

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

**IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the
Courts of Justice Act, R.S.O. 1990, c. C.43, by Order-in-Council 210/2024 respecting
permitting international play in an online provincial lottery scheme**

B E T W E E N:

**ATLANTIC LOTTERY CORPORATION, BRITISH COLUMBIA
LOTTERY CORPORATION, AND MANITOBA LIQUOR AND
LOTTERIES CORPORATION**

Appellants
(Intervenors)

– and –

ATTORNEY GENERAL OF ONTARIO

Respondent

– and –

**CANADIAN GAMING ASSOCIATION, FLUTTER
ENTERTAINMENT PLC, NSUS GROUP INC., NSUS LIMITED
AND MOHAWK COUNCIL OF KAHNAWÀ:KE**

Intervenors
(Intervenors)

**FACTUM OF THE APPELLANTS,
ATLANTIC LOTTERY CORPORATION,
BRITISH COLUMBIA LOTTERY CORPORATION, AND
MANITOBA LIQUOR AND LOTTERIES CORPORATION**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. In *Reference re Earth Future Lottery*,¹ this Court unanimously affirmed that for a provincially-licensed lottery scheme to be “in that province” under s. 207(1)(b) of the *Criminal Code*, the lottery scheme must be conducted and managed within the province’s geographical boundaries. In the decision below, the majority of the Court of Appeal for Ontario sidestepped this Court’s decision in *Earth Future* and interpreted identical statutory language differently to permit the Ontario government to launch online lottery schemes in collaboration with international operators, many of which currently operate illegally throughout the rest of Canada.

2. The Ontario Court of Appeal erred in so doing. This Reference concerns a neighbouring clause of the same statutory provision that was at issue in *Earth Future*. That provision, s. 207(1)(a), contains the identical requirement as s. 207(1)(b)—that a “lottery scheme” be “conduct[ed] and manag[ed] ... *in that province*”. Thus, at bottom, the Reference poses a straightforward question of statutory interpretation: Do the words “in that province” in s. 207(1)(a) mean the same as they do in s. 207(1)(b)? The answer should be equally straightforward: Of course they do.

3. As this Court has said time and again, it is “passing strange” that the same words in the same statutory provision could have different meanings.² Yet that is what success for Ontario in this appeal requires, by Ontario’s own admission. And even if this Court looks past the precedential force of *Earth Future*, familiar principles of statutory interpretation drive the same result. The plain meaning of “in that province”, abundant contextual clues from the rest of the statutory scheme, and Parliament’s clear prohibition on foreign gambling operations in Canada all show that “in that province” means what it says.

4. The stakes for Canadians are high. The undisputed evidence shows that the private gambling operators with whom Ontario has already joined hands use their legal platforms in

¹ [2003 SCC 10](#) [“*Earth Future*”].

² *Mitchell v. Peguis Indian Band*, [\[1990\] 2 S.C.R. 85](#) [“*Mitchell*”] at p. 124, *per* La Forest J. (speaking for six of seven justices); see also *Thomson v. Canada (Deputy Minister of Agriculture)*, [\[1992\] 1 S.C.R. 385](#) at pp. 400-401 [“*Thomson*”]; *British Columbia v. Philip Morris International, Inc.*, [2018 SCC 36](#) at para. [30](#).

Ontario as springboards to promote illegal international websites (“**International Sites**”) to Canadians outside Ontario. On these International Sites—the very sites with whom Ontario apparently proposes to “pool liquidity” to support its proposed model—Canadians outside Ontario are invited to gamble in breach of the *Criminal Code*. Although Ontario baldly asserts that Canadians outside Ontario would somehow be barred from participating under its hypothetical scheme (and the Court of Appeal majority predicated its opinion on that claim), no evidence supports it. To the contrary, the record shows the opposite is true today.

5. Some two decades ago, when *Earth Future* was before this Court, an earlier Attorney General of Ontario did not mince words: “The reference now before this Court represents the latest in a line of cases whereby a scheme to conduct gaming activity that by all appearances contravenes both the letter and spirit of the *Criminal Code*, is described by its crafters in a most creative and charitable light, all in an attempt to escape the onerous demands of the criminal law.”³ That admonition is equally appropriate here, even though Ontario has now switched sides and seeks to run from the statutory interpretation it once urged. Ontario’s proposed scheme flouts the *Criminal Code*, and this Court should accordingly answer the first Reference question in the negative.

A. Statutory and Legislative Framework

(i) Parliament Enacted a Comprehensive Ban on Gambling, Subject Only to Limited Exceptions

6. The statutory baseline in Canada is that all organized gambling is illegal. Within Part VII of the *Criminal Code*, ss. 201, 202, 203, 205 and 206 create sweeping prohibitions directed at all forms of gambling and associated activities.⁴

7. Sections 204 and 207 are carefully tailored exceptions to this baseline.⁵ Section 204 exempts from criminal liability a person who becomes a custodian of money associated with a lawful bet, “a private bet between individuals not in any way engaged in the business of betting”,

³ Factum of the Intervener Attorney General of Ontario, *Reference re Earth Future Lottery* (SCC Case No. 29213) (January 30, 2003) [“**AGO Earth Future Factum**”] at para. 11, Appellants’ Book of Authorities [“**ABOA**”], Tab 4.

⁴ *Criminal Code*, [R.S.C. 1985, c. C-46](#) [“*Criminal Code*”], ss. [201-203](#), [205-206](#).

⁵ *Criminal Code*, ss. [204](#) and [207](#).

and certain “pari-mutuel” bets on horse racing. Section 207 exempts certain gambling activities conducted and managed either by a provincial government itself or designated third parties authorized by a provincial government.⁶ The upshot of this legislative scheme is that all organized gambling and gambling-related activity in Canada is presumptively unlawful unless a specific statutory exemption applies.⁷

8. Parliament’s comprehensive prohibition on organized gambling has existed since the *Code* was first enacted in 1892.⁸ While subsequent amendments have widened the scope of certain exceptions, including by permitting provincial governments to assume a more prominent regulatory function in the gambling ecosystem, Parliament has not altered the basic legislative structure of a general prohibition and specific exceptions.

(ii) Parliament’s Comprehensive Ban Extends to Foreign Lotteries

9. Foreign lotteries have long been the subject of opprobrium in Parliament. An express prohibition on soliciting Canadians to participate in foreign lotteries has been part of every iteration of the *Criminal Code* since 1892.⁹ Today, foreign lotteries are excluded from the list of “Permitted lotteries” enumerated among the exceptions in s. 207, and s. 206(7) makes it an offence to engage in various activities in furtherance of a foreign lottery.

