

International Comparative Legal Guides



Gambling 2020

A practical cross-border insight into gambling law

Sixth Edition

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ISBN 978-1-83918-011-8
ISSN 2056-4341

Published by

glg global legal group

59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
www.iclg.com

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Printed by
Buxton Press Limited

Cover Image
www.istockphoto.com

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Canada

Miller Thomson LLP



Danielle Bush

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	<i>Alberta</i> Alberta Gaming and Liquor Commission (“AGLC”). <i>British Columbia</i> Gaming Policy and Enforcement Branch of the Ministry of Finance. <i>Manitoba</i> Liquor, Gaming and Cannabis Authority of Manitoba. <i>New Brunswick</i> Gaming Control Branch of the Department of Public Safety. <i>Newfoundland and Labrador</i> Consumer Affairs Division, Consumer and Commercial Affairs Branch of Service NL. <i>Northwest Territories (Territory)</i> Department of Municipal and Community Affairs. <i>Nova Scotia</i> Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia. <i>Nunavut (Territory)</i> Consumer Affairs, Department of Community and Government Services. <i>Ontario</i> Alcohol and Gaming Commission of Ontario (“AGCO”). <i>Prince Edward Island</i> a. Prince Edward Island Lotteries Commission. b. Consumer Services section of the Department of Environment, Labour and Justice (regulates bingo, raffles, casino nights, and charitable gaming). <i>Quebec</i> <i>Régie des alcools, des courses et des jeux</i> (authority over, amongst other things, the operation of casinos as well as contests, certain types of lotteries, and VLTs other than those in casinos). <i>Société des loteries du Québec</i> (“Loto-Québec”), a provincial government agent, (i) operates the casinos located in Quebec, and (ii) regulates traditional lotteries and bingo as well as gaming machines located inside casinos. <i>Saskatchewan</i> a. Saskatchewan Liquor and Gaming Authority (“SLGA”). b. Indigenous Gaming Regulators (“IGR”), licenses and regulates on-reserve charitable gaming activities of the First Nations that have designated IGR as their regulator through Band Council Resolutions. <i>Yukon Territory</i> Professional Licensing & Regulatory Affairs Branch of the Department of Community Services.	
	Poker		
	Bingo		
Betting	Betting	Respective provincial regulator – please see above.	
	Sports/horse race betting (if regulated separately to other forms of betting)	Respective provincial regulator – please see above.	Betting on horse races is governed by the Canadian Pari-Mutuel Agency.

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Betting	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Not formally addressed in any legislation so no regulator.	Not applicable.
Lotteries	Lotteries	Respective provincial regulator – please see above.	
Social/ Skill arrange- ments	"Social" gaming with no prize in money or money's worth	"Social" gaming does not fall under the definition of games of chance and hence lacks specific regulation.	
	Skill games and competitions with no element of chance	Not regulated except by generic provincial consumer protection laws.	

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

(a) Gambling law and regulation

The overarching statute that governs gambling activity in Canada is the federal *Criminal Code* (the "Code"). Sections 201 through to and including section 206 make all types of gambling, betting and lotteries illegal throughout Canada, with very limited exemptions such as *pari-mutuel* betting on horse races (provided for in section 204). While the federal Code is the applicable prohibitory statute, all of the regulatory statutes (and regulators) are provincial with the one exception being *pari-mutuel* betting on horse races which is governed by the federal Canadian Pari-Mutuel Agency.

The operation or provision of casinos, bingo, ticket lotteries, betting (other than *pari-mutuel* betting), poker and other card games, electronic games such as slot machines and video lottery terminals ("VLTs") are activities that constitute gambling unless they fall within one of the few exceptions in the Code. This is true whether the activities are provided in a land-based facility or digitally.

There are a number of activities that are prohibited by the Code but may not be thought of as "gambling" in the colloquial sense of the word. For example, a competition or draw for a prize may fall into any one of a number of baskets depending on its structure. For example, if no consideration is payable in order to enter the competition, Canadian case law has made it clear that any person hosting or offering such a competition is not illegally operating a common gaming or betting house. Furthermore, the Code, and the little case law there is on the subject, draw fine distinctions between games of pure skill, games of pure chance, and games of mixed chance and skill. As a result, a number of idiosyncratic "rules" have evolved, the best example being the "mathematical skill-testing question" which is added to contest rules in order to transform a competition from an illegal contest of pure chance to a legal contest of mixed chance and skill. In sum, any competition for a prize must be examined through the lens of section 206 of the Code in order to determine whether it might constitute an illegal lottery.

