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# Another step forward for Internet gaming in Ontario: international pooled liquidity

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## Key Takeaways

- The Ontario Court of Appeal confirmed the legality of a new "pooled liquidity" model for online gaming, allowing Ontario players to engage with players outside Canada.
- The Ontario government can now implement a model that permits peer-to-peer games that include both Ontario and non-Canadian players, enhancing game variety and promoting public safety.
- The decision emphasizes provincial discretion in regulating online gaming, as long as the province continues to "conduct and manage" local player participation.

The Ontario Court of Appeal recently released its decision in *Reference re iGaming Ontario* (the decision). This significant ruling confirms the legality under Canada's *Criminal Code* of Ontario's proposed "pooled liquidity" model (the proposed model) for Internet gaming in Ontario. The proposed model would permit players in Ontario's regulated iGaming market to participate in peer-to-peer games (such as poker or fantasy sports) with players in jurisdictions outside of Canada, and to bet on the outcomes. Currently, in Ontario's regulated iGaming market, players can only play against other players located in Ontario (referred to as a "closed liquidity" model).

The decision paves the way for Ontario to begin implementing the proposed model. It further provides important guidance to other provinces, such as Alberta, which are considering creating their own regulated online gaming markets. Finally, it is a welcome development for Ontario operators and gaming-related suppliers with peer-to-peer offerings.

## Internet gaming in Ontario

Notwithstanding the broad prohibitions against most forms of gambling in the *Criminal Code*, a province is permitted under s. 207(1)(a) "either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme *in that province*, or in that and the other province" [emphasis added].

Relying on this exception, Ontario created a detailed statutory framework regulating Internet gaming in the province. Internet gaming in Ontario is "conducted and managed" by the

province through a statutory corporation — iGaming Ontario (iGO) — which is an agent of the government of Ontario. Private operators offer their online games in Ontario pursuant to operating agreements with iGO, as agents of iGO. This market is regulated by the Alcohol and Gaming Commission of Ontario (the AGCO). The framework was upheld by the Ontario Superior Court of Justice in 2024 in *Mohawk Council of Kahnawà:ke v. iGaming Ontario*.

When Ontario's regulated market launched in April 2022, it was based on a "closed liquidity" model. iGO operators are therefore required under their operating agreements and under the Registrar's Standards for Internet Gaming (the Standards) to take steps to ensure that all players are physically located in Ontario.

## Impetus for the Reference

A "pooled" liquidity model in which Ontario players can face players from other jurisdictions is perceived to provide tangible and intangible benefits for both the government and the operators. Under a pooled liquidity model, operators can offer a richer selection of games that potentially attract more players. A broad range of offerings has the potential to capture more of the Ontario players who would otherwise gravitate to the unregulated market, furthering the province's goals to create a fully regulated market and to protect those players and the public.

Accordingly, the Attorney General of Ontario (the AGO) asked the Ontario Court of Appeal to determine whether online gaming and sports betting would remain lawful under the *Criminal Code* if users were permitted to participate in games and betting involving individuals outside Canada and if not, to what extent?

## Key findings

In concluding that the proposed model was legal, four out of the five judges on the panel of the Court of Appeal held:

- The earlier decision of the Supreme Court of Canada in *Earth Future Lottery*, which upheld, without reasons, the finding of the PEI Court of Appeal that a proposed PEI lottery involving extra-provincial participants did not comply with the *Criminal Code*, was not binding. *Earth Future Lottery* was decided in reference to a different provision of the *Criminal Code*, and the lottery at issue differed substantially from the proposed model.
- While the *Criminal Code* specifically addresses when lottery schemes can be operated in other provinces, it is silent regarding other countries. This silence demonstrates that whether a provincially-run lottery scheme can be linked with gaming in foreign jurisdictions has been left to provincial governments to determine.
- The requirement to "conduct and manage . . . in *that* province" [emphasis added] does not mean that the lottery scheme has to operate physically and exclusively within the province. To the contrary, s. 207(1)(a) of the *Criminal Code* expressly contemplates that a lottery scheme conducted and managed in one province can also involve participants in another province, with that province's consent. Similarly, s. 207(1)(a) should be broadly read to permit in-province gaming to be linked to gaming in foreign jurisdictions pursuant to arrangements with those jurisdictions, provided that the participation of players within Canada remains under the conduct and management of a provincial government.