10. The distaste for foreign lottery schemes ultimately flows from concerns about an inability to control foreign actors. In 1956, the Final Report on Lotteries issued by a Joint Committee of the Senate and House of Commons described significant fraud and enforcement issues created by foreign lotteries advertising to Canadian players, and reiterated that foreign lotteries were

⁶ *Tsuu T’ina Gaming Limited Partnership v. Alberta Gaming, Liquor and Cannabis Commission*, [2023 ABCA 135](#) at para. [28](#).

⁷ *Siemens v. Manitoba (Attorney General)*, [2003 SCC 3](#) at para. [35](#).

⁸ Final Report on Lotteries, Joint Committee, (July 31, 1956), Record of the Attorney General of Ontario (May 31, 2024) [“**AGO Record**”] Vol. 2 at p. 415.

⁹ House of Commons Standing Committee on Justice and Legal Affairs, 1st Session, 28th Parliament, 1968-1969 (March 11, 1969), excerpts [“**1969 Committee**”], AGO Record, Vol. 2 at p. 455.

“prohibited in Canada”.¹⁰ And when Parliament amended the *Code* to permit lotteries conducted and managed by federal and provincial governments in 1969, then-Attorney General John Turner declared in no uncertain terms that “a foreign lottery remains illegal”.¹¹ As Parliament well understood, the reluctance to allow foreign lotteries in Canada stems from a legislative recognition that there is “no way of controlling the operation of a foreign lottery” and “no way of enforcing the conditions attaching to a foreign lottery”.¹²

11. As shown below, Ontario asks this Court to trust that it will be able to enforce contractual conditions with foreign online gambling behemoths, even while it disclaims any control over those foreign operators.

(iii) Parliament Was Clear that Its ‘Local Option’ Was Confined ‘Within Provincial Boundaries’

12. The exception that is now s. 207(1) was first enacted in 1969.¹³ The provision at the time included eight distinct exemptions from criminal liability. Those exceptions included what has become s. 207(1)(a), which is the clause at issue here, and also s. 207(1)(b), which was the clause at issue in *Earth Future*.

13. Section 207(1)(a) allows “the government of a province, 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, in accordance with any law enacted by the legislature of that province”.¹⁴ This provision has remained largely unchanged since its adoption.¹⁵ Similarly,

¹⁰ Joint Committee of the Senate and House of Commons on Capital Punishment, Corporal Punishment and Lotteries, Final Report on Lotteries (July 31, 1956) [“**1956 Report**”], AGO Record Vol. 2 at pp. 417-418, 423.

¹¹ 1969 Committee, AGO Record Vol. 2 at pp. 455-456.

¹² 1969 Committee, AGO Record Vol. 2 at pp. 459-460.

¹³ *Criminal Law Amendment Act, 1968–69*, S.C. 1968–69, c. 38, ABOA, Tab 3.

¹⁴ *Criminal Code*, s. [207\(1\)\(a\)](#) (emphasis added).

¹⁵ *Criminal Law Amendment Act, 1968–69*, S.C. 1968–69, c. 38, ABOA, Tab 3. The provision was subsequently amended to make minor changes for grammar and clarity. See Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 31 (4 December 1985), excerpts, AGO Record Vol. 2 at p. 625, and *Criminal Code*, s. [207\(1\)\(a\)](#).

s. 207(1)(b) allows “a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme *in that province* if the proceeds from the lottery scheme are used for a charitable or religious object or purpose”.

14. The addition of s. 207(1) and its various exceptions in 1969 was prompted by a desire to reduce the appeal of illegal foreign lotteries advertising in Canada by allowing for a competing “local option”.¹⁶ Thus, Parliament exempted from criminal liability lottery schemes conducted and managed by either the provincial or federal governments, or certain local operators (such as charitable organizations) acting under a government licence. Still, it was clear that Parliament had in mind territorial boundaries on the scope of the new “local option”. In leaving it “to the regions”, Attorney General Turner explained, “provincial Attorneys General have control over whether or not there should be lotteries permitted *within provincial boundaries*.”¹⁷ Where a province established a lottery scheme, the materials, advertising, and marketing in service of the scheme would be restricted to “within the province concerned” and prohibited “outside the province which has allowed it unless the receiving province also consents.”¹⁸

15. Part VII of the *Code* was amended again in 1985 to define certain aspects of the provincial authority to conduct and manage lottery schemes, and, in exchange for payment to the federal government by the provinces, to repeal the authority of the federal government to operate its own lottery schemes.¹⁹ The 1985 amendments also permitted provincial governments to conduct and manage lottery schemes operated on or through a computer or video device—a power which would eventually come to include online gambling.

¹⁶ Bill C-150, Criminal Law Amendment Act, 2nd Reading, House of Commons Debates, 28-1, vol. V (January 23 and 27, 1969 and February 11 and 13, 1969), excerpts, AGO Record Vol. 2 at p. 440.

¹⁷ 1969 Committee, AGO Record Vol. 2 at p. 457.

¹⁸ 1969 Committee, AGO Record Vol. 2 at p. 455.

¹⁹ Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 31 (4 December 1985), excerpts, AGO Record Vol. 2 at pp. 619-627.

16. Amid these changes, the legislative record arising from the 1985 amendments again underscored the territorial restrictions imposed on provincial lottery schemes in 1969. In commenting on the government’s proposed amendments, the Department of Justice explained that the liability exemption was limited to the authority of provincial governments “to control gaming *within their boundaries*”, and that “[t]he policy of the federal government since 1969 has been to extend to the provincial governments the right to control these activities *within their boundaries*”.²⁰ The Department of Justice also acknowledged the responsibility that “the provincial government has over activities *within their boundaries*”.²¹ In short, the federal government assured Parliament that provincial authority would still be circumscribed by provincial borders.

17. Importantly, the 1985 amendments did not broaden the exemption in s. 207(1)(a) or otherwise reverse the federal government’s broad prohibition of gambling. These amendments simply repealed the exemption permitting the federal government to run a state lottery. As a result, provincial governments were not (and are not) permitted to license and regulate any and all forms of gambling. They are only permitted to operate or authorize lottery schemes that fall within the four corners of s. 207(1)(a) and its related exemptions from criminal liability.

18. The Canadian gambling landscape has undergone a number of other changes in the intervening years. For example, in 2021, Parliament passed the *Safe and Regulated Sports Betting Act*, which amended s. 207(4)(b) of the *Code* to permit single-event sports betting in Canada.²² At the same time, a significant portion of gambling by Canadians has moved online, driven in large part by restrictions imposed in response to the COVID-19 pandemic. The shift to online gambling has come with an attendant increase in illegal, private gambling platforms advertising to and soliciting bets from Canadians.²³ But notwithstanding these changes, Parliament has left the

²⁰ Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 32 (11 December 1985), AGO Record Vol. 2 at p. 639 (emphasis added).

