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The Phantom of Single Game Betting in Canada

According to estimates by the Canadian Gaming Association (“CGA”), Canadians bet in excess of \$10 billion annually with illegal bookies and another \$4 billion through offshore online sports betting companies, with only 5% of sports betting in Canada being conducted through provincially-regulated betting and lottery schemes.

This money not only represents potential revenue lost to the government, but is also believed to directly contribute to organized crime. As a result, one topic that has garnered considerable attention over the past few years has been the prohibition on single-event betting, by what many view as an antiquated approach under the current legal system.

Beginning with a near-complete prohibition on all forms of gambling in the early days of Confederation, the law has inched slowly forward and now permits, under Section 207 of the Criminal Code of Canada (the “Code”), the “creation” and “operation” of lotteries run by a province or under license by charitable or religious organization in the province. However, despite the evolution of societal attitudes with respect to gaming—a 2012 study conducted by Ipsos Reid found that 64% of Canadians support the legalization of single event sports betting—the law in Canada currently prohibits wagering on the outcome of a single sporting event under section 207(4) (b) of the Code, and instead requires players to place a combined bet on a minimum of three events, all of which the player must correctly predict in order to win—a method of wagering known as parlay betting.

With the gradual shift in public opinion towards gambling and sensing the opportunity to effectively regulate a product that a growing number of Canadians wish to have access to, several attempts have been made to remove the outdated prohibition

on single-game betting in recent years—none of which have, as of yet, borne fruit.

In 2011, Bill C-290 was introduced by means of a private member’s bill. C-290 proposed to amend the Criminal Code to allow for wagering on the outcome of a single sporting event, race or fight. The bill unanimously passed the House of Commons and entered the Senate in March 2012. However, despite seemingly widespread support, the bill languished in the Senate for 3 years, before finally dying on the table with the call of the federal election in 2015. It appears that the primary opposition to the bill came from members of Canada’s Conservative Party who, backed by the support of several major league sports organizations, argued that the bill would jeopardize the integrity of sporting events by making them more susceptible to match-fixing.

Another attempt was made to amend the same provisions of the Code in 2016 with Bill C-221, the Safe and Regulated Sports Betting Act. This time however it was members of the Liberal party who opposed the bill, even though the Liberal members had supported the earlier Bill C-290. In similar fashion, and with the support of the major sports leagues, the Liberal government (with a majority in Parliament) argued that “legalizing single-event sports betting could encourage gamblers to fix games”. Despite claims by its proponents that the bill would have created



or saved at least 250 jobs and brought in a much-needed source of revenue for the government, Bill C-221 failed to pass the House of Commons.

Implications – Where We’re Going

With this latest setback, the door seems to have closed—at least in the immediately foreseeable future—on the legalization of single-event betting in Canada. Joe Comartin, the MP who sponsored Bill C-290 has retired, while Brian Masse, the MP who sponsored Bill C-221 has not indicated whether he would re-introduce the bill after the next election, should he remain a sitting MP. Whether anyone has the appetite to take up the cause remains to be seen.

There are several implications arising from the continued gridlock on this issue. Regardless of the political rhetoric at both the federal and at the provincial level, Canadian politicians cannot continue to shy away from the fact that online sports betting is big business and its acceptance into the mainstream as a valid form of entertainment (along with concomitant revenue generation) is projected to grow consistently for the foreseeable future. It is clear that parlay betting has failed to prove popular with Canadians. Competitive odds, combined with the absence of the requirement to parlay and the ease and plethora of available online sports betting options, means Canadians are increasingly sending revenue to offshore operators that could be going instead into provincial coffers.

The problem is further exacerbated because unless provincial regulators such as Alcohol and Gaming Commission of Ontario are able to regulate and oversee online sports-betting and implement responsible gaming measures to verify the age of participants, implement checks to prevent fraud or add controls to curb addiction, there is little that can be done to regulate the conduct of offshore operators, arguably leaving Canadians vulnerable unless they are using sites already regulated by jurisdictions such as Britain. Ignoring these issues means that revenues which could have been used to promote a safe and responsible experience for players, create jobs and fund programs that provide support or treatment for addiction are lost to foreign operators with no stake in the well-being of Canadians.

Despite a recent survey that indicates that an overwhelming three-quarters (76%) of Canadians agree, either strongly or somewhat, that legalizing single event sports betting would bring in more revenue and allow for greater oversight and regulation

of sports betting, there does not seem to be a clear way forward at this time. Activity surrounding the repeal or amendment of Section 207(4)(b) has stalled and no one at any level of government has, to date, shown any real appetite for raising it again. The reality is that in a world of online sports betting that is growing rapidly and showing no signs of stopping, a failure to respond proactively, in a meaningful manner, will only see more and more Canadians—and their dollars—finding their way (virtually) out of the country.

As Mr. Bill Rutsey said in a CGA Update posted on the Association’s website on February 7, 2017:

“[Single event sports betting] is needlessly illegal in that our current and just past federal governments have both ignored the wishes and requests of the provinces and the will of the majority of Canadians across the country by failing to amend the Criminal Code to allow single event sports betting for purely partisan reasons.

Along with the provinces and the majority of Canadians, single event sports betting has

been supported by the Canadian Chamber of Commerce and the Canadian Labour Congress. The International Olympic Committee, the National Basketball Association, and the Canadian Soccer Association have called for the regulation of sports wagering. Most American professional leagues have changed or softened their position on sports wagering.

Experts in responsible gambling, law enforcement, and amateur sport all believe that bringing regulatory oversight and control to sports wagering is the best way to protect people, athletes, and the integrity of sport. Look at it this way: if no one is watching how do you know what’s going on?”**CGI**

Danielle Bush is a partner at the law firm of Miller Thomson LLP. Ms. Bush specializes in all aspects of gaming law with a particular emphasis on online gaming. Konstantin (Kosta) Starostin is an associate in the Business Law group at Miller Thomson LLP. Kosta has experience with regulatory and commercial matters in a wide range of regulated sectors, with an emphasis on the gaming and alcoholic beverage industries.



Pictured here, clockwise from top left: Robert W. Stocker II, Michael D. Lipton, Peter H. Ellsworth, Dennis J. Whittlesey

Robert W. Stocker II and Michael D. Lipton are Tier I gaming attorneys in Chambers Global and all four lawyers pictured here are listed in Best Lawyers.

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