Games of pure skill (that is, skill games and competitions with no element of chance) do not fall within the definition of an illegal lottery in section 206(1) of the Code and so can be legally provided without the consent of a regulator or any other government body. It is important to note that Canada's highest court, the Supreme Court of Canada, has made it clear that if there is any element of chance built into the structure of a game, it will be considered a game of mixed chance and skill and not a game of pure skill. The concept of a "dominant factor" is not recognised by the courts in this country. Poker, for example, is considered to be a game of

mixed chance and skill as there is an element of chance in the game flowing from the dealing of cards. Games of chance, and games of mixed chance and skill, are considered illegal lotteries unless no consideration is paid to enter, play or win a prize. Based on generally accepted interpretations of section 206, it is possible nonetheless to structure a game of either nature so as to render it legal.

The conduct of fantasy sports or shares competitions is not currently addressed by any federal or provincial statutes or regulations. There is presently an active debate amongst gaming regulators and Canadian lawyers about the legality of daily fantasy sports, some taking the position that competitors are merely engaged in a form of betting and therefore engaging in illegal conduct, while others take the position that it is a game of pure skill and therefore a legal competition. Having said that, it is generally agreed that if a person other than a competitor bets on the outcome of a fantasy competition, that constitutes illegal betting.

Social gaming with no prize in money or money's worth is not regulated *per se* by any government body although, like any other consumer product, they are subject to review and regulation by provincial consumer protection ministries and the federal Competition Bureau.

Set out below are the national and provincial statutes that apply to activities that are generally agreed to constitute gambling.

National

At the federal level, the Code is the primary legislation that impacts gambling in Canada, as it contains both the primary prohibitions and exceptions respecting gambling and the federal penal law concerning proceeds of crime including money laundering (Part XII.2) and the financing of terrorism (sections 83.02, 83.03, and 83.04).

The Competition Act is the only federal statute that is applicable to contests and competitions. Section 74.06 of the Competition Act prohibits any promotional contest that does not disclose the number and approximate value of prizes, the area or areas to which they relate, and any important information relating to the chances of winning such as the odds of winning. Any person who is found to have contravened this section is liable to a fine.

Provincial

Set out below are the primary gambling statutes in each province.

1. *Alberta*
Gaming, Liquor and Cannabis Act.
2. *British Columbia*
Gaming Control Act.
3. *Manitoba*
 - a. The Liquor, Gaming and Cannabis Control Act.
 - b. The Manitoba Liquor and Lotteries Corporation Act.
4. *New Brunswick*
Gaming Control Act.

5. *Northwest Territories*
Lotteries Act.
6. *Nova Scotia*
Gaming Control Act.
7. *Saskatchewan*
 - a. The Alcohol and Gaming Regulation Act, 1997.
 - b. The Saskatchewan Gaming Corporation Act.
8. *Ontario*
 - a. Gaming Control Act, 1992.
 - b. Ontario Lottery and Gaming Corporation Act, 1999.
9. *Quebec*
 - a. Act respecting the *Société des Loteries du Québec*.
 - b. Act respecting Lotteries, Publicity Contests, and Amusement Machines.
10. *Yukon*
Lottery Licensing Act.

(b) Advertising and marketing

The advertising and marketing of regulated Relevant Products is subject to the provisions of the applicable provincial gambling statutes and guidelines. For example, in Ontario any entity that supplies the OLG (Ontario's lottery corporation) with Relevant Products must comply with the OLG's Marketing and Advertising Standard which in turn incorporates the standards for marketing and advertising established by the AGCO (Ontario's gaming regulator). Unregulated Relevant Products must comply with the general legislation applying to any unregulated service in Canada, including the federal Competition Act and provincial consumer protection acts such as Ontario's *Consumer Protection Act*. Additionally, section 13.1 of Ontario's *Consumer Protection Act* prohibits the advertisement of an "internet gaming site" in the province if it is operated contrary to the Code. To date, there are no reported cases that consider this section or the prohibition.

(c) Tax and duties

As the majority of private corporations providing Relevant Products in Canada are, of necessity, merely registered suppliers of gambling products and services to the provincial governments, there are no industry-specific taxes or levies. Such companies are required to comply with generally applicable federal and provincial income tax laws but there is no separate regime of taxes within the industry. The providers of unregulated Relevant Products are subject to generally applicable tax laws.