²¹ Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 32 (11 December 1985), AGO Record Vol. 2 at p. 639 (emphasis added).

²² *Safe and Regulated Sports Betting Act*, [S.C. 2021, c. 20](#).

²³ Affidavit of William Hill (sworn April 8, 2024) [“**Hill Affidavit**”] at paras. 24-25, Record of the Canadian Lottery Coalition [“**CLC Record**”] at pp. 8-9.

prohibition on foreign lotteries in s. 206(7) and the territorial boundaries intended in s. 207(1)(a) undisturbed on the multiple occasions in which it has reviewed Part VII of the *Code*.

B. The Canadian Lottery Coalition

(i) The CLC Seeks To Combat Illegal Online Gambling

19. The Appellants, Atlantic Lottery Corporation, Manitoba Liquor and Lotteries Corporation, and the British Columbia Lottery Corporation (collectively, the “**CLC Members**”), are provincial and regional crown corporations dedicated to promoting safe and responsible gaming, conducting and managing commercial gambling, and supporting social programs and other important government initiatives with the profits generated from lawful gambling in their respective jurisdictions.²⁴

20. The CLC Members were established to conduct and manage provincially run lottery schemes under s. 207(1)(a). They each operate under statutes established by legislation in their respective provinces, and possess the sole legal authority (or act as agent to the provincial lottery corporation with such legal authority) to conduct and manage online lottery schemes in those provinces.²⁵

21. The CLC Members, together with Loto-Québec,²⁶ make up the Canadian Lottery Coalition (“**CLC**”). The CLC was formed in 2022 in response to concerns arising from private operators illegally promoting their online gambling offerings to residents in the jurisdictions of the CLC Members and other provinces in Canada.

22. These unlawful operators harm Canadians by diverting profits earned illegally from Canadian players—estimated at \$1.86 billion in 2023 alone—from important social services and government programs funded by revenues from the CLC Members.²⁷ Illegal online gambling

²⁴ Hill Affidavit at paras. 6-12, CLC Record at pp. 3-4.

²⁵ Hill Affidavit at paras. 13, 15, CLC Record at pp. 4-5.

²⁶ Loto-Québec did not participate in the decision below, but anticipates filing a motion under Rule 18 to be added as a party in this appeal. If the motion is granted, Loto-Québec would join this factum.

²⁷ Hill Affidavit at para. 24, CLC Record at pp. 7-8.

platforms are not subject to any meaningful control, oversight, regulation or review, and create grave risks of problem gambling, fraud, cheating, and money laundering.²⁸ There is no requirement for these platforms to implement age-of-majority controls, responsible gambling features, or regularly report on their finances.²⁹ Ultimately, these platforms are not accountable to Canadians.

(ii) The CLC Members Solved the Need for ‘Liquidity’ in Online Gambling Without Resorting to International Play

23. To keep pace with the growing popularity of online gambling, the CLC Members have established their own online gambling websites. To respect the limitations of their authority under s. 207(1)(a), those websites are “geo-blocked” such that they are only available to persons physically present within their provincial boundaries.³⁰ In British Columbia, for example, residents can participate in online gambling through PlayNow, but that website is inaccessible to a person accessing it from, say, Ontario or New York.³¹ In Nova Scotia, residents can participate in online gambling through ALC.ca, but that website is inaccessible to someone accessing it from, for example, Manitoba or Milan.³² These platforms are the only legal gambling websites within these respective provinces.

24. Recognizing the need for a critical mass of players in certain games, the CLC Members share player pools and funds (that is, “liquidity”) among residents of the participating provinces for certain games in accordance with agreements between the provinces.³³ Liquidity is important in peer-to-peer games, like poker, and certain types of betting, like fantasy sports, because the

²⁸ Affidavit of Jesse Todres (sworn May 31, 2024) [“**Todres Affidavit**”] at paras. 51-52, AGO Record Vol. 1 at p. 41; Affidavit of George Sweny (sworn May 31, 2024) [“**Sweny Affidavit**”] at para. 32, AGO Record Vol. 1 at pp. 367-368.

²⁹ Hill Affidavit at para. 32, CLC Record at p. 11.

³⁰ Hill Affidavit at para. 13, CLC Record at pp. 4-5.

³¹ Supplemental Affidavit of William Hill (sworn June 21, 2024) [“**Hill Supplemental Affidavit**”] at Exhibits 10-12, CLC Record at pp. 182, 192, 203.

³² Hill Supplemental Affidavit at Exhibit 9, CLC Record at p. 151.

³³ Hill Affidavit at para. 37, CLC Record at p. 13.

players' own bets create the betting pool that is available to be won.³⁴ Without a critical mass of players, such games will ultimately be unattractive and unworkable. The pooling arrangements among the CLC Members directly address these issues.

C. Ontario's Online Gambling Regime and the Reference Proposal

(i) Ontario's Privatized Online Gambling Regime

25. In 2021, Ontario established a novel regime for the regulation of private online gambling operators in the province. Operators would enter into agreements and register with iGaming Ontario (“iGO”), then a wholly-owned subsidiary of Ontario’s gambling regulator, the Alcohol and Gaming Commission of Ontario (“AGCO”).³⁵ Under these agreements, private operators act as agents of iGO in their advertising and offering of gambling products and platforms. There are dozens of iGO operators, with brand names such as Bet365, Betway, and Bet99—familiar from their ubiquitous advertising to anyone who has watched sports, travelled on public transportation in Ontario, or accessed social media.³⁶

26. iGO operators are permitted to offer a variety of popular casino games and sports betting options through their online platforms, including “peer-to-peer” games, such as poker, and daily fantasy sports. In peer-to-peer games and daily fantasy sports, it is important to have sufficient liquidity (as described above), which can be challenging in off-peak hours.³⁷

27. This Reference arises because, under its current regime, Ontario does not allow operators to “pool” liquidity with games offered outside of Ontario, and iGO operators do not wish to pool liquidity with other iGO operators, who are their competitors.³⁸ This problem has grown worse as

³⁴ Todres Affidavit at paras. 36-38, AGO Record Vol. 1 at p. 37; Sweny Affidavit at para. 16, AGO Record Vol. 1 at p. 364.

³⁵ iGO has since been continued as a Crown corporation by the *iGaming Ontario Act, 2024*: see *Reference re iGaming Ontario*, [2025 ONCA 770](#) [“**Decision**”] at para. 13, footnote 4.

