

Ontario's Proposed iGaming Model Affirmed: Non-Canadian Gamers Allowed

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In *Reference re iGaming Ontario*,¹ released on November 12, 2025, the Court of Appeal for Ontario (ONCA) considered whether Ontario's proposed online gaming model, which would allow players in Ontario to participate in games with players outside Canada, would remain lawful under s. 207(1)(a) of the *Criminal Code*.²

The reference questions, which were referred to the ONCA by the Lieutenant Governor in Council on February 2, 2024, by Order in Council 210/2024 (the OIC),³ asked:

"Would legal online gaming and sports betting remain lawful under the Criminal Code if its users were permitted to participate in games and betting involving individuals outside of Canada as described in the attached [Schedule](#)? If not, to what extent?"

Background

Subsection 207(1)(a) of the *Criminal Code* provides that notwithstanding any of the provisions of Part VII relating to gaming and betting, it is lawful for "the government of a province" to "conduct and manage a lottery scheme in that province."⁴

Under Ontario's current internet gaming and sports betting scheme (the iGaming Scheme), internet gaming is offered to players in Ontario by a number of private gaming companies that have entered into agreements with iGaming Ontario (iGO). These private gaming companies that work with iGO (iGO Operators) offer internet games and sports betting to players in Ontario through various websites and mobile applications.

The terms of the agreements between iGO and iGO Operators, which are largely standard and non-negotiable, require that the iGO Operators take steps to limit access to the various websites and mobile applications to players who are physically located in Ontario.

The Proposed Model

The Schedule to the OIC describes a proposed model (the Proposed Model) in which players in Ontario

would be able to participate in peer-to-peer games, including games of chance and mixed chance and skill played for money, and sports betting, involving players outside of Canada. This is referred to as a “pooled” liquidity scheme. Players in other parts of Canada would not be allowed to partake in these games, unless Ontario enters into an agreement with the province or territory where those players are physically located.

Players in Ontario would access games through iGO websites and mobile applications, while players outside Canada would use websites or applications accessible in the jurisdictions where they are physically located. Although these operators would not act as agents of iGO, Ontario would retain authority to approve participating jurisdictions and impose contractual conditions on their involvement.

Positions of the Attorney General of Ontario and the Interveners

Attorney General of Ontario

The Attorney General of Ontario (AGO) advanced multiple arguments to support its position that the Proposed Model complies with s. 207(1)(a) of the *Criminal Code*. The AGO stated that the phrase “conduct and manage a lottery scheme in that province” should be interpreted broadly to permit a province to establish a lottery scheme with international dimensions, provided the scheme is created under provincial legislation and maintains a real and substantial connection to the province. The AGO grounded this interpretation in constitutional principles, noting that lotteries and gaming fall under provincial jurisdiction as matters of “Property and Civil Rights” and “local or private Nature” under ss. 92(13) and 92(16) of the *Constitution Act, 1867*. The AGO argued that the real and substantial connection test, developed in *Unifund Assurance Co. v. Insurance Corp. of British Columbia*,⁵ should determine the scope of s. 207(1)(a) of the *Criminal Code*, allowing provinces to legislate to the full extent of their constitutional authority. The AGO asserted that this approach is well suited to internet gaming as it lacks a single geographic location.

Additionally, the AGO asserted that the Proposed Model would better advance Parliament’s purpose in enacting s.207(1)(a) of the *Criminal Code*, which is to better protect the public and more effectively regulate gaming, by steering players playing in Ontario away from accessing illegal offshore gambling websites.

Interveners

Five entities/groups were granted leave to intervene:

- the Canadian Gaming Association (the Gaming Association);
- Flutter Entertainment plc (Flutter);
- Mohawk Council of Kahnawà:ke (the Mohawk Council);
- NSUS Group Inc. and NSUS Limited (collectively, NSUS); and
- Atlantic Lottery Corporation, British Columbia Lottery Corporation, Lotteries and Gaming

Saskatchewan, and Manitoba Liquor and Lotteries Corporation (collectively, the Lottery Coalition).