(d) AML/terrorist financing

The Code's provisions regarding proceeds of crime and financing of terrorism synchronise with the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCTFA"). The PCTFA was enacted (and has been subsequently amended) to implement measures to detect and deter money laundering and the financing of terrorist activities, to facilitate the investigation or prosecution of money laundering and terrorist financing offences (including establishing record-keeping and client identification requirements for financial services providers and other persons that engage in businesses, professions or activities that are susceptible to being used for money laundering, and the financing of terrorist activities), and to respond to the threat posed by organised crime by providing law enforcement officials with the information they need to investigate and prosecute money laundering or terrorist financing offences. Section 5(k) specifically identifies casinos as a type of organisation that must comply with all requirements in Part 1 (Record Keeping, Verifying Identity, Reporting Of Suspicious Transactions And Registration) of the Act.

The Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") was established in 2000 by the federal government to act as Canada's financial intelligence unit. FINTRAC is the regulatory body overseeing compliance with the PCTFA and

its regulations. As noted above, the only entities that can legally supply regulated Relevant Products in Canada are provincial governments (either directly through their respective lottery corporations or through service suppliers to those lottery corporations) and charitable organisations licensed by provincial governments. In all cases, those entities are subject to Canada's anti-money laundering ("AML") legislation (namely (i) the PCTFA, and (ii) Part XII.2 (Proceeds of Crime) of the Code and, in particular, section 462.31 which outlines the offence of laundering the proceeds of crime).

(e) Consumer protection

All persons providing Relevant Products (whether regulated or unregulated) in Canada must comply with provincial consumer protection statutes such as Ontario's *Consumer Protection Act* and Quebec's *Act respecting Lotteries, Publicity Contests, and Amusement Machines*.

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, "Licences") are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

As noted above, gambling in Canada is a provincial Crown monopoly pursuant to section 207 of the Code. With very limited exceptions such as those for charities and local fairs, no person other than a provincial government is legally permitted to supply gambling facilities or services in Canada. Notwithstanding the foregoing, all provinces do require registration of any person supplying goods and services for use in the operation of gambling facilities and the provision of gaming services by the province. As the provincial governments, out of necessity, must contract out the vast majority of such services, in reality this is the "licensing" scheme in Canada. Any company that wishes to supply gambling facilities may approach a provincial government with a proposal for a gambling facility which the government would, by law, be required to conduct and manage, with the proponent of the plan acting as the operator under contract with the government.

There is no substantive difference in the treatment of land-based and digital offers of the Relevant Products. Companies that offer digital gaming products are only permitted to supply their products to the applicable provincial operator who will then provide the product to consumers in its jurisdiction.

There are no firm residency requirements or restrictions on persons applying for registration. Each applicant will, however, be required to pass a risk assessment and provincial regulators may take a position on what constitutes "honesty and integrity" that would preclude the registration of a company that, in the regulator's view, had not complied with Canadian law (for example, by providing offshore online gaming services to Canadian residents).

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

As noted above, companies are not granted "licences" but rather are registered to provide gaming services to the province. The persons who are required to be registered as gaming suppliers differ from province to province, but only to a minor extent. Typically, there are tiers of gaming registrants ranging from individuals who will be working in casinos through to the companies that are operating those casinos.

2.3 What is the process of applying for a Licence for a Relevant Product?

Each province has its own process for applying for gaming supplier registrations but, again, they are relatively similar. Generally, in order to be registered as an operator or supplier, a company must complete three forms: (i) an application for registration; (ii) an enterprise disclosure form; and (iii) a personal disclosure form. The initial risk assessment involves the review of an applicant's completed application materials as well as information obtained based on a standard background check. This information is evaluated based on five criteria which are considered key indicators of an individual's or business's appropriateness to be registered. The five criteria related to businesses (e.g., suppliers) applying for a gaming registration are: (i) honesty and integrity; (ii) financial responsibility; (iii) compliance with the law; (iv) registration type; and (v) financial gain from registration.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

As persons are registered within a particular class of gaming suppliers, they are by definition restricted with respect to the activities in which they can legally engage. They are then restricted by the terms of the contract entered into with the provincial lottery corporation or other agent of the Crown to whom they will be supplying goods or services.

There are no firm residency requirements or restrictions on persons applying for registration. Each applicant will, however, be required to pass the risk assessment outlined in question 2.3 below and provincial regulators could take a position on what constitutes "honesty and integrity" that would preclude the registration of a company that, in the regulator's view, had not complied with Canadian law (for example, by providing offshore online gaming services to Canadian residents).

