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Gaming & Hospitality

GAMING & HOSPITALITY LEGAL NEWS

CANADA CONTINUES PUSH FOR SINGLE-GAME SPORTS BETTING

by Michael Lipton, Q.C., Kevin Weber and Tiziana Romagnuolo

The Canadian Criminal Code (the "Code") sets forth the parameters of legal gaming in Canada. The Code generally prohibits sports-based wagering except where such wagering is conducted and managed by the provincial governments; however, section 207(4)(b) of the Code prohibits even those governments from offering wagering on the outcome of a single sporting event or contingency thereon.

The rationale for creating the sports betting regime in this way in 1985 derived from the Canadian Federal Government's attempt to limit the potential for match manipulations. However, technological advances and statistical tools that have since become available can enable sportsbook operators to closely monitor illegal acts that give rise to match-fixing, so the danger of match-fixing no longer justifies the prohibition.

In May 2018, the United States Supreme Court declared the Professional and Amateur Sports Protection Act, a federal law that prohibited most states from legalizing and regulating sports betting, to be unconstitutional. Consequently, U.S. states and the District of Columbia are now free to establish their own regulated sports betting regimes if they so choose. This decision also created the necessary momentum for Canada to modernize the Code to allow the provincial governments to offer sports wagering on a basis competitive with that which is becoming available throughout the U.S.

Moving in the Right Direction: The Proposed Bills

Recently, Canadians have seen a push to revolutionize the current sports-betting regime by lifting the restrictions on single-event sports betting. The legislative amendments to section 207(4)(b) of the Code currently being proposed derive from two bills under consideration in the House of Commons: Bill C-13 and Bill C-218.

Bill C-13 is a government-supported bill introduced by the federal Minister of Justice and Attorney General David Lametti. This bill represents the third attempt to lift the prohibition against single-game sports betting in Canada since 2015. Bill C-218 is a private member's bill sponsored by an opposition Conservative Member of Parliament, Kevin Waugh. Both bills would allow Canada's provincial and territorial governments to conduct and manage single-event sports betting in their respective jurisdictions, either online or in land-based facilities.

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There are many similarities between Bills C-13 and C-218, with the exception that Bill C-13 excludes wagering on horse racing. If Bill C-13 is enacted, the federal government's Canadian Pari-Mutuel Agency would maintain its role in overseeing pari-mutuel betting on horse racing. In contrast, the enactment of Bill C-218 as originally drafted would have removed any federal involvement in the regulation of pari-mutuel betting on horse racing.

As of the publication of this article, C-13 has not yet completed its second reading. The House of Commons has postponed the debate on Bill C-13 in favour of other legislation a number of times, most recently on February 19, 2021. It is currently uncertain as to when the next debate for C-13 will be scheduled.

Bill C-218 recently completed its second reading in the House of Commons and was thereafter referred to the House Standing Committee on Justice and Human Rights for further deliberations. After five meetings of the Committee between February and March 2021, during which it heard testimony from 32 witnesses and received written briefs from 29 stakeholders, the committee adopted an amended version of the bill on March 25, 2021 and presented this amended bill to the House on March 26, 2021. The effect of the amendment is that the language in Bill C-218 is now identical to that proposed by the government in Bill C-13, and as a result, neither bill will have any impact on the federal regulation of pari-mutuel betting on horse races. Bill C-218 will require a third reading vote in the House of Commons, then approval from the Senate, and finally Royal Assent before becoming law.

Commentary and Next Steps

Until recently, law enforcement authorities have not turned their minds to the offshore operators that currently reap the rewards from 'grey-market' single-event sports betting in Canada. The Canadian Gaming Association estimated that Canadians spend approximately \$10 billion per year on single-event sports betting conducted illegally through organized crime, and approximately \$4 billion through offshore internet sites that are not provincially regulated.

The proposed legislative amendments are promising steps towards minimizing and re-directing the lost revenues and associated profits that are currently going into the pockets of offshore entities. Accordingly, Canadian stakeholders are optimistic about the proposed amendments' ability to level the playing field once either of the bills becomes law.

Michael Lipton and Kevin Weber represent gaming clients from Dickinson Wright's Toronto office. Dickinson Wright's Canadian Gaming & Hospitality attorneys have extensive experience before gaming regulatory authorities throughout Canada, and advise Canadian, U.S. and international clients on gaming regulatory compliance, AML, governance, procurement policies and due diligence requirements integral to the gaming and hospitality industries. Tiziana Romagnuolo is an articling student at law. Contact Michael Lipton at mdliponqc@dickinsonwright.com or 416-866-2929 for further information.

ABOUT THE AUTHORS



Michael D. Lipton, Q.C. is a Member in Dickinson Wright's Toronto office. He can be reached at 416.866.2929 or mdliponqc@dickinsonwright.com.



Kevin J. Weber is a Member in Dickinson Wright's Toronto office. He can be reached at 416.367.0899 or kweber@dickinsonwright.com.



Tiziana Romagnuolo is a Summer Associate in Dickinson Wright's Toronto office. She can be reached at 416.646.6872 or tromagnuolo@dickinsonwright.com.