



BY RON SEGEV

Ontario's Online Gaming Liberalization

Looking into the Crystal Ball



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Ball



The 2019 Ontario budget, released in April of 2019 by the Progressive Conservative government, was noteworthy for a variety of reasons. Those in the iGaming industry immediately zoned in on one segment which lamented the fact that Ontarians are currently spending \$500-million per year mostly on grey-market websites for online gaming.

Consequently, the budget states that the government wants to ensure that “the people of Ontario have access to safe and legal gambling options” and that they plan to do that by the establishment of a “competitive market for online gambling that will reflect consumer choice while protecting consumers who play on these websites”.¹

The Ontario Monopoly

The vow to create a competitive market for online gambling is a marked shift from the current iGaming regime in Ontario. Currently, the Ontario Lottery and Gaming Corporation (OLG) and the Alcohol and Gaming Commission of Ontario (AGCO) are tasked with the administration and regulation of iGaming in Ontario. The OLG is a Crown Corporation owned by the government of Ontario. Companies wishing to provide their iGaming solutions to Ontario register with the AGCO and enter into a commercial agreement with the OLG to become a provider through its PlayOLG.com platform. This can often be a slow and expensive process and companies navigating it are often frustrated that, despite making the good investment in obtaining appropriate registration with the AGCO and offering their solutions through PlayOLG.com, they face competition in the Ontario market against a sizeable, unregulated market.

New Models to Consider

A “competitive market for online gambling,” as mentioned in Ontario’s budget, suggests a shift to competition being allowed for new B2C market participants. A prominent model that Ontario may choose to emulate is the U.K. model. As we know, the U.K. iGaming regime is significantly more liberalized and nimbler than its counterparts in Canada. They allow for both B2B and B2C licenses, opening the UK market to private companies that develop, market and operate their own iGaming platforms in competition with one another and subject to a regulatory framework intended to protect the public interest.

Despite the greater flexibility and speed

with which companies in the U.K. can operate in this space, the government has a highly active enforcement body and a targeted regulatory framework to ensure safe gaming and intended to protect the public interest.² The U.K. has stringent advertising standards through the Advertising Standards Association (ASA) that limit where iGaming ads can be placed and to whom they can be targeted.

Ontario may also emulate the Danish hybrid iGaming model. In preparing this article, we spoke with Troy Ross, President of TRM Public Affairs, a leading Canadian public affairs consultancy in gaming and other regulated industries, who shared his belief that there are strong indicators that Ontario is leaning towards some version of Denmark’s model. Denmark’s online gambling regime is noteworthy because it has not capped the number of online licenses it allows. Denmark has allowed licensees to offer a wide range of gambling products while still tightly enforcing regulations, and still offering a state owned and operated iGaming platform.

Until 2012 the state-owned Danske Spil had a monopoly over gambling activities with local or international companies trying to access the Danish market were restricted from offering games and sports betting services. The 2012 Danish Gaming Act was passed with the purpose of liberalizing while still tightly regulating the gaming market in Denmark. These new regulations allowed for private operators to have access to the Danish iGaming market.

Additionally, the Danish Gaming Act has a focus on protecting underage individuals and other vulnerable people. The Danish Gambling authority, tasked with the role of licensing and regulating their iGaming market, has undertaken strict measures against illegal iGaming, including measures such as blocking payments and ISP disruptions. They also have banned advertisements that promote gambling.³ Consequently, the Denmark model is widely admired. Given the messaging of the Ontario Progressive Conservative Party, and for commercial reasons set out below, it seems as if this model, or some

variation of it, stands a strong chance of being adopted by the OLG.

Likelihood of a Liberalized Ontario iGaming Regime?

The U.K. and Denmark are just two possible models that Ontario can draw inspiration from and the industry is mature enough now so that the OLG and AGCO will not have to re-invent the wheel to get a liberalized framework rolling. But how will it drive this initiative forward?

Ontario’s iGaming offering is currently tied to some degree to those of other provinces. Quebec, Ontario, Manitoba and British Columbia share player liquidity for some games such as progressive slot games like IGT’s Mega Jackpots. While terminating the shared liquidity with those provinces is likely possible, it is also possible that the province is restricted from doing so by agreement or political reasons.

In addition, despite disappointing results commercially, Ontario’s iGaming portal PlayOLG.ca is responsible for a considerable number of jobs which the province may be reluctant to eliminate. Furthermore, PlayOLG.ca has directed approximately \$45 million to the Ministry of Health and Long-Term Care for problem gambling prevention, treatment and research;⁴ government revenue that the province likely will not want to jeopardize by terminating its iGaming offering while it waits for a new regime to take traction and generate replacement revenue for the province.

