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SINGLE-SPORT BETTING IN CANADA - LEGISLATIVE UPDATE

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

We have had a number of occasions to discuss the proposed sports betting amendments being brought before the Canadian House of Commons by Joe Comartin, a Member of Parliament representing the riding of Windsor-Tecumseh. As last reported in the October 5, 2011, edition of the *Gaming Legal News*, Mr. Comartin had reintroduced his private member's bill that would amend the Criminal Code (the "Code") to allow the provincial governments to offer betting on single sporting events, an activity from which they are currently barred. At that time, we offered the opinion that there was reason to believe that this Bill, entitled Bill C-290, has a chance of being seriously considered by the House and perhaps even enacted into law.

The rapid movement of Bill C-290 since it was reintroduced into the House on September 28, 2011, confirms our opinion. It received Second Reading in the House and was referred for review and consideration by the Standing Committee on Justice and Human Rights on November 1, 2011, and is expected to be the subject of a meeting of that Committee shortly.

As mentioned in previous updates, when Mr. Comartin first offered up this bill in February 2011, he was vague as to his reasoning and the level of support he had for the bill. As of November 1, 2011, his rationale was considerably clearer:

... the primary purpose behind this bill is twofold: first, to create greater employment opportunities in the gaming industry in Canada and in all the provinces who pick this up; and second, at least as important, it is a blow against organized crime that has captured, controls and is making huge profits from it ...

... both the Province of Ontario and the Province of British Columbia are on record with letters to the federal justice minister asking him to proceed with this type of amendment. The government up to this point has not proceeded that way, although I am expecting, and I may be overly optimistic because this is a private member's bill, substantial support from the government side as well as from our colleagues in the Liberal Party.

In October 2011, we opined that Mr. Comartin appeared to be seeking to amass a critical level of support for his bill, with a focus on the provincial governments. He referred to benefits to casinos in the ridings of government ministers, seemingly reaching out for support from the governing Conservative Party. If debate on Second Reading of Bill C-290 is any indication, he may have achieved success in these efforts. Support for the bill was expressed by more than one member of the governing Conservative Party, including most notably the Parliamentary Secretary for the Minister of Justice. No member of the House of any party spoke negatively about the bill.

We further noted in October 2011 that it was critical that Mr. Comartin receive support from the provincial governments for Bill C-290, and it would appear that he has obtained considerable support of that kind:

Let me indicate the support that we have had. I have already indicated that both the Province of Ontario and the Province of British Columbia have sought this amendment from the federal government. A number of municipalities, including the City of Niagara Falls and the City of Windsor, the Canadian Gaming Association, the Saskatchewan Indian Gaming Authority, the Atlantic Lottery Corporation, the Nova Scotia Gaming Corporation, the Ontario Lottery and Gaming Corporation, and the Saskatchewan Gaming Corporation have all indicated their support.

All of the signs appear to indicate that Bill C-290 was granted early priority in the Order of Precedence for a good reason. The Conservative government is interested in seeing the law changed and is seeking to obtain all-party support as well as support from provincial and municipal governments. The government is without a doubt glad to see the matter addressed by a private member's bill sponsored by a member of the opposition, as this allows the government to avoid being directly responsible for expanding betting options in Canada. With the House swiftly moving Bill C-290 through the legislative process, there is every reason to believe that single-sport betting will be available in Canada by the end of 2012.

We will keep our readers apprised of how Bill C-290 is received in Committee hearings. The testimony before Committee will indicate if any opposition is likely to arise that might delay amendment of the Code to permit single-sport betting.

CRIMINAL BACKGROUND CHECKS

by Andrew J. Skinner*

It is more important than ever for employers to exercise caution in hiring and maintaining their workforce. This is especially true in the gaming industry where associations with undesirables could negatively impact on an employer's gaming registrations. Accordingly, background checks, whether criminal background or credit checks, resume confirmations, or other similar inquiries, have become important parts of hiring policies.