³⁶ Hill Affidavit at para. 21, CLC Record at p. 7. For a current listing, see iGaming Ontario, “What Sites Are Regulated For Play In Ontario?”, <https://igamingontario.ca/en/player/regulated-igaming-market>.

³⁷ Todres Affidavit at para. 37, AGO Record Vol. 1 at p. 37.

³⁸ Todres Affidavit at para. 39, AGO Record Vol. 1 at p. 38.

the number of iGO operators has climbed into the dozens, reducing the number of individual players on any individual website.³⁹ As iGO's General Counsel explained in the court below:

This means that, at any given time, an individual seeking to play poker through igaming is likely to have fewer tables available to play on; fewer participants at those tables; fewer varieties of poker to play; and smaller betting pools than they would on a gaming site using a pooled liquidity model. The player would not have access to the higher-value, larger-scale poker tournaments offered on gaming sites which benefit from pooled liquidity.⁴⁰

28. In adopting a unique online gambling regime with private operators acting as agents, Ontario made the choice to forgo the possibility of reaching open liquidity agreements with other provinces who have not adopted a similar framework. Unlike the CLC Members, Ontario has not entered into any agreements with other provinces in Canada to create a pooled liquidity lottery scheme for peer-to-peer games that would expand the size of the "pot" available to players.⁴¹ It has not, for example, entered into any agreement with Loto-Québec to create a pooled liquidity scheme in Canada's two most populous provinces.⁴²

(ii) Ontario's Online Gambling Regime Turns a Blind Eye to Illegality

29. Ontario's private online gambling market went "live" on April 4, 2022. Under the new regime, existing operators who were illegally advertising to and soliciting players throughout Canada, including Ontario, were given until October 31, 2022 to register and enter into agreements with iGaming Ontario to lawfully provide online gambling products to residents of Ontario.

30. The AGCO and iGaming Ontario did not, and do not, require corporate affiliates of iGO operators to cease their illegal operations in the rest of Canada as a condition of participating in the Ontario market. Instead, Ontario acknowledges and approves of the use of "purpose built" subsidiaries that allow private gambling operators to offer their platforms to participants in Ontario

³⁹ Hill Affidavit at para. 36, CLC Record at p. 12.

⁴⁰ Todres Affidavit at para. 44, AGO Record Vol. 1 at p. 39; see also Sweny Affidavit at para. 29, AGO Record Vol. 1 at p. 367.

⁴¹ Hill Affidavit at para. 37, CLC Record at p. 13.

⁴² Todres Affidavit at para. 32, AGO Record Vol. 1 at p. 36.

through an iGO domain (an “iGO Site”).⁴³ At the same time, many private operators with a global presence direct a separate subsidiary under the same corporate umbrella, using the same brand, to continue operating illegally in the other provinces of Canada and the rest of the world through their affiliated International Site.⁴⁴

31. For example, at the same time it offers the PokerStars.ca site in Ontario, Flutter Entertainment plc, a major global online gambling operator, offers the PokerStars.com International Site in other provinces, soliciting bets from Canadians from coast to coast (except Ontario). If players in provinces other than Ontario attempt to access PokerStars.ca, they are directed to PokerStars.com.⁴⁵ The same is true of more than a dozen other leading iGO operators and their affiliated International Sites.⁴⁶ On all but one of these International Sites, Canadians outside Ontario are able to register, deposit funds, and place bets—all in obvious violation of the *Criminal Code*.⁴⁷

32. iGaming Ontario has been clear that it does not conduct any kind of due diligence or investigation as to the activities of iGO operators or their affiliates outside Ontario and that it does not otherwise monitor these activities.⁴⁸ Consequently, the affiliates of iGO operators have continued to advertise and operate illegally throughout the rest of Canada, including in the jurisdictions of the CLC Members.⁴⁹

⁴³ Todres Transcript, Joint Brief of Transcripts of Cross Examinations [“JBT”] at pp. 78-79, qq. 190-191.

⁴⁴ See Affidavit of Ning Fung Tse (sworn June 21, 2024) [“Tse Affidavit”], Chart at para. 5, CLC Record at pp. 281-282; Sweny Transcript, JBT at p. 344, qq. 127-130, p. 349, q. 153.

⁴⁵ Tse Affidavit, Chart at para. 15, CLC Record at p. 289.

⁴⁶ Tse Affidavit at para. 12(a) and Chart at para. 17, CLC Record at pp. 284, 288-289.

⁴⁷ Tse Affidavit at para. 11, CLC Record at pp. 283-284; see also *Manitoba Liquor and Lotteries Corporation v. IL Nido Ltd. et al.*, [2025 MBKB 89](#) at paras. [8](#), [10](#), [23](#) (“As noted, the *Criminal Code* prohibits all gambling in Canada that does not fit within the specified statutory exception. No such exception applies to [online gambling operator] Bodog.”)

⁴⁸ Todres Transcript, JBT at p. 89, qq. 216-217.

⁴⁹ Tse Affidavit, Charts at paras. 5, 15, CLC Record at pp. 281-281, 288-289.

33. Flutter, which provided evidence in the court below at Ontario’s request, conceded that it has the ability to geo-block Canadians outside Ontario from accessing its International Site. In fact, Flutter routinely geo-blocks persons from certain other jurisdictions—Russia, for example—from accessing its International Site.⁵⁰ But Flutter has no interest in doing so when it comes to Canadians outside Ontario.⁵¹ It earns approximately 50 percent of its Canadian revenues from provinces and territories other than Ontario.⁵² Ironically, the only Canadian geo-blocking that Flutter has been willing to engage in on its International Site is to ensure that persons *in Ontario* do not access the International Site—because permitting persons in Ontario to access the International Site would run afoul of iGaming Ontario’s rules.⁵³

34. The last several years have been good for business for the International Sites. Between 2020 and 2023, illegal online gambling revenues generated from Canadians outside Ontario are estimated to have increased by approximately 40 percent.⁵⁴ Throughout that period, numerous International Sites have misrepresented their legality to Canadians outside of Ontario, and they have remained unaccountable to any Canadian regulator.⁵⁵

(iii) Ontario’s Proposed Model Seeks To Solve Its ‘Liquidity’ Problem by Incorporating International Players into Its Games

35. To solve its liquidity problem, Ontario has proposed—and now seeks judicial blessing for—a hypothetical online gambling model in which Ontario players 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”.⁵⁶ In plain terms, as evidence put forward

⁵⁰ Sweny Transcript, JBT at pp. 380-382, qq. 304-310, Cross-Examination Brief of George Sweny (September 6, 2024) [“**Sweny Cross Brief**”], Tab 3, JBT at p. 574.