Of further note, the Ontario government has had a request for proposal (RFP) out for a sports betting platform since 2017 without having chosen a solution.

Taking all of these factors into consideration (the jobs and revenue at stake, the game liquidity ties to other provinces and the time it has taken the province to find certain solutions for its platform) it would make sense for Ontario to adopt a Danish hybrid style model. This would enable it to continue operating its platform and maintain jobs, revenue and ties to other provinces while moving forward with licensing other B2C providers and taxing their

revenue at point of consumption to increase government tax revenue.

What about the other Provinces?

Given the size of the Ontario market, this shift will undoubtedly impact the other Canadian provinces.

Will other provinces follow suit? PlayOLG revenue between May 2017 and May 2018 was \$73.1 million, well behind the revenue of \$180 million brought in by B.C.'s PlayNow, despite B.C. having a third of the population. The need to shift to an alternative model in B.C. may therefore not be as acute. Loto-Québec may similarly not feel an acute commercial need to shift to a new regime. However, if Ontario's new regime shows extraordinary return to the province, these won't be easily ignored.

As discussed above, should Ontario completely abandon its platform the immediate effect on other provinces would be the reduced liquidity in certain games and the possible negative impact on revenue that would result to other provinces. A more material repercussion could be that a liberalized Ontario iGaming framework could also attract more companies to Ontario eager to take advantage of the expanded opportunities, bringing with them jobs and investment dollars. Certainly, other provinces will take note of such positive economic spin-offs. Some may feel compelled to compete for jobs and consider liberalizing their markets for that reason alone.

Another question that arises in a possible opening up of the Ontario market is whether or not new Ontario market participants can take business directly away from other province's — BCLC's Playnow.com or Loto-Québec's EspaceJeux.com, for example. Will Ontario be pulling players away from other provincial platforms?

The April 2002 Supreme Court of Canada decision in Reference re Earth

Future Lottery, ruled that the Criminal Code prohibits internet lotteries directed or made available to purchasers outside the province.⁵ Prince Edward Island had proposed to license a charity to operate an online lottery that would have accepted customers internationally and throughout the rest of Canada. The Earth Future Lottery was intended to operate in all provinces of Canada despite not being licensed by any of those provinces except Prince Edward Island. Both the Court of Appeals in Prince Edward Island and the Supreme Court of Canada found this to be prohibited by the Criminal Code. This ruling could at least stem the tide of players eager to play in Ontario from other provinces. If Ontario does not require it on its own volition, other provinces could take legal action to attempt to compel the province of Ontario to require its iGaming licensees to implement geolocation and geo-fencing technology to ensure that Ontario restrict its licensees to only offer their solutions to players playing from inside Ontario.

OLG's ETA?

The process of iGaming liberalization in Ontario is still in its infancy, which has limited the amount of information available to predict exactly how the shift will occur. The Ontario government has said that as a first stage, they are focusing on speaking with industry stakeholders to develop and shape the market.⁶ It is possible that current gaming licences may transfer to the new regime. This would certainly be a concern for companies who have recently navigated through the process of obtaining registration with the province and negotiating a vendor agreement with the OLG. Those companies may argue that they should have preferential treatment over other companies as a result of having navigated through the process. For example, on May 24, 2019, after the Ontario Budget was released, Scientific

Games renewed its instant games partnership with the OLG through July 2022, which includes offerings on OLG's iGaming platforms.⁷ It would make sense for Scientific Games to request preferential treatment under a proposed new regime in light of this, and certainly preferential treatment over foreign operators who have been active in the Ontario market without having registered with the AGCO. The province will have to iron out these and countless other details prior to adopting the new regime; a time consuming undertaking to say the least.

The best bet at this point, based on all available information, is that the government will move towards a Danish inspired system that places an emphasis on consumer choice, responsible play and consumer protection. However, as of this writing they have published no expected timeline for rollout.

Ontarians spend an estimated \$500 million per year on offshore, grey market gaming websites.⁸ As the Ontario iGaming regime liberalizes, it is likely much of this spending will move back into the province.

These developments make Ontario an essential market to monitor. It has a population of 14.5 million, almost double that of New Jersey and almost equal in size to that of the Netherlands. The ability to reach out more effectively to a market of that size and value in a more unrestricted manner for the first time is a sea change in our Canadian iGaming industry and cannot be ignored. **CGL**

Ron Segev is the founding Partner of Segev LLP, a full-solutions business law firm recognized worldwide as a leading online gaming and betting law firm, and having an expertise in technology, commercial, regulatory, compliance, finance and securities law. He is a General Member of the International Masters of Gaming Law and recognized as a leading gaming lawyer by Chambers & Partners.

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