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Each province differs in this regard but as the organisational structures are similar, Ontario will be used as an example. The AGCO issues registrations with expiry dates. Prior to expiry, the registrant must complete and submit the same form as used for the initial application for registration. Each registrant must also pay an annual fee (e.g., \$100,000 for casino operators) in order to maintain their registration.

Registrations may be revoked for any number of reasons but only after disciplinary action short of revocation. In Ontario, registrants who are not in compliance with the law usually receive a warning first, followed by a monetary penalty if still non-compliant. If the registrant continues to be non-compliant, the AGCO will issue a notice advising the registrant that they have 15 days in which to appeal the decision to a separate government appeal tribunal (the Licence Appeal Tribunal) that is not associated with the AGCO. If the registrant does not appeal or loses on appeal, the registration will be revoked.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

The key limitation for all regulated Relevant Products arises from the fact that such products must be provided exclusively by a provincial

government. The lottery corporations in each province will decide which types of products they wish to carry from time to time and are able to change those policy decisions at will. As the providers of the products to the residents of their respective provinces, the provincial government (either through the applicable lottery corporation or through one of its branches (typically Finance)) will exercise significant control over the selection of products, the locations in which the products will be placed, and the marketing that is permitted.

Some unregulated Relevant Products such as fantasy leagues and eSports are in a grey zone as various provincial regulators have taken the position that, in their view, such products contravene the Code. Other unregulated Relevant Products, such as play-for-free games, are only limited by the requirement to comply with laws generally applicable to all service providers in Canada.

2.7 What are the tax and other compulsory levies?

As the majority of private corporations operating in the gambling industry in Canada are, of necessity, merely registered suppliers of gambling products and services to the provincial governments, there are no industry-specific taxes or levies. Such companies are required to comply with generally applicable federal and provincial income tax laws, but there is no separate regime of taxes within the industry.

2.8 What are the broad social responsibility requirements?

As the providers of gambling services in their respective jurisdictions, the provincial lottery corporations have all addressed social responsibility in their regulations and policies, if not in their statutes. Any private companies that provide services to the public on behalf of the lottery corporations are required to conform with those policies and regulations. Those policies generally include training programmes for employees regarding responsible gaming, advising and informing all players concerning responsible gaming and how to make informed choices about products and play in general, and the operation of voluntary exclusion programmes. Once again, using Ontario as an example, the OLG has a Responsible Gambling Centre at all sites, with staff from the Responsible Gambling Council at eight locations; there is mandatory training for all front-line and management staff; and they run a self-exclusion programme that uses technology such as facial recognition. It is a given that minors are excluded from all forms of gambling activity including the purchase of lottery tickets.

While the foregoing is not applicable by statute to unregulated Relevant Products, providers of such unregulated products would be well advised to voluntarily comply with the same policies.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

As noted above, the only entities that can legally supply gambling in Canada are provincial governments (either directly through their respective lottery corporations or through service suppliers to those lottery corporations) and charitable organisations licensed by provincial governments. In all cases, those entities are subject to Canada's anti-money laundering ("AML") legislation (namely (i) the PCTFA, and (ii) Part XII.2 (Proceeds of Crime) of the Code and, in particular, section 462.31 which outlines the offence of laundering the proceeds of crime). At present, virtual currencies are not recognised by any level of government in Canada. They are regulated but only to the extent that virtual currency dealers are required to comply with Canada's anti-money laundering laws.

Having said that, the Canadian Securities Administrators (an umbrella organisation of Canada's provincial and territorial securities regulators) recently issued a guidance document on cryptocurrency offerings which included advice on the application of Canadian securities law to certain types of those offerings.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

There is no accepted legal definition of online, mobile, digital or electronic gaming (for the purposes of this section “digital gaming”) in Canada. Provincial governments, alone or in concert, are permitted to provide any digital gaming activity that they desire, subject only to the restrictions in section 207(4). That section provides that permitted lottery schemes (that is, those that a provincial government may offer) do not include the activities of “bookmaking, pool selling or the making or recording of bets ... on any race or fight, or on a single sport event or athletic contest”. Most provinces have read this to prohibit any type of sports betting other than parlay betting. Legal online sports betting therefore does not permit betting on single games or other types of sporting events. While there is no legislation or case law that specifically criminalises or otherwise prohibits the provision of digital gaming by private companies, it is generally accepted that private digital gaming provided from within Canada for Canadian players will be caught by the prohibitions found in the Code. There is less certainty around the issue of digital gaming provided by persons whose operations are located entirely outside of Canada. To date, there have been no charges laid against any such offshore operator, and so the law in that regard remains untested. Having said that, all levels of government and all of the provincial regulators have taken the position that such operations are illegal and should be closed down.