⁵¹ Sweny Transcript, JBT at pp. 382-383, qq. 311-314.

⁵² Sweny Transcript, JBT at p. 408, qq. 431-434; Sweny Cross Brief, Tab 7, JBT at p. 794.

⁵³ Sweny Transcript, JBT at pp. 382-383, qq. 312-314; Todres Affidavit at para. 32, AGO Record Vol. 1 at p. 36; Todres Affidavit, Exhibit “C”, Rule 3.02, AGCO Registrar’s Standards for Internet Gaming dated February 28, 2024, AGO Record Vol. 1 at p. 80; Todres Transcript, JBT at pp. 57-58, qq. 134-139.

⁵⁴ Hill Affidavit at para. 24, CLC Record at pp. 7-8.

⁵⁵ Hill Affidavit at para. 32, CLC Record at p. 10.

⁵⁶ Schedule to the Order-in-Council 210/2024 dated February 2, 2024, [“**Schedule**”], AGO Record Vol. 1 at p. 12.

by Ontario in the court below attests, “[u]sing poker as an example, a player in Ontario would be able to sit down at a virtual poker table and compete with players from around the world.”⁵⁷ In the context of daily fantasy sports, participants from Ontario and players from the rest of the world would be competing in the same “league” with the same ruleset. Thus, whatever form Ontario’s proposed model ultimately takes, the key point is that players in Ontario and around the world would still be competing against each other on common terms—in the same game, in the same league, and so on.

36. The Schedule to Ontario’s Order-in-Council 210/2024 asserts that the games including players outside of Canada would be offered through the platforms of international private operators that are the affiliates of the iGO operators under Ontario’s current regime.⁵⁸ Though Ontario’s proposal does not identify specific international platforms that would be included in the model, there is every indication that Ontario means to partner with the international affiliates of current iGO operators who today operate the International Sites that illegally solicit Canadians outside Ontario.⁵⁹

37. In contrast to the regulations imposed on iGO operators in the current regime, the Schedule also explains that Ontario essentially disclaims responsibility for management of the International Sites included in its proposed model. The international private operators running the International Sites would not be agents of Ontario, or conducted and managed by Ontario, and would instead be subject to the rules and regulations of their respective jurisdictions.⁶⁰ For example, while iGO Sites must confirm a player’s age, identity, eligibility, and location, and comply with any responsible gambling and anti-money laundering provisions described in Ontario regulations, such “key aspects of [iGO’s] conduct and management of the iGO Sites” would *not* apply to International Sites.⁶¹ Thus, there can be no assurance that Canadians outside Ontario would, in fact, be barred

⁵⁷ Sweny Affidavit at para. 22, AGO Record Vol. 1 at p. 365.

⁵⁸ Schedule, AGO Record Vol. 1 at p. 12.

⁵⁹ Schedule, AGO Record Vol. 1 at p. 12; see also Todres Transcript, JBT at pp. 129-130, q. 305.

⁶⁰ Schedule, AGO Record Vol. 1 at p. 13.

⁶¹ Schedule, AGO Record Vol. 1 at p. 13.

from the International Sites. In fact, when asked to confirm this fact in the proceedings below, Flutter's representative demurred and replied that Ontario's model had not been defined.⁶²

D. The Decision Below

(i) Procedural History

38. Ontario referred the questions in this Reference to the Court of Appeal for Ontario by the Order-in-Council and attached Schedule dated February 2, 2024. The Reference questions 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?

39. On February 29, 2024, Ontario submitted a Statement of Particulars.

40. On May 3, 2024, Justice van Rensburg granted leave to intervene to the CLC Members and a number of other interested parties, including parties representing the interests of the international operators with whom Ontario intends to partner. On July 21, 2024, Justice van Rensburg also granted leave to the CLC Members to file the entirety of the proposed evidentiary record and provided for the cross-examination of affiants. Ultimately, Ontario and the CLC Members were the only parties who provided evidence to the Court and the CLC Members functionally served as respondents in the proceedings below.

(ii) The Majority's Opinion

41. A majority of the Court of Appeal answered the first Reference question in the affirmative and, as a result, considered it unnecessary to answer the second question.

42. The majority disagreed with the CLC Members that this Court's treatment of the phrase "in that province" in s. 207(1)(b) in *Earth Future* was determinative of the scope of the exemption

⁶² Sweny Transcript, JBT at p. 405, qq. 418-419.

under s. 207(1)(a).⁶³ It likewise rejected Ontario’s submission that “in that province” should be interpreted to import the “real and substantial connection” test.⁶⁴

43. Instead, the majority preferred its own approach. Most significantly, in the majority’s view, a textual analysis of s. 207(1)(a) favoured a permissive interpretation: though “Parliament did not expressly state that a provincially-run lottery scheme can be linked with a foreign country with the permission of that country’s government ... neither did it expressly prohibit all such international linkages.”⁶⁵ The majority also concluded that a contextual analysis of s. 207(1)(a) supported the legality of Ontario’s proposal. Finally, the majority concluded that Ontario’s proposed model aligned with Parliament’s purpose in enacting s. 207(1)(a), which was to “replace federal criminalization of lottery schemes with provincial regulation, thereby minimizing harm and empowering the provinces to make gaming policy within the broad parameters established by the *Criminal Code*.”⁶⁶ Accordingly, the majority concluded that Ontario’s proposed model was lawful and answered the first Reference question in the affirmative.

(iii) The Dissenting Opinion

44. Justice van Rensburg dissented. Although she agreed that *Earth Future* was not dispositive and that the “real and substantial connection” test could not be used to interpret the meaning of “in that province” in s. 207(1)(a), she disagreed with essentially every other aspect of the majority’s statutory analysis and preferred the arguments advanced by the CLC Members.

45. Most significantly, Justice van Rensburg reasoned that the majority’s analysis had incorrectly reframed the interpretive question as whether there was “anything in s. 207(1)(a) that would *prevent* a provincially-operated scheme from linking with an international scheme”.⁶⁷ In her view, in the context of a blanket prohibition on gambling with specific exemptions, the starting point of the relevant inquiry is whether anything in the text or context actively *permits* an

⁶³ Decision at para. [88](#).

⁶⁴ Decision at para. [124](#).

⁶⁵ Decision at para. [148](#).

⁶⁶ Decision at para. [183](#).