Intervenors supporting the Proposed Model (the Gaming Association, Flutter, and NSUS), argued that it does not contravene s. 207(1)(a) of the *Criminal Code* because Ontario would continue to conduct and manage its lottery scheme for players in Ontario. They emphasized that the court should adopt a “dynamic interpretation” of s.207(1)(a) of the *Criminal Code*, arguing that this approach allows the courts to consider technological developments that did not exist when the provision was enacted, which better achieves the legislature’s intent.

Intervenors opposing the Proposed Model (the Lottery Coalition and the Mohawk Council) contended that “in that province” in s. 207(1)(a) of the *Criminal Code* means entirely within provincial boundaries, relying on the precedent of *Reference Re Earth Future Lottery (P.E.I.)*.⁶ They emphasized that the Proposed Model would not be conducted and managed “in the province” of Ontario – rather, it would be conducted “in that province” *and* elsewhere in the world, contrary to s. 207(1)(a) of the *Criminal Code*. Both the Lottery Coalition and the Mohawk Council emphasized that Parliament never intended provincial schemes to include foreign elements and that any such expansion would contravene the *Criminal Code*’s prohibition on foreign lotteries.

ONCA Affirms the Proposed Model and a Broad Interpretation of s.207(1)(a) of the Criminal Code

The Majority’s Position

The majority of the ONCA held that *Earth Future Lottery* is not determinative because it interpreted a different subsection (s.207(1)(b)) of the *Criminal Code* and materially different facts. They also rejected the application of the real and substantial connection test, which governs constitutional limits on provincial legislation. The question was decided using a statutory interpretation analysis and it was concluded that the text of s.207(1)(a) of the *Criminal Code* does not preclude international gaming. The majority held that Parliament’s purpose of decriminalizing and regulating gambling to further public safety favours a broad interpretation of s.207(1)(a) of the *Criminal Code*. They reasoned that Parliament intended to empower provinces to regulate gaming within their borders, and allowing Ontario to manage international play for its residents aligns with that purpose. Accordingly, the majority answered the first reference question in the affirmative, finding the Proposed Model lawful under s.207(1)(a) of the *Criminal Code*, making the second question unnecessary.

The Dissenting Opinion

Justice van Rensburg dissented, stating that, “in that province” imposes a territorial limit requiring the lottery

scheme to be ‘conducted and managed’ entirely within Ontario. Justice van Rensburg did agree with the majority’s conclusion that *Earth Future Lottery* is not binding, and that the real and substantial connection test does not apply.

Justice van Rensburg concluded that the Proposed Model involves a single lottery scheme extending beyond Ontario, and Ontario’s anticipated agreements and operational involvement with foreign operators would contravene the *Criminal Code* prohibitions on foreign lotteries and thus, fall outside the exemption in s. 207(1)(a) of the *Criminal Code*.

Key Takeaways

This ONCA decision permits Ontario to implement a “pooled” liquidity scheme under the conditions outlined in the Proposed Model. It also confirms the legality of the Proposed Model; however, many operational details remaining unspecified. As of this date, leave to appeal to the Supreme Court has not been sought.

The Cassels team regularly advises gaming operators on iGaming in Canada. If you have any questions about the content of this article or how to comply with iGaming rules and regulations, please contact a member of the Cassels [Regulatory Group](#).

¹ Reference re iGaming Ontario, [2025 ONCA 770](#).

² *Ibid* at 1-3.

³ *Ibid* at 1.

⁴ *Ibid* at 3.

⁵ 2003 SCC 40 (CanLII).

⁶ 2002 PESCAD 8, 211 Nfld. & P.E.I.R. 311, aff’d Reference re Earth Future Lottery, 2003 SCC 10, [2003] 1 S.C.R. 123.