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Modernizing the Canadian Criminal Code to Allow for Single Game Sports Betting





INTRODUCTION

The traditional landscape of gaming and gambling¹ in Canada has drastically transformed from a strictly land based phenomenon to a constantly evolving industry since the federal laws determining the ambit of lawful gaming had their last major overhaul in 1985. Since that time, gaming worldwide has undergone a seismic shift, the main catalyst of which has been gaming conducted over the internet. The internet has modernized gaming, in particular betting on sports, by creating new means and methods to bet, most of which were not contemplated decades ago. This shift begs the following questions: in our modern era in which the internet has eliminated transnational barriers and enabled players to bet through a countless number of offerings, why do the Canadian federal and provincial governments continue to turn a collective blind eye to the impact of the internet on sports betting? Why are single-game sports bets illegal today as they were in 1985, forcing Canadian bettors to either bet on a parlay basis with a legally recognized Canadian operator (an inferior product offering to bettors), or to bet with an offshore gaming operator, including operators licensed by the Kahnawake Gaming Commission? Why hasn't the Canadian Criminal Code (the "Code") been updated to address the gray zone that exists with respect to offshore betting, which carries on in Canada untaxed and unregulated by Canadian authorities?

This article will delve into these unanswered questions and will suggest that the Canadian federal government must reform and modernize the current antiquated gaming and betting provisions of the Code, which are both unfair to sports bettors and inconsistent with the modern gaming industry. Such federal reform will allow the provincial governments to update their gaming regulatory regimes to better meet the changing landscape of gambling in Canada.

SPORTS BETTING

The Code provides that only the provincial governments can offer sports betting, while at the same time prohibiting them from offering single-game sports bets. Only parlay betting is permitted, often coined a ‘sucker’s bet’ as it requires the bettor to combine two or more wagers, all of which must win for the bet to be successful. Educated bettors recognize these betting options as an inferior product when compared to the single-sport betting offered by offshore gaming operators, many of whom operate legally in their home jurisdictions. This creates an incentive for Canadian bettors to use offshore websites for sports betting.

From the 19th century through to 1969, nearly all forms of gambling were banned in Canada – the only legitimate gambling industry in the country was parimutuel horse-race betting. The first Code, enacted in 1892, defined gambling as an offence against “religion, morals and public Convenience.” In 1954-1955, a Special Committee of the House of Commons and Senate examined the issues of gambling generally and lotteries specifically. The report of the Joint Committee stopped short of recommending state-run lotteries that would become reality in 1969, but it did contain passages that recognized that attempts to enforce morality in the gambling space through the Code prohibitions had been largely ineffective, and that in many cases the prohibitions encouraged underground criminality and undermined respect for the law.

For approximately 20 years, the ban on single-game sports betting imposed by the Code upon provincial gaming corporations

into the internet age has mimicked the impact that the general prohibition against gambling had upon public morality before 1969. It has not enforced morality, and in fact has encouraged disrespect for the law by influencing the Canadian betting public to patronize offshore sports betting that is not regulated by the provincial governments.

Moreover, single-game sports betting results in a waste of public resources in the form of advertising and marketing budgets of the provincial gaming corporations. It is estimated that the provincial governments spend more than \$450 million per year on gambling advertising.² This is similar to, and often more than, the marketing budgets of some Fortune 500 companies. In the case of sports betting, this money is being spent to promote a product that is not tailored to the demands of the betting public. Until the Code is amended to allow the provincial governments to provide an updated product that can capture the interest of young, new and existing gamblers, these promotional efforts will be wasteful, at least insofar as they relate to sports betting.

Resistance to federal legislation that would allow the provinces to offer single-game sports betting would seemingly be at odds with the legalization of recreational marijuana in Canada. Marijuana, like gambling, has historically been a banned substance because of its perceived links to criminal activity and immoral behaviour. The 2015 election platform of the now-governing Liberal Party of Canada stated that “Canada’s current system of marijuana prohibition does not work”, in that it “does not prevent young people from using marijuana,” and “the proceeds from the illegal drug trade support organized crime and greater threats to public safety, like human trafficking and hard drugs.”³ Prime Minister Trudeau reiterated these principles after winning the election, stating in June 2016 that he had two guiding principles in his push for legalizing marijuana: to minimize underage access to the drug and to reduce criminal activity surrounding the illegal marijuana trade.⁴

These principles are entirely applicable to the legalization of single-game sports betting. Since the day offshore internet

gambling became a reality over 20 years ago, the prohibition in the Code has not prevented people from engaging in single-game sports betting. Canadians who access single-game sports betting by using offshore websites are often unaware of the degree to which the activities of those websites are regulated. Many websites are subject to strict regulation imposed by other countries, but other websites exist which are not licensed in any jurisdiction, some of which have been associated with organized crime.⁵ The federal and provincial governments should apply the same rationale to gambling as has been applied to marijuana, amending the Code so as to modernize the practice of sports betting in a manner that ensures current market participants are protected, while taking active steps in removing illegal operators.

OFFSHORE GAMING & ILLEGAL GAMING

Given the outdated product offered to Canadians, they are turning to offshore websites where they can enjoy single-game sports betting. It is estimated that Canadians wager C\$4 billion a year with offshore sports books, as compared with approximately C\$500 million spent by Canadians on the sports betting options provided by the provincial governments. Although millions of dollars of revenue is being lost to such practices, the federal and provincial government continue to turn a blind-eye. Since the inception of offshore betting, Canadian authorities have largely ignored this multi-billion-dollar business, allowing online sports betting to exist in a ‘grey zone’ where both bookmakers and bettors are more or less free to operate.