⁶⁷ Decision at para. [280](#) (emphasis added), *per* van Rensburg J.A., dissenting.

international lottery scheme.⁶⁸ Justice van Rensburg found no such permission in the scheme, and she concluded that Ontario’s proposed model ran afoul of each of the four requirements of the s. 207(1)(a) exemption, including the requirement that Ontario conduct and manage each lottery scheme “in that province”.

PART II – STATEMENT ON QUESTION AT ISSUE

46. The Reference questions before this Court are as stated in the Order-in-Council:

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?

47. This Court should answer the first Reference question in the negative. As to the second question, as was the case in *Earth Future*, Ontario’s proposed model invites international participation such that the lottery schemes that Ontario seeks to operate would not be conducted and managed in Ontario. In the result, Ontario’s proposed model falls outside the criminal exemption provided by s. 207(1)(a) and cannot be saved.

PART III – STATEMENT OF ARGUMENT

A. Ontario’s Novel Proposal To “Pool Liquidity” with International Players Contravenes Section 207(1)(a)

(i) *Earth Future* Resolves This Reference

48. In approaching the Reference questions, this Court does not write on a blank slate. *Earth Future* controls the answers to the Reference questions and should be followed here.

49. The key question in *Earth Future* was whether a Prince Edward Island-based charitable lottery scheme that sold lottery tickets over the internet to individuals around the world complied with the requirement under s. 207(1)(b) that the lottery scheme be “conduct[ed] and manage[d] ... in that province.” As the Prince Edward Island Supreme Court (Appeal Division)⁶⁹ explained, the “[k]ey aspect” of the lottery scheme that generated the reference question there was that “persons

⁶⁸ Decision at paras. [286](#), [290](#), *per* van Rensburg J.A., dissenting.

⁶⁹ Now styled as the Prince Edward Island Court of Appeal.

physically located outside Prince Edward Island” would be able to “participate in the lottery using its interactive website through their home computers”.⁷⁰

50. Interpreting Parliament’s command in s. 207(1)(b) that the lottery scheme must be conducted “in that province” (*i.e.*, in Prince Edward Island), the *Earth Future* court concluded that the proposed scheme could not pass muster. As Chief Justice Mitchell elaborated:

In my view the above stated plan to “**conduct**” the lottery **in the global market** would render the scheme ineligible for licensing under s-s. 207(1)(b). ... [C]onducting a lottery “**from**” Prince Edward Island is not the same as conducting it “**in**” Prince Edward Island. A lottery conducted **from** Prince Edward Island is not necessarily conducted **in** the province. Here the intent is to conduct a lottery throughout the world. Subsection 207(1)(b) requires that the lottery scheme be conducted and managed **in** the province, **not just from the province**.⁷¹

51. On appeal to this Court, nine justices unanimously affirmed the decision of the PEI court “substantially for the reasons of the Chief Justice of Prince Edward Island”, without even seeing the need to call on the respondents.⁷²

52. *Earth Future*’s statutory analysis applies here with equal force. There is no dispute that the relevant language in both ss. 207(1)(a) and 207(1)(b)—“to conduct and manage a lottery scheme **in that province**”—is identical. What is more, the *Earth Future* court noted that “extra-provincial and international lottery sales transactions are not permitted by s-s. 207(1)(b) **or by any other provision of s. 207**”, which would include s. 207(1)(a).⁷³

⁷⁰ *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#) at para. [10](#) (emphasis in original) [**“Earth Future (C.A.)”**], *aff’d Earth Future*.

⁷¹ *Earth Future (C.A.)* at para. [10](#) (emphasis in original).

⁷² *Earth Future* at para. [1](#).

⁷³ *Earth Future (C.A.)* at para. [13](#) (emphasis added). Similar language also exists in s. [207\(1\)\(c\)](#) of the *Criminal Code* (“to conduct and manage a lottery scheme in a province”), s. [207\(1\)\(d\)](#) (“to conduct and manage a lottery scheme at a public place of amusement in that province”), and s. [207\(1\)\(f\)](#) (“to conduct and manage in the province”).

53. As a result, the same, straightforward interpretive exercise that dictated the outcome in *Earth Future* dooms Ontario’s proposal. Just like the proposal in *Earth Future*, Ontario’s proposal includes both players “in” Ontario **and** players “in” other jurisdictions across the world. To reiterate, as one of Ontario’s own affiants explains: “Using poker as an example, a player in Ontario would be able to sit down at a virtual poker table **and compete with players from around the world.**”⁷⁴ Indeed, even the Reference questions themselves stipulate that Ontario’s proposal involves individuals in Ontario “**participat[ing] in games ... involving individuals outside of Canada**”. Thus, and critically, the Ontario player and international players would be playing in a single game, which constitutes a single “lottery scheme” under s. 207(1)(a).⁷⁵ As a result, Ontario’s proposal cannot be said to be conducted and managed “in that province”, for the same reasons that PEI’s proposal was not conducted and managed in PEI. This Court need go no further to resolve this case.

(ii) The Court of Appeal Erroneously Distinguished *Earth Future*

54. The Court of Appeal offered two reasons for declining to apply *Earth Future* to Ontario’s proposal.⁷⁶ Both are legally unsound.

55. *First*, the Court of Appeal found it significant that *Earth Future* concerned the “different circumstances” of a charitable lottery scheme under s. 207(1)(b), as compared with a lottery scheme conducted and managed by a province itself under s. 207(1)(a). In the Court of Appeal’s view, there was good reason to think that s. 207(1)(a) “must be interpreted more broadly and applied with greater deference given the need to respect provincial sovereignty”.⁷⁷

⁷⁴ Sweny Affidavit at para. 22, AGO Record Vol. 1 at p. 365 (emphasis added).

⁷⁵ For a further discussion of the significance of the definition of “lottery scheme”, see the discussion *infra* at paras. 59-65.

⁷⁶ Nevertheless, the Court of Appeal correctly concluded that *Earth Future* was binding on lower courts, although certain parties had argued otherwise below. See Decision at paras. [89-90](#).

⁷⁷ Decision at para. [100](#).

56. But “[g]iving the same words the same meaning throughout a statute is a basic principle of statutory interpretation,” known as the presumption of consistent expression.⁷⁸ The presumption flows from the common-sensical notion that “it seems unlikely that Parliament intended that a term in a single subsection should have different meanings depending upon different factual circumstances”.⁷⁹ Indeed, allowing one phrase to have different meanings within a single provision based on “different circumstances” is all the more remarkable, because “[i]t seems passing strange that the same words should be accorded different meanings *in the same sentence*”, which is what the Court of Appeal’s interpretation of the single sentence in s. 207(1) requires.⁸⁰

57. Unsurprisingly, leading treatises identify only a single instance in this Court’s precedents where the presumption of consistent expression has been rebutted with respect to the same phrase within a single statutory provision.⁸¹ Yet the Court of Appeal majority did not appear to even assert that the presumption had been rebutted here. Rather, the majority’s analysis on this issue appears half-hearted because it concluded only that s. 207(1)(a) “arguably warrants a different interpretation” than s. 207(1)(b).⁸²

⁷⁸ *R. v. Zeolkowski*, [\[1989\] 1 S.C.R. 1378](#) at p. 1387.

