



BY JACK TADMAN

Block Quebecois: Network Sovereignty and Controlling Remote Gambling in Quebec

Government control over gambling in Canada is exerted at the federal and provincial levels through legislation and enforcement of legislation. Offshore remote gambling presents jurisdictional and enforcement challenges to government control over gambling. These jurisdictional and enforcement challenges have led to offshore remote gambling operators accepting players located in Canada without fear of repercussion from Canadian authorities. As an alternative to criminal and quasi-criminal control over offshore remote gambling, which has not been an effective deterrent, the Quebec government is attempting to control offshore remote gambling by blacklisting and blocking unauthorized remote gambling websites. This exercise of network sovereignty is unprecedented in Canada.

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Government Control over Remote Gambling

The primary source of legislative control over gambling in Canada is federal, in the form of the Criminal Code (the “Code”).¹ All commercial gambling is illegal in Canada, unless the activity falls into one of the permitted exemptions contained in the Code.²

The secondary source of legislative control over gambling in Canada is provincial, in the form of the legislation created by the provinces. The provinces are able to create legislation dealing with most aspects of

gambling but are subject to a number of limitations in the Code.³

Commercial gambling not authorized by the Code or by provincial gambling legislation presents a challenge to government control over gambling. Remote gambling, which is usually provided by entities whose only connection to Canada is the location of the players (referred to in this article as an “offshore operator” or “offshore remote gambling operator”), presents unique challenges related to jurisdiction and enforcement as compared to land-based gambling. To date, no offshore remote gambling operator has been charged with any gambling offences under the Code.

Provincially Offered Remote Gambling

At the time of writing, eight provinces offer

some type of remote gambling through provincial or inter-provincial lottery corporations.⁴ Prior to provincial and inter-provincial lottery corporations providing remote gambling to players located in their respective provinces, offshore remote gambling operators were not directly competing with provincial lottery corporations. At present, provincial and inter-provincial lottery corporations must compete with offshore operators which have numerous advantages including: (i) a head-start attracting players; (ii) offering more favorable odds and payouts; and (iii) being able to offer types of remote gambling that provincial and inter-provincial lottery corporations are prohibited from offering (e.g., single-game sports betting). Accordingly, provincial and inter-provincial lottery corporations are motivated to find effective alternative means to restrict the activities of offshore remote gambling operators.

“Illegal Website Filtering Measure”

Quebec is trying a novel approach (in Canada, at least) to increase its control over offshore remote gambling. In Quebec’s 2015–2016 budget, it unveiled three measures to control offshore remote gambling. The first, and most controversial measure, is to introduce an “illegal website filtering measure.”⁵

According to the Quebec government, the primary reasoning for this measure is that offshore remote gambling operators “do not apply the same responsible gambling rules as Espacejeux.”⁶ They thus pose a risk to the population, especially young people.⁷ The next paragraph begins by stating that “...the measures announced will enable the government to recover revenues that are escaping it...”⁸

In accordance with the first measure to control offshore remote gambling,

in May 2016 the Quebec legislature approved a bill (Bill 74) which would require internet service providers (ISPs) to block remote gambling websites not approved by Loto-Quebec. ISPs which fail to block websites on Loto-Quebec’s list could be fined up to CAD \$100,000 for a first time offence.

Bill 74 has been heavily criticized by numerous stakeholders, including net neutrality proponents, Canada’s telecommunications regulator, ISPs, net neutrality proponents, and legal experts.

Net neutrality is the principle that ISPs should enable access to all content and applications regardless of the source, and without favoring or blocking particular products or websites. Legislated blocking of websites violates this principle. The Canadian federal government, including Prime Minister Justin Trudeau, supports net neutrality.⁹

Canada’s telecommunications regulator is the Canadian Radio-Television and Telecommunications Commission (the “CRTC”). The CRTC’s position is that (i) any blocking of the delivery of content (such as a remote gambling website) to an end-user would require approval of the CRTC and (ii) compliance with legal or juridical requirements – whether municipal, provincial, or foreign – does not in and of itself justify the blocking of specific websites by Canadian carriers, in the absence of Commission approval under the [Telecommunications] Act.

The Canadian Wireless Telecommunications Association (the “CWTA”) is an industry group representing Canada’s telecom providers. The CWTA has challenged the constitutionality of Bill 74 because it (a) usurps the federal government’s authority over telecom matters and (b) forces CWTA members to pay for the cost of policing Loto-Quebec’s blacklist.

As Canadian internet law expert Michael Geist points out, if someone is successful legalizing website blocking for one specific purpose (e.g., blocking offshore remote gambling operators or websites providing pirated materials):

... it is easier to envision governments requiring the blocking of sites that are alleged to infringe copyright or blocking e-commerce sites that are not bilingual or do not pay provincial taxes. If that happens, the open Internet in Canada would be placed at risk of unprecedented government intervention into how Internet providers manage their networks and what sites Canadians are able to access.¹⁰

It is likely that both parties are prepared to take this matter to the Supreme Court of Canada, meaning that it could be years before this matter is resolved.

If the Quebec government is successful, this would be the first example of government-mandated website blocking in Canada. Loto-Quebec and provincial and inter-provincial lottery corporations would have a powerful tool available to control offshore remote gambling. Legislating website blocking also sends a message to other jurisdictions that remote gambling is not lawful in Canada unless provided by provincially or inter-provincially authorized organizations. Unfortunately for the Quebec government, it appears that it has an uphill battle, and, even if successful, it will be years before the matter is actually decided. **CGL**

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1. Criminal Code, R.S.C., 1985, c. C-46.

2. One of the exemptions in the Code grants the authority to conduct and manage most forms of commercial gambling to the provinces.

3. Examples of gambling which the provinces are not permitted to legislate are specific gambling games not permitted by the Code (e.g., single-game sports betting), pari-mutuel wagering (which is federally regulated), gambling on international cruise ships, and certain types of private bets.

4. The eight provinces are: British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, and Quebec.

5. Section G, 2.1, p. 21, The Quebec Economic Plan, March 2015 <http://www.budget.finances.gouv.qc.ca/budget/2015-2016/en/documents/BudgetPlan.pdf>

6. The website conducted and managed by Loto-Quebec (the provincial lottery corporation responsible for conducting and managing gambling in Quebec).

7. Supra note 4.

8. Ibid.

9. See, for example, Canadian Press, Net Neutrality in Canada Should be Enshrined in Law, Activist Says, November 24, 2017, http://www.huffingtonpost.ca/2017/11/24/net-neutrality-in-canada-should-be-enshrined-in-law-activist-says_a_23287277/.

10. Michael Geist, “Quebec Bets on Internet Blocking: New Bill Mandates ISP Blocking of Gambling Websites,” November 13, 2015.