

# GAMING LEGAL NEWS



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## REQUEST FOR PROPOSAL FOR AN INTERNET GAMING OPERATOR ISSUED IN ONTARIO

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

On December 9, 2011, the Ontario Lottery and Gaming Corporation (“OLG”) issued its long-awaited Request for Proposal (“RFP”) for an operator of online gaming and betting (“iGaming”) conducted and managed by the OLG.

The OLG is a Crown corporation, which acts as a Crown agent on behalf of the Ontario government. Pursuant to the federal Criminal Code, only a provincial government may “conduct and manage” gaming conducted on or through a computer or video device. However, “conduct and management” is interpreted to mean acting as the directing mind of the operation. Day-to-day operational matters may be carried out by private entities retained by the government (in this case, the OLG acting for the government) for that purpose.

For that reason, the winning bidders on the RFP will have to enter into written agreements with the OLG that set forth the OLG’s responsibilities and authority in order to ensure that the provincial government does not improperly delegate its “conduct and manage” duties in relation to what the RFP calls the proposed iGaming platform. Submissions from single entities or joint ventures/consortiums are both acceptable.

OLG anticipates that the iGaming platform will consist of three separate product releases. The initial phase will implement online versions of the existing Ontario ticket lotteries, iGaming casino games, including iGaming versions of table games (*i.e.*, blackjack, roulette, and baccarat), slots and video poker, along with player account management and customer service applications. “Video poker” does not refer to peer-to-peer poker gaming, but rather to solo poker of the type seen on a video poker slot machine.

The RFP applies specifically to this initial phase of the roll out, and a different entity may be brought in to act as the OLG’s operators for the products released in later phases.

The second planned product release will involve expanded gaming releases, including peer-to-peer poker, bingo, and sports betting products, along with regular new slot and casino “quick game” releases. Only the respondents who are short-listed in accordance with their

RFP submissions for the first phase will be invited to submit proposals for the second phase.

The third phase will involve the expansion of the iGaming product lines released in the first two phases, along with the implementation of casual games and the introduction of iGaming through smartphones.

A respondents' meeting is planned for December 21, 2011, for those interested in submitting proposals for the first phase; confirmation of attendance at this meeting must be received by December 19, 2011. Disclosure applications from respondents must be received by the provincial gaming regulator (the Alcohol and Gaming Commission of Ontario) by January 20, 2012, and the deadline for RFP submissions for phase one is February 3, 2012. The short list of respondents is expected to be announced on March 7, 2012.

## THE FINE POINT GROUP WINS TRIBAL COURT APPEAL IN THE BUFFALO THUNDER DISPUTE

The Pojoaque Tribal Court has rendered a significant decision against the Pueblo of Pojoaque's gaming operations and in favor of The Fine Point Group for illegal tribal actions in terminating a business relationship between them.

The Decision was issued on December 9 by The Honorable June Lorenzo, a *pro tem* judge appointed by the Pueblo to hear The Fine Point Group's case. She ruled that the Tribe and various tribal officials acted illegally in March 2011 when they terminated the company's consulting agreement and revoked a tribal gaming license. She ruled in favor of the company and its managing director, Randall A. Fine, on all issues while rejecting the Pueblo's justification for refusing to pay tens of millions of dollars owed the company.

In late 2010, The Fine Point Group entered into a consulting agreement with Buffalo Thunder, Inc. and Pojoaque Gaming, Inc., subsidiaries of Buffalo Thunder Development Authority, which is a wholly owned tribal corporation. The Las Vegas company was hired as part of the proposed restructuring of more than \$250 million in casino development bonds that the Pueblo was unable to repay. These now heavily discounted bonds are owned by a variety of banks, hedge funds, and other institutional investors.

The Pueblo's illegal contract and gaming license actions were taken only a few months after the documents were executed. The Tribal Court specifically ruled each of those actions void *ab initio* and ordered reinstatements retroactive to the dates on which they were terminated. Under the company's contract, the Tribe ultimately could be liable for tens of millions of dollars.