In the case of unregulated Relevant Products, operators may provide such products from inside or from outside of Canada, although as noted elsewhere in this chapter, fantasy leagues and eSports remain in the grey zone in terms of legality in Canada.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

There are no material restrictions on legal (that is, government-run) digital gaming in Canada. With respect to offshore digital gaming, neither the provincial governments nor the federal government have taken steps to limit access to such sites. While there are presently no statutory or regulatory restrictions on payment processing by such operators, or that constitute internet service provider (“ISP”) blocking, blacklisting or currency restrictions, the Province of Quebec passed legislation in 2016 that would, if in force, require internet service providers to block Quebec residents from accessing private online gaming sites. The Quebec legislation was held by a Quebec court to be unconstitutional in 2018 and thus is currently of no force and effect. As expected, the decision is currently under appeal with the Quebec Court of Appeal. See question 5.1 below for further details.

3.3 What terminal/machine-based gaming is permitted and where?

Provincial governments are allowed to provide any form of terminal or machine-based gaming that they choose. Therefore, all such gaming is “permitted” by law. For policy reasons, there are varying restrictions from province to province with respect to the nature of the games and their locations within the applicable jurisdiction. For example, VLTs are provided to the public by provincial lottery corporations in all provinces other than British Columbia and Ontario. Similarly, provincial lottery corporations provide slot machines in casinos and/or at race-tracks in all provinces other than Newfoundland and Labrador. There are no slot machines available in two of the three territories (Nunavut and Northwest Territories), while they are available in Yukon. Fixed-odds betting terminals (“FOBTs”) have not appeared in Canada, although it would be legal for a provincial lottery corporation to provide FOBTs to residents of their jurisdiction. Private companies are prohibited from operating any type of gambling machine anywhere in Canada except pursuant to a registration issued by a provincial regulator.

The type of payment accepted at these machines is dependent entirely on provincial regulation. Having said that, cards are either strongly recommended or required for AML purposes.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Breaches of the federal Code are a matter of criminal rather than civil law and thus the ambit of liability is, in practice, quite narrow. While the Code is drafted broadly, Canadian courts have exercised their discretion under the principles of statutory interpretation to ensure that such sections are read narrowly, given that they are penal in nature. On the other hand, the courts do not appear to be as concerned by a broad application of section 201(2) which provides that every person found without lawful excuse in a common gaming house or common betting house is guilty of a summary conviction offence. As summary conviction offences are the most minor offences in the Code and typically result in a small fine, courts are willing to convict individuals who are caught in sweeps of illegal sports betting events and large poker operations. The Code makes it possible for directors, officers and senior management to be charged and convicted of a criminal offence with respect to the activities of their corporation pursuant to the sections of the Code concerning aiding and abetting and parties to an offence (sections 21, 22, 22.1, and 22.2).

Breaches of provincial gambling legislation involve, almost by definition, breaches of the requirement to obtain a registration for the supply of gaming services and to comply with the regulations concerning such activity. The service supplier (registered or unregistered, as the case may be) is liable, as well as the directors and officers in some cases. In practice, culpability does not typically flow to individuals if the service was being supplied by a corporation unless there is egregious conduct involved.

4.2 What form does enforcement action take in your jurisdiction?

Prosecution of gaming offences is not common, primarily because of the monopolistic nature of the industry and the resulting lack of private operators. As the legislation governing gaming at the top level is criminal, most prosecutions will be criminal. Provincially, prosecutions are administrative for the most part. On the rare occasion that someone is charged with a gaming-related offence in

Canada, it usually involves illegal card houses or other physical sites that are hosting illegal gaming activities.

4.3 Do other non-national laws impact upon liability and enforcement?

While there are no reported cases in which Canada has attempted to extradite an individual from another country in order to face gambling charges in Canada, Canada has agreed to extradite Canadians to the U.S. to stand trial for gambling offences. There are no reported cases in which a Canadian court has chosen to take jurisdiction over a case involving gambling activities that took place outside of Canada, or over cases involving gambling services provided to Canadians by persons located outside of Canada.

