



BY MICHAEL D. LIPTON AND CHANTAL A. CIPRIANO

# Into the Weeds

How Canada's cannabis regime can help with the legalization of single-event sports betting



*The odds may be tilting in favour of the legalization of single-event sports betting in Canada. Despite the existence of parlay bets, Canada's long-standing federal restriction on single-event sports betting continues to run afoul of an evolving sports landscape and the demands of increasingly savvy bettors. Yet, with the dawn of the Information Age, the shifting legal sentiments of our southern neighbour and a growing black market of domestic and offshore sports bookies, Canada remains laggard when it comes to its betting market.*

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. Further, Canada's reluctance to legalize head-to-head betting is at odds with its recent legalization of recreational cannabis, a substance historically prohibited and treated, in the eyes of many, much worse than gambling. To level the playing field, this article explores how Canada can modernize its antiquated betting provisions in much the same way as was recently implemented with recreational cannabis.

### Single-Event Sports Betting in Canada

*The Criminal Code of Canada* (the "Code"), which sets out the parameters of legal gaming in Canada, prohibits betting on a single sporting event or athletic contest under section 207(4)(b). Predicated upon fears of match-fixing and the social problems associated with gambling, the Canadian ban on single-event sports betting has remained in place since offshore internet gambling became a reality over 20 years ago. For this reason, provincial gaming corporations require customers to bet on a minimum of two or more sporting events, otherwise known as a parlay bet. Despite the publicized betting odds, parlay betting has been coined a sucker's bet since players must correctly predict the outcome of all of the events in order to win. As a result, educated bettors drawn to the flexibility and simple odds of single-event sports betting instead opt for the services offered by offshore operators and illegal bookmakers to satiate their sports gaming appetite.

Widespread throughout all socioeconomic strata of Canadian society, single-event sports betting is big business, and it is finally gaining some much needed attention in Ontario. The recent 2019 Ontario Budget tabled by the Progressive

Conservatives encourages the federal government to reconsider the types of gambling activities permitted in the province, to include single-event sports betting. According to the Ontario Budget, the people of Ontario spend approximately \$500 million per year gambling online, with \$110 million allotted to single-event sports betting, all conducted on illegal websites or by way of other illegal offerings. The Ontario Budget highlights that "it is time to usher Ontario out of the gambling prohibition era and treat the people of Ontario as adults by allowing them to bet on the outcome of a single sporting event."

### Going Head-to-Head with Cannabis

The inability of section 207(4)(b) of the Code in preventing Canadians from engaging in single-event sports betting has not gone unnoticed. In the last ten years, federal lawmakers have twice considered amending the Code, but to no avail. Most recently, NDP MP for Windsor West, Brian Masse, attempted to repeal section 207(4)(b) of the Code through *Bill C-221, The Safe and Regulated Sports Betting Act*.

Bill C-221 — the brevity of which matched the ease of its legislative implementation — proposed to provide provincial governments with the option of permitting single-event sports betting and, if so permitted, the choice of operating the bets by telephone, Internet and/or land-based locations. Proponents argued that Bill C-221 would not only create employment opportunities in the Canadian gaming industry but also stymie organized crime operations linked to illegal bookmakers. Despite garnering broad cross-party support, Bill C-221 ultimately met the same fate as its predecessor Bill C-290 and was defeated in the House of Commons in September 2016. Opposition to the various private members' bills was based in part on the misconceptions that head-to-head betting would worsen gambling addiction among vulnerable groups in Canada and open a Pandora's box of match-fixing, undermining the integrity of sport.

The Canadian federal government's position on single-event sports betting is, even more troublingly, seemingly at odds

with its recent legalization of recreational cannabis. Cannabis, like gaming, was historically banned because of its perceived links to criminal activity and immoral behavior. Interestingly, in both cases, the prohibition regime has failed. Confronted by a "system of marijuana prohibition that does not work," the push for cannabis legal reform spearheaded the successful 2015 election campaign of the Liberal Party of Canada. Following the 2015 electoral win, Prime Minister Trudeau cited two principles for the legalization of cannabis: to minimize underage access to cannabis and to reduce criminal activity surrounding its illegal trade.

This policy rationale is entirely applicable to the legalization of single-event sports betting. Much like cannabis, the underground market of single-event sports betting has long been shielded from liability under a three-decade-old law that, ironically, was originally intended to restrict, rather than expand illicit gambling activities. Canada's newfound stance on cannabis signifies the government's power to amend the law where prohibition has failed to achieve the goal of protecting the public interest. Arguably, the proliferation of organized crime activity alongside the millions of dollars in tax revenue that pour out of the Canadian economy inevitably begets the need for a modernized approach to head-to-head betting.