Judge Lorenzo's Decision and the relevant briefs describing the case can be found at [www.thefinepointgroup.com/buffalothunder.aspx](http://www.thefinepointgroup.com/buffalothunder.aspx).

The Fine Point Group is represented in this matter by attorneys from Dickinson Wright's gaming group and the New Mexico law firm of Sutin, Thayer & Browne's litigation and Indian gaming law groups.

## MICHIGAN GAMING CONTROL BOARD SET FOR MAJOR CHANGES IN 2012

by Robert W. Stocker II

The Michigan Gaming Control Board faces three vacancies on its five-person Board as of January 1, 2012. Barbara Rom, whose term expires December 31, 2011, is completing her service as Chair of the Board, retiring, and moving to France. Ms. Rom's financial expertise arising from her many years as a leading bankruptcy lawyer has been important in dealing with a wide array of financial matters involving the Detroit casinos, including the bankruptcy reorganization and complete restructuring of Greektown Casino in the absence of any Michigan gaming law precedent. Judge Benjamin Friedman's term expires December 31, 2011. Judge Friedman brought a strong judicial temperament to the Board. Finally, Jim Plakas, a former mayor of Garden City who has decided to retire from the Board a year before his term expires, had a wealth of practical greater Detroit metropolitan area political experience.

The next scheduled meeting of the Board is set for February 14, 2012. At least one more Board member needs to be appointed before then in order for a quorum to exist to conduct regular business. Moreover, certain actions by the Board require the approval of four Board members, so filling all the vacancies is of paramount importance.

Unlike the gaming laws of other gaming states, the Michigan Gaming Control and Revenue Act does not provide any form of stipend for Board service, notwithstanding the fact that service on the Board requires a great deal of time and effort on the part of Board members. This is consistent with Michigan's long-standing focus on volunteerism on state-created boards. Nonetheless, finding appropriate volunteers for service on the Board has been a challenge faced by every governor since the enactment of the Michigan Gaming Control and Revenue Act. Governor Snyder demonstrated his commitment to excellence in Board appointments when he appointed Robert L. Anthony, a retired partner from PricewaterhouseCoopers LLP, to fill a vacancy that occurred as of December 31, 2010. He now faces the challenge of finding three more highly qualified volunteers to serve on this interesting, but very demanding, Board. This comes as Detroit's three casinos face the looming challenge of the opening of a commercial casino in Toledo in the first half of 2012, as well as significant economic challenges being faced by the City of Detroit.

## DETROIT CASINOS' NOVEMBER REVENUES INCREASE FROM SAME MONTH LAST YEAR: MICHIGAN GAMING CONTROL BOARD RELEASES NOVEMBER 2011 REVENUE DATA

by Ryan M. Shannon\*

The Michigan Gaming Control Board ("MGCB") released the revenue and wagering tax data for November 2011 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 3.3% increase in gaming revenues compared to the same month in 2010. Aggregate gross gaming revenue for the

Detroit commercial casinos decreased, however, by approximately 0.4% compared to October 2011 revenue figures, continuing a trend of a decrease in revenues from October to November in prior years.

MGM Grand Detroit posted positive gaming revenue results for November 2011 as compared to the same month in 2010, with gaming revenue increasing by nearly 2.7%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in November 2011 of more than \$49 million. MotorCity Casino had monthly gaming revenue approaching \$37.7 million and posted a 1.5% improvement in November 2011 over its November 2010 revenues. Greektown Casino had gaming revenue of approximately \$28.4 million, improving over its November 2010 revenues by more than 7.0%.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for November 2011 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$49,018,163.26	\$3,970,471.22
MotorCity Casino	\$37,691,579.66	\$3,053,017.95
Greektown Casino	\$28,400,063.81	\$2,300,405.17
Totals	\$115,109,806.73	\$9,323,894.34

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