There are multitudes of offshore gambling sites that allow dollars to flow out of Canada to sportsbooks with servers on small islands. Many gambling sites are based in places like Antigua, Gibraltar, and the Isle of Man. As such, anyone in Canada can place bets with countless offshore bookmakers who accept bets from players in Canada and

other countries where it is not legal to accept wagers.

Canadian law enforcement authorities have not initiated any prosecutions against offshore remote gambling regardless of whether they have actively promoted their services in Canada or have merely passively made those services available in Canada. The absence of such prosecutions speaks volumes about the current attitude of law enforcement authorities towards offshore remote gambling and their appetite to prosecute them. There are only three known Code prosecutions of entities involved in remote gambling, and in each of those three cases, the entities involved carried out their activities in Canada – they were not true “offshore” operations. Accordingly, it is safe to say that many internet betting operators either believe that it is legal for them to offer their services in Canada, or they accept bets from persons in Canada on the basis that it is unlikely they will be prosecuted. Other bookmakers, such as those who operate websites from offshore without being regulated in a particular jurisdiction, also view the risk of prosecution as extremely low.

The Canadian government is not known to be taking steps to amend the Code to permit single-game sports bets, nor is there any reason to believe that it is taking steps to encourage the enforcement of the gambling prohibitions in the Code against operators that are currently operating betting websites and taking bets from within Canada. It is bizarre to see the law frozen in a state where federal law explicitly prevents Canadian provincial lottery corporations from competing on a level playing field with offshore gaming operators, while no efforts are made to prevent those offshore operators from unlawfully poaching from the Canadian sports betting market. Rather, online betting continues to remain ignored by Canadian regulators and authorities; and

in a nation obsessed with regulation, billions of dollars flow out of the economy to offshore entities with no benefit to the Canadian governments.

FAILED OPPORTUNITY

The government recently had the opportunity to lift the ban on single-game sports betting, through Bill C-221, a private member’s bill known as the Safe and Regulated Sports Betting Act. Bill C-221 was, strongly opposed by many Members of Parliament, and did not become law. Some politicians expressed fears that single-game sports betting would lead to higher levels of gambling addiction, especially for those in lower income brackets.

These fears are to a large extent overstated. First, polling data from the United States tells us that many sports bettors today are well-educated people who earn a high income and who occupy their leisure time with sports betting. Second, many bettors do not see it as an addiction or problem, but simply as an investment tool similar to buying stocks, where a bettor can study the market and manipulate their wagers as they would their stock picks. This level of commitment to such a hobby is common; many individuals in professional circles are involved in such a hobby.⁶

Third, the legalization of single-game sports betting will not result in the introduction of gambling to a large swath of the Canadian public. To a large extent, it will simply capture existing Canadian bettors who are currently using offshore websites. If they have developed an addiction while betting on such websites, the legalization of single-game sports betting may result in their behavior being made subject to existing provincial responsible gambling programs, such as self-exclusion programs whereby a trespass notice can be served upon self-excluded gamblers who enter a gaming venue, and

which can prevent self-excluded gamblers from collecting any winnings should they be discovered.

RESOLUTION OF THE CURRENT PROBLEM

There are a number of jurisdictions that maintain and regulate successful, full-sports betting operations that can provide models for how to regulate such betting in Canada. These include Malta, Gibraltar, Isle of Man, the United Kingdom, and the Kahnawake Gaming Commission. It is time for the federal government to step up and amend the Code to permit single-game sports betting. The recent focus on the legalization of marijuana clearly demonstrates the power of government to change the law to allow for regulation where the goal of protecting the public interest is not accomplished by the existence of a prohibition. Allowing offshore gaming operators to accept single-game sports bets from Canadians while prohibiting provincial lottery corporations from doing the same is both foolish and outdated in this modern connected world. Modernizing the Code should be an essential goal of both the federal and provincial governments, both in the interests of allowing the provincial lottery corporations to compete against offshore gaming operators, and in the interest of effectively regulating the activity to ensure the best interests of the Canadian public. **CGI**

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1. The terms “gaming” and “gambling” are used interchangeably throughout this article.
 2. Tristin Hopper, “Why Canadian governments are spending millions to have you gamble more” (5 December 2017), online: <<http://nationalpost.com/news/canada/why-canadian-governments-are-spending-millions-to-have-you-gamble-more>>
 3. Liberal Party of Canada, “Real Change”, <https://www.liberal.ca/realchange/marijuana> (accessed on April 6, 2018)

Justin Trudeau Makes a Surprising Case for Legalizing Marijuana, *Time Magazine*, June 13, 2016: <http://time.com/4364344/justin-trudeau-marijuana-weed-legal/> (accessed on April 6, 2018)
 McMullan, J.L., Rege, A. (2010) Online crime and internet gambling. *Journal of Gambling Issues*, 24(5): 54–85 (accessed at <http://jgi.camh.net/index.php/jgi/article/view/3824/3851>, on April 6, 2018)
 See <https://tweepick.com/sports-betting-demographics-of-the-modern-era/> (accessed on April 6, 2018)