⁷⁹ *Barrie Public Utilities v. Canadian Cable Television Assn. (C.A.)*, [2001 FCA 236](#) at para. [23](#), per Rothstein J., *aff’d* [2003 SCC 28](#).

⁸⁰ *Mitchell* at p. 124 (emphasis added); *Thomson* at pp. 400-401.

⁸¹ See Sullivan, Ruth, *The Construction of Statutes*, 7th ed. [“**Sullivan**”], 8.04 [1], ABOA, Tab 7; Côté, Pierre-André, *The Interpretation of Legislation in Canada*, 4th ed., [“**Côté**”], ABOA, Tab 2. The only instance identified in either treatise where this Court found the presumption of consistent expression rebutted with respect to the same phrase within a single statutory provision is *Sommers v. The Queen*, [1959 S.C.R. 678](#) at p. 685. There, the Court concluded that giving the word “official” a narrower meaning—consistent with its apparent meaning in another clause of the same statutory provision—would “leave untouched a portion of the mischief aimed at by the enactment” by allowing government ministers to escape charges of bribery. See, for example, Côté at p. 356, ABOA, Tab 2.

⁸² Decision at para. [102](#). The Court of Appeal’s reliance on a law review article to support its interpretation is misplaced. As the Court of Appeal appeared to recognize, the article focused on the breadth of the “conduct and manage” power, not the scope of the geographic

58. Moreover, the Court of Appeal majority’s suggestion that “greater deference to provincial sovereignty” is warranted in s. 207(1)(a) misses the mark. In both ss. 207(1)(a) and 207(1)(b) (and, for that matter, in other clauses of s. 207(1)), provincial governments exercise their powers by making choices concerning the precise ways that lottery schemes and gaming are to operate within their borders. The ability of charitable and religious organizations to operate under the exception in s. 207(1)(b) depends on their ability to secure a provincial licence *on terms set by the province*. As a result, *Earth Future*’s holding that hybrid domestic-international lottery schemes are impermissible under s. 207(1)(b) is equally an impingement on the autonomy of any provincial government who prefers to license such play, as was the case with PEI there.⁸³ Despite that impingement, such concerns were not relevant to the statutory interpretation exercise in *Earth Future*, and they are likewise not relevant here either.⁸⁴

59. *Second*, the Court of Appeal declined to apply *Earth Future* because it reasoned that there are “material factual differences” between Ontario’s proposed model and the lottery in *Earth Future*.⁸⁵ But these purported “factual differences” are irrelevant to the interpretation of s. 207(1).

60. The Court of Appeal leaned heavily on Ontario’s description of its proposal “as consisting of two (or more) schemes *connected by linkages* facilitating the sharing of liquidity with foreign lottery schemes”.⁸⁶ Put differently, the Court of Appeal accepted that *Earth Future* was

“in that province” limitation. See Decision at para. [102](#). The authors accepted that the gaming activities of a provincial government must still occur “*in that jurisdiction*” and “*in a province*” (emphasis added), and were chiefly concerned with the authority of the courts to scrutinize the financial structure of provincially-managed lottery schemes under s. 207(1)(a) in the same way that courts were prepared to review the validity of the financial relationship between charitable organizations and private operators under s. 207(1)(b). See Monahan, Patrick J. & Goldlist, A. Gerold, “Roll Again: New Developments concerning Gaming” (1999) 42: Issues 2 & 3 Crim LQ 182 at pp. 211-213, 225-226, ABOA, Tab 5.

⁸³ *Earth Future (C.A.)* at para. [2](#) (see bullet 1 in the excerpted “statement of facts”).

⁸⁴ See discussion regarding Parliament’s constitutional powers, *infra* at para. 86.

⁸⁵ Decision at para. [103](#).

⁸⁶ Decision at para. [109](#) (emphasis added).

distinguishable purportedly because—unlike the PEI proposal, which included both domestic and international players in a single lottery scheme—“Ontario will continue to conduct and manage the lottery scheme in Ontario, which will be operated entirely in the province, while that scheme will *interact or connect* with foreign lottery schemes that it has approved”.⁸⁷

61. This conclusion is unsustainable. As Justice van Rensburg noted in dissent, the “‘two-scheme’ premise” of the majority’s reasons cannot be squared with the language of s. 207(1).⁸⁸ To understand why, it is important to return to the definition of “lottery scheme” in s. 207(4):

a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting other than [certain enumerated games and technologies].⁸⁹

That definition, as one senior Department of Justice official explained to a Senate committee during the 1985 amendment debates, “covers the waterfront. Virtually any type of gaming activity that you can think of can be brought within the rubric of the term ‘lottery scheme’”.⁹⁰

62. As the inclusion of granular terms like “game” and “device” convey, the definition of “lottery scheme” also operates on a specific level. It is not merely describing a high-level framework or regulatory regime (*e.g.*, the iGaming Ontario model). Rather, it also defines individual games and other forms of gambling (*e.g.*, a specific “game” of poker, a “device” like a slot machine, or any other “means” of gambling, such as a fantasy sports league).

63. This specificity of the statutory definition is fatal to attempts to distinguish *Earth Future*. As Ontario’s own evidence makes clear, the intermingling between Ontario and any international

⁸⁷ Decision at para. [109](#) (emphasis added).

⁸⁸ Decision at paras. [193](#), [244-249](#), *per* van Rensburg J.A., dissenting. Although Justice van Rensburg agreed with the majority that *Earth Future* did not resolve the Reference questions (see Decision at para. [195](#)), her reasons nonetheless explain cogently why the Court of Appeal’s basis for distinguishing *Earth Future* fails.

⁸⁹ *Criminal Code* at s. [207\(4\)](#) (emphasis added).

