisfy the conduct and manage requirements under the Criminal Code. The agreements could also include a set of common parameters applied to all operators, including:
    - **Player registration and game performance data**. Initial registration and login requirements to verify player identity, location and to ensure

eligibility. Commercial agreements could also set out requirements for player data capture, use and retention, as well as data sharing with the AGCO subsidiary.

- **Consumer protection and financial integrity**. Operators will need to comply with anti-money laundering and anti-fraud requirements, including obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
- **Responsible gambling measures**. The province intends to build on the AGCO's existing standards and define responsible gambling program requirements, gaming features and policies that operators would be required to implement for all Ontario players (*e.g.,* identity and age verification processes, restrictions on marketing and game designs so they do not appeal to minors, and requirements for voluntary self-exclusion).
- **Compliance with accessibility standards.** Registrants will be required to adhere to the standards outlined under the *Accessibility for Ontarians with Disabilities Act, 2005*.

- **Revenue model**. Recognizing the Criminal Code obligations for conduct and management, the AGCO subsidiary would need to have a direct amount of oversight of iGaming revenues. In this regard, the province is considering a revenue-sharing model under the commercial agreements with private operators. The province is currently exploring different options for revenue-sharing rates, including either a single rate to be applied to GGRs or varying revenue share rates to be applied across different product lines based on profit margins, elasticity of demand, and future market potential. The province is also considering requiring private operators to establish joint bank accounts between themselves and the AGCO subsidiary to hold gaming revenues, with a share of such revenues being paid back to the operator on a regular basis in accordance with the terms of the commercial agreement.
- **Types of games to be included in the model**. While the OLG will continue to be the only entity authorized to conduct and manage all lottery offerings in Ontario, the categories under consideration for inclusion in Ontario's iGaming market include:
  - **Sports wagering**. The province intends to ensure that parlay-style wagering for traditional sports events will be offered, as well as single-event sports wagering, should legalization occur.
  - **Novelty event wagering.** The province is considering what types of novelty wagers (*e.g.*, Oscar winners) might be beneficial to the iGaming market in Ontario, recognizing that a number of other jurisdictions in Canada (including Atlantic Canada, British Columbia, Québec and Manitoba) currently offer various forms of novelty betting.
  - **Peer-to-peer games and offerings**. Well-established peer-to-peer games and offerings, such as poker, will be permitted under the new rules and standards. The province is currently considering other less traditional offerings for inclusion in the final rules. It is expected that these games and offerings will initially be limited to operating solely within Ontario, but the government has indicated a willingness to work with the federal government and other provinces to allow players from different jurisdictions to play together.

The draft Registrar's Standards for Internet Gaming released by the AGCO covers subject areas such as responsible gambling, player eligibility and associated controls,

game integrity and player awareness, public safety and protections of assets, and minimizing unlawful activity related to gaming. The AGCO will continue gathering feedback from industry stakeholders on topics such as eligibility requirements, regulatory compliance, commercial arrangements, data capture and other technical items. Interested parties are encouraged to signup for email updates through the engagement portal.

Takeaways

To capitalize on the potential of the proposed changes in Ontario and across the country, gaming industry businesses, service providers and entrepreneurs need an effective engagement strategy with provincial regulators.

Our experts in sports and gaming, governmental affairs, and corporate and securities laws can help navigate the complex regulatory and legislative landscape of sports and gaming to identify opportunities and strategies in connection with the proposed decriminalization of single-event sports wagering. For assistance, reach out to any of the key contacts listed below.

[1] PricewaterhouseCoopers LLP, "Economic analysis of single-event sports betting legislation" (Feb. 8, 2021).

By

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