### Third Time is a Charm?

It may be time for members of Parliament to attempt, for a third time, to table a bill allowing for single-event sports betting. In the past few years, we have witnessed the legal reform of cannabis in Canada gain unprecedented traction as the global shift towards the legalization of recreational cannabis simultaneously emerged. Unlike cannabis, however, Canada's gaming laws sit frozen in time while the international sports betting industry undergoes a major upheaval.

An indicator of the prominence of single-event sports betting is the U.S. Supreme Court's recent decision to strike down the *Professional and Amateur Sports Protection Act* (PASPA) — a law that barred U.S. states from enacting laws that

effectively promoted any kind of sports betting. With the repeal of PASPA, U.S. states are now able to enact laws that legalize and regulate all forms of sports betting. In addition to the uncaptured online betting market, the sports betting landscape south of the 49th parallel will only make it more difficult for Canada's gaming industry to compete. In the wake of the U.S. sports industry stepping out of the shadows and millions of dollars flowing through new U.S. sportsbooks, some Canadian politicians, including the government of Ontario as reflected in the Ontario Budget, and sports leagues have again placed the spotlight on the federal government to modernize the Code by permitting single-event sports bets.

#### **Levelling the Playing Field: Lessons**

##### **Gleaned from Canada's Cannabis Regime**

Despite being slow to play its cards, Canada can still gain a second-mover advantage by learning from U.S. states, such as Nevada, that has both successfully introduced the legalization of recreational cannabis and offers single-event sports betting. Akin to the legalization of cannabis, the repeal of section 207(4)(b) of the Code would task the provincial and territorial governments, albeit on a smaller scale, with creating their own regulatory framework. Head-to-head betting in Canada, much like with cannabis, could be provincially regulated through three different models. One, the government-run model; two, the request-for-proposal model; or three, the free market model (provided the Code is amended to permit a tax and regulate the type of licensure regime).

In practice, provincial governments that adopt the government-run model would enact streamlined legislation permitting their respective lottery and gaming corporations to conduct and manage single-event sports betting. Another option available to the provinces is the request-for-proposal model, which provides regulators with significant control over licensees but enables lottery corporations to conduct and manage the single-event sports betting. It appears from the Ontario Budget that the Ontario government is considering

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this model in relation to online gaming. As noted in the Ontario Budget, the government of Ontario intends to consult with stakeholders to develop a market that “reflects consumer preferences, fosters an exciting gaming experience and minimizes the burden on business while ensuring appropriate protections are in place.”

The first two models, however, raise the important corollary issue of whether provinces are well-equipped to achieve a successful single-event sports betting regime given Canada's newfound need to move quickly. We recently learned from the Canadian cannabis regime that the shortage of the federal supply of cannabis — stemming largely from a limited number of federal licenses granted due to overly cumbersome regulatory approvals — has resulted in a lingering black market. Arguably, the same effect will likely occur with single-event sports betting should provincial models fail to foster a betting market that provides players with the sports betting offerings to which they have grown accustomed.

Alternatively, provinces that adopt the free market model could develop a regulatory scheme for the registration and licensing of private entities seeking to offer single-event sports betting. This model would effectively eviscerate the existing monopoly of the provincial lottery corporations. If such amendment to the Code is enacted, as seen with Ontario's cannabis retail regime, the regulatory hassles of developing a licensing regime in an infant industry may make the free market model a somewhat unattractive option. Nevertheless, these regulatory challenges are arguably offset by the long-term benefits of an open market, namely, the promotion of competition to offer the best products and services while also releasing the pressure on

provincial governments to conduct and manage sportsbooks in a nascent industry in which they have little experience.

#### **Going the Distance**

Should Canada seek to enter this billion-dollar market, it will need to undercut illegal bookmakers. But if Canada keeps dragging its heels, illegal bookmakers will win — pun intended. It is therefore essential that the approach taken by the provinces not only promotes high-calibre service providers but also encourages economic and development efficiencies to the benefit of players. Gaining a competitive edge on illegal and offshore bookmakers is therefore best effected by way of a truly free market. Provinces must also consider whether single-event sports betting, if legalized, will be restricted to land-based locations.

While it remains to be seen what will happen next, it is certain that the shifting legal tides in the sports-betting landscape worldwide are bound to have ripple effects throughout Canada. With the growing disconnect between public sentiment and sports betting offerings, alongside increasing political pressure to move quickly, industry players and bettors alike are hopeful that the legalization of single-event sports betting in Canada will finally be the consensus pick. **CGI**

*Michael D. Lipton, Q.C. is a Senior Partner at Dickinson Wright LLP and Head of the Canadian Gaming Law Group and can be reached at 416-866-2929 or MDLiptonQC@dickinsonwright.com.*

*Chantal A. Cipriano is an Associate in the Canadian Gaming Law Group at Dickinson Wright LLP and can be reached at 416-646-6864 or CCipriano@dickinson-wright.com.*

*We would like to thank our articling student, Era Saraci, for her contribution to this article.*