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THE RECOMMENDATIONS OF QUÉBEC'S "WORKING GROUP ON ONLINE GAMBLING"

by Michael D. Lipton, Q.C. and Kevin J. Weber

On November 6, 2014, the Government of Québec released its long-awaited report on online gaming ("iGaming"). The Working Group on Online Gambling was struck in February 2010 to analyze the social impact of iGaming in Québec, and measures that might be used to block "allegedly illegal" iGaming. The particular focus of the Working Group was the lawful iGaming carried out in Québec through Espacejeux.com ("Espacejeux"), whose operations are conducted and managed by the Government of Québec through its wholly owned Crown corporation, Loto-Québec.

The report of the Working Group criticized the ability of Loto-Québec to provide measurably effective measures to ensure Espacejeux is operated consistent with social responsibility, security, and integrity. The conflict or appearance of a conflict between its two mandates, profitability on the one hand and social responsibility on the other, was cited. The final recommendations of the report accordingly focused upon the creation of an independent authority to oversee the activities of Loto-Québec, rather than allowing Loto-Québec to self-regulate on these matters.

Loto-Québec can unilaterally make decisions that may compromise the well-being of Québecers, presumably overriding its social responsibility mandate in favour of profitability where it deems it desirable to do so. As an example, the Working Group cited a decision by Loto-Québec to "streamline" the Espacejeux registration process, making the process less time-consuming by "abandoning the detailed presentation of responsible gambling tools." Similarly, the Working Group found that it could not conclude that Espacejeux was providing integrity and security in iGaming, due to the absence of any external mechanism or authority responsible for monitoring the activities of Espacejeux.

The report of the Working Group goes on to note that the availability of Espacejeux has not curtailed Québecers' use of "allegedly illegal" iGaming websites. The Working Group was not critical of the lack of concrete measures implemented by the Government of Québec to crack down on such websites. Rather, it noted the obstacles to such a crackdown, citing (i) police action, (ii) the ambiguity of legislation governing gaming, (iii) the fact that many "allegedly illegal" websites hosted outside Canada are legal in their home jurisdictions, and (iv) the presence of private iGaming operators offering their iGaming services to the world from Québec territory, specifically from the Territory of Kahnawà:ke near Montreal.

The federal *Criminal Code* (the "*Code*") prohibits any entity other than the provincial government from acting as the "operating mind" of iGaming made available to Québecers. Without explicitly saying so, the

Working Group concluded that enforcement of the *Code* in this respect is practically impossible. Accordingly, it recommends a solution best described using the old maxim: "if you can't beat 'em, join 'em": petitioning the federal government to amend the *Code* to allow the provincial governments to license private sector iGaming operators to legally offer their services within Canada.

At present, the *Code* requires that provincial governments remain at all times the entity that "conducts and manages" iGaming within the province. A private sector entity can only act as an "operator" under contract with the provincial government. The jurisprudence indicates that this means that the provincial government must at all times be the "operating mind" of the gaming. While the "conduct and manage" requirement is interpreted somewhat differently amongst the provinces, the Working Group concluded that the Government of Québec has to date adopted the most restrictive and conservative interpretation. When the *Code* speaks of issuing a licence to an entity, it refers to a licence that allows that entity to "conduct and manage" gaming. A province may license charitable and religious organizations to carry on certain forms of gaming, which charitable and religious organizations then act as the "operating minds" of their gaming operations. However, iGaming is set out in the *Code* as a form of gaming ("a game or proposal, scheme, plan, means, device…that is operated on or through a computer, video device or slot machine…") for which the provincial governments cannot issue licences. The provincial governments alone can act as the "operating minds" of iGaming operations.

Under the licensing scheme proposed by the Working Group, the *Code* would be amended to grant the provincial governments the authority to delegate the "conduct and manage" function to private operators that would be subject to the regulation of the provincial gaming authorities. Pending the enactment of amendments to the *Code* to allow for the delegation of the "conduct and management" authority, the report of the Working Group recommends that the Government of Québec operate an online "portal" through which private iGaming operators would offer their games to Québec residents. The Government of Québec would remain the "operating mind" by establishing standards and precise rules for the online games offered through the portal. It would define the rules to which the games must conform, their rate of return, the types of games offered, security measures concerning fraud and money laundering, strategies for responsible gaming, and player identification in the course of registration and money transferring.

We will continue to monitor developments, most importantly whether the Government of Québec will explicitly adopt and endorse in part or all of the report and recommendations of the Working Group.

AMENDMENTS TO BRITISH COLUMBIA GAMING CONTROL ACT – SUSPENSION AND CANCELLATION OF GAMING REGISTRATIONS

by Michael D. Lipton, Q.C. and Kevin J. Weber

On October 23, 2014, the Government of British Columbia introduced Bill 4, *Miscellaneous Statutes Amendment Act (No. 2), 2014* ("Bill 4"). Bill 4 amends a number of statutes, including section 69 of the *Gaming Control Act* of that province (the "Act").

In 2010, amendments to the Act were enacted which created some confusion as to the authority of the gaming regulatory authorities to cancel, suspend, impose conditions upon, or vary the conditions upon the registration of a gaming services provider or gaming worker. As section 69(1) of the Act presently reads, it appears that the regulator may cancel or suspend a registration, or impose conditions upon or vary the conditions on such a registration, only "in relation to one or more gaming premises of a registrant." Not every gaming services provider has a "gaming premises" in the province of British Columbia, making the section confusing as to the authority of the regulator. Prior to 2010, section 69(1) of the Act contained no reference to "premises."

Bill 4 proposes that section 69(1) of the Act, which presently reads as follows, be struck out:

> "…the general manager may
>
> (a) issue a warning to a registrant, or
>
> (b) do any of the following in relation to one or more gaming premises of a registrant:
>
> (i) cancel the registrant's registration or suspend it for a period of time;
>
> (ii) impose new conditions on the registrant's registration or vary existing conditions of that registration."

In its place, the following would be enacted:

> "…the general manager may do any of the following:
>
> (a) issue a warning to a registrant;
>
> (b) cancel a registrant's registration;
>
> (c) suspend a registrant's registration for a period of time;
>
> (d) impose new conditions on a registrant's registration, either generally or for a period of time;
>
> (e) vary existing conditions of a registrant's registration, either generally or for a period of time."

As well, Bill 4 proposes that a new section 69(3) be added to the Act. This new section would make clear that the conditions that may be imposed or varied upon the registration of a gaming services provider may be applied specifically with reference to the premises at which the registrant carries on business, as follows:

> "In the case of a registrant that is a gaming services provider, conditions may be imposed or varied under subsection (1) (d) or (e) in relation to one or more premises at which the registrant carries on the business of providing gaming services and, without limiting this, the conditions imposed or varied may do any of the following:

(a) prohibit the registrant from selling lottery tickets at a premises and require the registrant to ensure that no lottery tickets are sold, by any person, at the premises;

(b) prohibit the registrant from providing one or more other gaming services at a premises and require the registrant to ensure that the prohibited gaming services are not provided, by any person, at the premises;

(c) require the registrant to post the conditions in public view at the premises to which the conditions relate."

As Bill 4 is currently only at First Reading stage, its provisions are still subject to amendment during the Second Reading process before being given Royal Assent and enacted into law. At present, the amendments appear to simply write into the statute the interpretation which the British Columbia regulators have placed on the Act since 2010. Should any amendments be suggested at further readings which add controversial provisions to the Act, we will report them to our readers at the earliest opportunity.