

## Gaming Law 101

Historically, gambling has been frowned upon, often due to public concern about its moral lewdness. For many, gambling is seen as “the sin of wagering”. Regardless of society’s views, with the various developments in the 21<sup>st</sup> century such as technological advances and alternative forms of online entertainment, gambling is here to stay.

Here are some basics that you need to know about gambling in Canada:

1. Gambling is illegal in Canada under the Criminal Code (the “Code”) unless it falls within three principal exemptions. First, a provincial government, alone or in conjunction with other provinces, may conduct and manage a lottery scheme. Second, the federal government may permit pari-mutuel betting on horse races. And third, a provincial government may license or designate another body to license charitable and religious organizations.
2. Online gambling has gained popularity throughout the years. As there is no open licensure system in Canada, only the provincial governments may conduct and manage gambling that is operated on or through a computer or video device, which would include remote gambling. There are a number of offshore operators taking bets from Canada, leading to the question of whether these offshore operators are acting contrary to the Code. See *Libman v. The Queen* [1985] 2 S.C.R. 178 and *Society of Composers, Authors and Music Publishers of Canada v. Canadian Association of Internet Providers* (2004), 240 D.L.R. (4<sup>th</sup>) 193 (S.C.C.). The cases leave open the possibility that a Canadian court may assume jurisdiction where a significant portion of activities constituting the offence take place in Canada.
3. Games of pure skill are exempt from the prohibitions against gambling in the Code. A game that is primarily skill-based, but which involves some elements of randomness (e.g. poker, where the random draw of cards is an integral part of the game) is a game of mixed skill and chance, to which some of the prohibitions in the Code apply. Whether certain games are considered games of skill or chance, is still being debated at this time. See “Games of Skill and Chance in Canada” by M. Lipton and K. Weber, *Gaming Law Review*, February 2005.
4. In the recent case of *Paton Estate v. Ontario Lottery and Gaming Corporation (Fallsview Casino Resort and OLG Casino Brantford)* (2016 On C.A. 458), a law clerk, Shelly Spinks, impersonated a lawyer and gambled away millions of dollars from the estate of a client. The estate alleged, *inter alia*, that the Ontario Lottery and Gaming Corporation was negligent in making inquiries into the source of funds that Shelly Spinks was gambling. The motions court held that there was a reasonable cause of action and has allowed the case to proceed to trial. We await the verdict to determine whether casinos can be responsible for the actions of compulsive gamblers.

This is not an exhaustive list of the issues in gaming law, but includes matters frequently arising in my practice.

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