4.4 Are gambling debts enforceable in your jurisdiction?

If the debt is incurred in a legally operated gambling facility, such debts are considered a form of consumer debt and are treated accordingly. However, if the gambling debt is incurred in the course of illegal or private gambling, provincial gaming laws prohibit the use of civil proceedings to collect such debts. As an example, section 47.1 of Ontario's *Gaming Control Act* states that "no person may use civil proceedings to recover money owing to the person resulting from the [sic] participating in or betting on a lottery scheme unless the lottery scheme is authorized under subsection 207 (1) of the Code".

4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

As indicated in question 4.2, the prosecution of gaming offences is uncommon; and in the infrequent circumstance where a party is charged under a gaming-related offence, it typically involves illegal card houses or other physical sites hosting illegal gaming activities. However, in recent years there has also been a particular emphasis on enforcing anti-money laundering laws in connection with gaming facilities. Increased enforcement activity was seen after police investigations showed that gaming facilities were being used as laundromats for proceeds of crime. This was seen to be in large part due to the predominantly cash-based nature of land-based casinos. There have since been prosecutions for AML violations in a number of Canadian provinces, both against individuals who were found guilty of money laundering, and against casino operators who were fined for breaches of government AML protocols.

With respect to the online gaming industry, the provinces and federal government have refrained from ISP blocking, with the one exception of Quebec's unconstitutional legislation as detailed in

question 5.1. To date, there has been no serious discussion of legislation that would prohibit financial institutions including payment processors from moving funds between online gaming sites and Canadian residents.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

The Canadian Gaming Association plans to work with a federal Member of Parliament to, once again, put forward a private member's bill that would amend the Code to permit betting on single sports events. In March of 2019, the Canadian Gaming Association received the support of Ontario's provincial Finance Minister, who made a formal request to the federal Finance Minister that the Criminal Code be amended to legalise single event sports wagering in Canada. There is a modest sense of optimism that this – the third time in which a bill on the subject has been put forward – will lead to a positive amendment to the gaming provisions of the Code.

On the provincial front, the attempt by the Quebec government to block illegal gaming sites moves forward through the courts. To recapitulate, on May 18, 2016, the National Assembly of Quebec passed its budget into law pursuant to an omnibus act (*Loi concernant principalement la mise en oeuvre de certaines dispositions du discours du budget du 26 mars 2015*, L.Q. 2016, ch. 7, hereinafter the "Budget Act"). Section 12 of the Budget Act amended Quebec's consumer protection act (namely *La Loi sur la protection du consommateur*) to put into place a regime whereby ISPs would be required to block Quebec residents from accessing illegal internet gaming sites. On July 27, 2016, the Canadian Wireless Telecommunications Association (on behalf of its ISP members) filed a motion in the Quebec Superior Court requesting that the court find the ISP-blocking provisions to be invalid, primarily on the basis that they are unconstitutional. On September 1, 2016, the CRTC issued an open letter to Canada's Attorney General stating that in the CRTC's preliminary view, the ISP-blocking provisions were very likely unlawful. On July 18, 2018, the Quebec Superior Court issued its judgment finding that the proposed legislation was indeed unconstitutional. On August 21, 2018 Quebec filed a Notice of Appeal with the Quebec Court of Appeal. It is expected that this will be appealed to the Federal Court of Appeal and then, given the significant constitutional issues raised, it will be heard by the Supreme Court of Canada. The conclusion of most legal commentators is that the provisions are certainly unconstitutional and will be struck down, likely on appeal.

Another provincial case that has potential to cause national change began in 2015, with two plaintiffs in Newfoundland and Labrador who commenced an action against the provincial operator, Atlantic Lottery Corporation, claiming that the Crown-owned VLTs are inherently deceptive and breach the Code. The case has evolved into a class-action with approximately 30,000 plaintiffs and is currently on appeal to the Supreme Court of Canada, setting the stage for potential (though, unlikely) criminalisation of certain VLTs nationwide.



Danielle Bush is a partner at the Canadian law firm of Miller Thomson LLP. Ms. Bush provides legal advice and services (including negotiating and drafting software licence agreements, and providing legal opinions) to companies involved in all aspects of the gaming industry including lottery corporations, casino operators, gaming regulators, gaming software companies, payment processing companies, and online gaming operators. She regularly advises clients on a broad range of gaming-related issues including online gaming, sports betting, fantasy sports leagues, and lottery products. Sports betting is a particular interest, as are the related issues of probity, and the prevention and penalisation of match-fixing.

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