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Single-Sports Betting in Canada - Amendments Redux

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

In the February 17, 2011, edition of the *Gaming Legal News*, we reported that Joe Comartin, a Member of Parliament representing the riding of Windsor-Tecumseh, had on February 11, 2011, introduced a private member's bill in the House of Commons (the "House") to amend the Criminal Code (the "Code") to allow the provincial governments to offer betting on single sporting events. This bill, along with all other bills introduced and not yet passed into law, died on the Order Paper when the 40th Parliament was dissolved on March 26, 2011.

On September 28, 2011, Mr. Comartin (a member of the New Democratic Party, now the Official Opposition Party in the House) reintroduced his private member's bill into the 41st Parliament, now entitled Bill C-290, "An Act to amend the Criminal Code (sports betting)". However, there are reasons to believe that this Bill has a chance of being seriously considered by the House and perhaps even enacted into law.

Bill C-290 has been given spot no. 9 in the Order of Precedence that determines what private member's bills will be addressed first, and no. 4 in terms of private member's bills introduced by members of the opposition parties. As the current government received a majority mandate in the May 2011 general election, the present Parliament will in all likelihood not be dissolved until 2015. This very nearly guarantees that Bill C-290 will receive a full consideration on its merits and will not die on the Order Paper as previously occurred.

As well, it appears that Mr. Comartin is more confident in his arguments in favour of the bill and in his expectation of receiving support from the provincial governments. He has even hinted that he may expect support from other parties in the House, in particular the governing Conservative Party.

When Mr. Comartin first offered up this bill in February, he was vague as to his reasoning and the level of support he had for the bill.

At the current time, we are allowed to bet in Canada legally in several areas, but in particular on sports activities, and only if it is three or more events. That is the legality. It is strange how that came about. I do not fully understand it.

The effect of this bill would be to allow us to bet on individual events. There is a great deal of criminal activity that is going on, both inside and outside the country, where moneys are flowing out and Canadians are betting illegally on those activities.

This would be a way of allowing government, and government agencies, to run these events much as we allow for casinos and horse racing betting, so it would move it into that area. I have heard from all the casinos and a good number of the provinces. They want the ability to do this.

Mr. Comartin was wrong on the law in his February 2011 speech; the current law does not require that bets be on “three or more events.” Two or more will suffice to satisfy the limitations imposed by the Code. Moreover, he was vague on the nature and extent of the “criminal activity” he alleged was occurring due to the prohibition on single-sports betting and equally vague on which provinces supported the amendment.

Mr. Comartin’s speech in the House introducing Bill C-290 on September 28, 2011, showed considerable improvement. He was far more specific on the benefits of the bill, the nature and extent of unlawful sports betting, and the support for the amendment from private entities and provincial governments:

Mr. Speaker, this is a very simple bill, matching the personality and character of the person moving it.

It is simply a repeal of one very small section of the Criminal Code. The effect it will have will be to allow for sports betting on single sporting events in this country.

This is a very important bill from this perspective. That industry is very big, and it is entirely controlled by organized crime at the present time, both here and in the United States, because it is generally illegal in the United States to bet on one sporting event.

The estimate in the United States is that \$30 billion a year is bet on that, all going into the pockets of organized crime and some of it offshore. It is estimated that as much as \$2 billion is spent in Canada annually, with all of that money going out of the country to organized crime syndicates in the U.S. and the Caribbean, so it is quite important that we move on this.

The other thing is that there is a national gaming association in Canada. It just completed a study that shows the employment that would be created by making this into a legal business. For

instance, in Windsor there will be another 150 jobs either saved or added to the current employment in the Windsor casino. In the riding of the Minister of Justice there is a casino, and a similar number of jobs would either be saved or added. It is job creation.

The Province of Ontario has signalled that it is very interested in placing this operation in the casinos in that province. Other provinces are taking different perspectives on it, but there is widespread support for this bill and I am seeking support from all members of Parliament when it comes up for second reading.

It appears to us that Mr. Comartin is seeking to amass a critical level of support for his bill, with a focus on the provincial governments. By his reference to casinos in the ridings of government ministers, he is also reaching out for support from the Conservative Party. As we noted in our report in the February 17, 2011, edition of *Gaming Legal News*, many provincial governments are known to be in favour of an amendment that would allow them to open sportsbooks in their land-based casinos. Further, those provinces that have made inroads into online gaming may wish to have the option of conducting online sports betting in Canada.

Support from the provincial governments is the crucial factor in determining the chances of Bill C-290 becoming law. The government would be unlikely to take on this issue if it could be expected to encounter any serious opposition from either opposition parties at the federal level or from provincial governments. As this bill is being introduced by a member of the Official Opposition, the government is already protected from being attacked in any serious way in Parliament for enacting such a change.

The need for provincial approval is both a political and a legal matter. As it is the provincial governments and not the federal government that conduct and regulate sports betting in Canada, the federal government will take their lead in the matter. If they are strongly in favour, the federal government is likely to move to approve the change, but if even one of the ten provinces expresses strong opposition, that will be sufficient to put up a roadblock from a political perspective. On the legal front, the federal government entered into an agreement with the provincial governments in 1985 which provided that the federal government promised “to refrain from re-entering the field of gaming and betting, and to ensure that the rights of the provinces in that area are not reduced or restricted.” While it is difficult to imagine how one might argue that the proposed amendment would “reduce or restrict” provincial rights in the area of gaming and betting, the federal government would want to be certain that it had unanimous agreement amongst the provincial governments on that point before proceeding in order to protect itself legally.

The position given to Bill C-290 in the Order of Precedence appears to indicate that the Conservative Government is interested in gauging the level of provincial, industry, and public support for the bill. This augurs well for its initial chances of approval. If sufficient provincial support manifests itself when the bill reaches the stage of being considered in detail by a legislative committee, and no serious opposition arises, there is every reason to believe that the federal government will be open to using a private member's bill introduced by a member of the Official Opposition as the vehicle to amend the Code to permit sportsbook operations in Canada.