Privacy Law

British Columbia, Alberta, and Quebec are the only Provinces in Canada that have privacy legislation that applies in the employment context, as does the Federal Government with regard to matters of Federal jurisdiction. The trend is for other Provinces to follow suit. An employer must exercise informed caution in developing a policy in this area. For example, in Ontario, the Ontario Human Rights Code does provide protections to an individual in the employment context. The recent Ontario Court of Appeal case *Jones v. Tsige* has created a new category of tort "intrusion upon seclusion" which will likely be applied in other jurisdictions in Canada. The trend toward more privacy protection in Canada is clear.

Background Checks for Employees

It is essential to obtain the express consent of an employee whether for new hires or existing employees. The best time to impose a criminal background check is at the time of hire since the new hire does not have the same "contractual rights" of an existing employee. The best practice is to make acceptable background check results a precondition of employment.

Under Canadian employment law, an employee is employed subject to an express or implied contract of employment. An employer cannot unilaterally change a significant term or condition of the contract of employment without either the consent of the employee or prior written notice. Essentially, the written notice period would be equal to that in a wrongful dismissal context. The employee should be informed that from and after the end of the notice period, the terms of their employment will be amended to require consent to a background check and if it is not granted, their employment will be terminated.

Mechanics of a Criminal Background Check

Employers should be aware that criminal background checks in Canada could take up to several months to complete. Where more than one person is identified with the same name and birth date, fingerprinting would be required in order to obtain results.

Unionized Employees

The prevailing collective agreement is the employment contract for the unionized employee. There is case law to the effect that even if the collective agreement requires employees to provide consent, the privacy rights of an individual may override the terms of the collective agreement.

Formulating a Company Policy

It is important for companies to have a considered and comprehensive policy on background checks. In view of the evolving nature of privacy

law and the direction it is heading, it would be prudent for companies to periodically review and re-evaluate their existing policy to ensure it is fair and balanced and in compliance with prevailing law.

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GOVERNOR SNYDER APPOINTS THREE NEW MEMBERS TO THE MICHIGAN GAMING CONTROL BOARD, FILLING ALL VACANCIES

by Ryan M. Shannon*

On February 3, 2012, Governor Snyder announced the appointment of three members to the Michigan Gaming Control Board. The appointments include two new members, Patrick McQueen of Bloomfield Hills and Andrew Palms of Chelsea, as well as the Honorable Benjamin Friedman of Huntington Woods, who returns after previously serving seven years on the Board.

As of January 1, 2012, three of the Michigan Gaming Control Board's five member positions were vacant, following the departure of Barbara Rom, Jim Plakas, and Judge Friedman at the end of 2011. Three members are required for the Board to form a quorum to conduct regular business, and additionally, certain actions by the Board require the approval of four Board members. Filling the vacancies was thus of substantial importance to the Board's ability to function as it proceeds with its 2012 meeting schedule.

Patrick McQueen fills the vacancy left by Barbara Rom. Mr. McQueen's background includes substantial experience in Michigan's financial industry, and he presently serves as the managing director of McQueen Financial Advisors. His four-year term expires on December 31, 2015.

Andrew Palms fills the vacancy left by Judge Friedman. Mr. Palms serves as the executive director of communications systems at the University of Michigan, and he has worked for the University for over 20 years. His four-year term also expires on December 31, 2015.

Judge Benjamin Friedman returns to the Board after a short hiatus, and he fills the vacancy left by the resignation of Jim Plakas. Judge Friedman is currently a member of the law firm of Friedman & Lichterman, P.C., and earlier served as a district court judge in Oakland County. He will complete Mr. Plakas's four-year term, which is set to expire on December 31, 2012.

Messrs. McQueen, Palms, and Friedman will join current board members Michael Watzka, of Northville, and Robert L. Anthony, also of Northville. Governor Snyder simultaneously announced his appointment of Mr. Anthony to the position of Board Chair. Anthony, a former senior risk and quality partner with PricewaterhouseCoopers LLP, was appointed to the Board by Governor Snyder in January of

2011. His current Board term will expire on December 31, 2014, and he serves as Board Chair at the pleasure of the Governor.

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