- The *Criminal Code* explicitly restricts provincial autonomy in respect of other gaming-related issues (such as horse racing or gaming on cruise ships). The fact that it does not do so for other types of gaming demonstrates it intended to leave the involvement of players from foreign jurisdictions open to provincial governments.
- Parliament's purpose in enacting s. 207(1)(a) was to decriminalize and regulate gambling to further public safety, while allowing provincial governments to design models reflecting the varied public sentiment across the country. These purposes favour a broad interpretation which would allow Ontario to regulate the interaction of players in Ontario with players outside Canada.

The majority noted that its conclusion was premised on the assumption that:

- the current framework in Ontario itself complies with s. 207(1)(a) (this determination was previously made by the Ontario Superior Court of Justice in 2024 in the *Mohawk* decision, but it was not appealed)
- players in other Canadian provinces or territories would only be permitted to participate where there is an agreement between Ontario and that jurisdiction and
- iGO will continue conducting and managing Internet gaming in Ontario under the proposed model.

Note that the decision is subject to appeal to the Supreme Court of Canada, which must generally be sought within 30 days.

## Implications and takeaways

The decision is a welcome confirmation that provincial governments enjoy a broad discretion to structure local gaming regulations in light of local public policy considerations and priorities, provided they continue to "conduct and manage" the online gaming involving the Ontario players. To that end, Ontario can opt into larger, "pooled liquidity" arrangements with jurisdictions outside of Canada, in cooperation with those jurisdictions.

As the Court of Appeal noted, the details of how the proposed model would operate were not provided by the AGO. It was "unclear" whether Ontario would "enter into agreements with international operators, foreign state gaming regulators, or foreign jurisdictions; who in the government of Ontario would enter into these agreements; and what requirements would have to be met in such agreements."[1]

Similarly, details of any contractual terms were not identified. The Court noted that such agreements could potentially cover the rules of play between Ontario players and non-Canadian players, the size of maximum bets and rakes, the minimum ages of participating non-Canadian players, requirements for foreign regulators and/or operators to have anti-money laundering policies and requirements that the international operators take specific steps to prevent players located in other provinces or territories of Canada from accessing their websites.[2]

If the decision is not appealed, there will now be a period of time during which the AGCO and iGO will have to consider how to implement the proposed model, taking into account both legal and political considerations. We expect that, in the short term, Ontario will seek to enter into arrangements with major and reputable foreign gaming jurisdictions with existing regulatory frameworks, such as Nevada, New Jersey, and the United Kingdom.

The AGCO will also be tasked with determining what regulatory steps will need to be taken to implement the decision, including amending Standard 3.02, which currently expressly requires operators to ensure that all players are physically located in Ontario. In addition, iGO will have responsibility for determining whether and how to update the Operating Agreement or its policies to allow for international pooled liquidity. Ontario-registered operators and other stakeholders will be monitoring this process carefully.

A decision of an Ontario appellate court is technically not binding in other provinces, although it would likely be viewed as persuasive. As such, it is likely to provide comfort to other provinces, such as Alberta, that are in the process of creating their own regulated market or intend to do so in the future.  It is also a valuable step in ensuring that Ontario players have access to a larger array of online gaming offerings, without the risks of playing in the unregulated market.

Osler has previously acted on behalf of both Flutter Entertainment plc and the Canadian Gaming Association in supporting the legality of the proposed model.

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[1] *Reference re iGaming Ontario*, 2025 ONCA 770, at para. 188.

[2] *Reference re iGaming Ontario*, 2025 ONCA 770, at para. 26.