⁹⁰ Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 33 (12 December 1985), AGO Record Vol. 2 at p. 637.

element under Ontario’s proposal exists *at the game level*—just as in *Earth Future*.⁹¹ To borrow from the candid description of one of Ontario’s affiants, as noted above, Ontario’s proposal involves “a player in Ontario ... sit[ting] down at a virtual poker table and compet[ing] with players from around the world”.⁹² Indeed, as Justice van Rensburg noted, the whole point of Ontario’s scheme “is to provide for this opportunity”, because without players participating in the same game (and thus the same betting pool), Ontario would be unable to solve its liquidity problem.⁹³

64. The legal consequence of Ontario’s structure is that “each time a game is played, there is a single lottery scheme”—just as there was in *Earth Future*.⁹⁴ And while Ontario has proposed to divide responsibility for the management of this single lottery scheme between itself and foreign operators, “[t]his does not change the fact that players in Ontario and international players would participate in the same games”—and thus in the same lottery schemes.⁹⁵

65. The fallacy of the majority’s position is reinforced by the text of s. 207(1)(a) itself. That provision contemplates “*a lottery scheme* in that province, *or in that and the other province*”. It does *not* say “*or lottery schemes* [plural] in that and the other province”. Thus, under s. 207(1)(a), where a single game transcends one province’s boundaries to another province, it critically remains a single “lottery scheme”—and not, as the majority appears to have accepted, two “distinct” lottery schemes in different provinces. Once this aspect of the statute’s operation is appreciated, Ontario’s proposal should be seen for what it is: a hybrid domestic-international scheme that flouts s. 207(1)(a) for the same reason that the lottery in *Earth Future* flouted s. 207(1)(b). Remarkably,

⁹¹ Sweny Affidavit at para. 22, AGO Record Vol. 1 at p. 365.

⁹² Sweny Affidavit at para. 22, AGO Record Vol. 1 at p. 365.

⁹³ Decision at para. [245](#), *per* van Rensburg J.A., dissenting; see also discussion *supra* at paras. 26-28, 35.

⁹⁴ Decision at para. [245](#), *per* van Rensburg J.A., dissenting.

⁹⁵ Decision at para. [246](#), *per* van Rensburg J.A., dissenting. Counsel for Ontario almost certainly understood the glaring problems with this line of argument. That is ostensibly why their frontline argument before the Court of Appeal accepted that Ontario’s proposed model involved a single lottery scheme with both Ontario and international aspects, but sought to defend that hybrid scheme on the basis of a “real and substantial connection” to Ontario.

however, nowhere in the majority’s reasons does it grapple with the statutory definition of “lottery scheme”, or even acknowledge the robust criticisms by Justice van Rensburg of its “artificial”—and atextual—“two-scheme” approach.⁹⁶

66. Whatever the majority may have thought about the merits of *Earth Future*, this Court should approach the majority’s attempts to factually distinguish that decision with skepticism. In asking whether a precedent is distinguishable, it is important, as four Members of this Court recently warned, to remember that the nature of Supreme Court decisions “precludes an unduly narrow understanding of the law as [the Court] pronounce[s] it, confined to the facts of each individual case”. Indeed, whether a case is “factually distinguishable” is “irrelevant” in circumstances where, as here, “the underlying question of law is identical”. Were it otherwise, “[f]uture litigants could attempt to confine all [of this Court’s] precedents to their peculiar facts”—a result that would hollow out the Supreme Court’s vital role in defining the law.⁹⁷ Respectfully, that is what occurred in the court below.

67. Relatedly, it is also worth recalling that this Court’s statutory interpretation decisions command the utmost fidelity to *stare decisis*. As was only recently reiterated, “[t]his Court has previously expressed a heightened reluctance to depart from *stare decisis* on matters of statutory interpretation given that Parliament is free to amend the law”.⁹⁸ Thus, to the extent Ontario is dissatisfied with *Earth Future*, its recourse is to take up the matter with Parliament. It is telling that Parliament has repeatedly amended s. 207(1), including after *Earth Future*, but it has not changed the language at issue in this Reference.⁹⁹

(iii) In any event, ‘In That Province’ Is a Territorial Limitation

68. Even if this Court looks past *Earth Future*, the familiar tools of statutory interpretation “leave[] no doubt that ‘in that province’ can only be underst[ood] to refer to the conduct and

⁹⁶ Decision at para. 249, *per* van Rensburg J.A., dissenting.

⁹⁷ *R. v. Kirkpatrick*, 2022 SCC 33 at paras. 124, 128, 132, *per* Wagner C.J.C., Côté, Brown, and Rowe J.J., concurring [“*Kirkpatrick*”].

⁹⁸ *R. v. Hussein*, 2026 SCC 2 at para. 56, citing *Binus v. The Queen*, [1967] S.C.R. 594 at p. 601.

⁹⁹ See discussion *supra* at para. 18 and *infra* at para. 85.

management by the government of Ontario of a lottery scheme within the provinces’ geographical boundaries”.¹⁰⁰ Each of text, context, and purpose point in a single direction.

69. Start with text, which, of course, “remains the anchor of the interpretive exercise”.¹⁰¹ The plain meaning of “in that province” is “within the territorial boundaries of that province”. As Justice van Rensburg observed, “the language in s. 207(1)(a) does not refer to the government of a province conducting and managing a lottery scheme ‘serving players in that province’, ‘connected to’ that province, or ‘in part within that province.’”¹⁰²

70. Context reinforces that plain meaning in several ways. *First*, the language of s. 207 shows that where Parliament intended to address permissible extraterritorial activities, it used different language. Each of the exceptions created for lottery schemes under ss. 207(1)(a), (b), (e), and (f) explicitly permit activities in “other province[s]”, but nowhere reference activities internationally.¹⁰³ More broadly, the exception in s. 207(1)(h) allows “any person in Canada” to print and export certain betting-related materials to any “place”, not merely to “other provinces”.¹⁰⁴ Where Parliament “has chosen to use different terms, it must have done so intentionally in order to indicate different meanings.”¹⁰⁵ And the legislative history makes clear that this broader reference to “place” was designed to “permit[] Canadian companies to export materials related to lotteries and gaming” internationally.¹⁰⁶ Having thus drawn a domestic-international distinction

¹⁰⁰ Decision at para. [267](#), *per* van Rensburg J.A., dissenting.

¹⁰¹ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, [2024 SCC 43](#) at para. [24](#).

¹⁰² Decision at para. [268](#), *per* van Rensburg J.A., dissenting.

¹⁰³ See *Criminal Code*, s. [207\(1\)\(a\)](#) (lottery schemes conducted and managed by a province), s. [207\(1\)\(b\)](#) (lottery schemes conducted and managed by charitable and religious organizations licensed by a province), s. [207\(1\)\(e\)](#) (certain sale activities in another province), and s. [207\(1\)\(f\)](#) (lottery schemes conducted and managed by other persons licensed by a province).

¹⁰⁴ *Criminal Code*, s. [207\(1\)\(h\)](#).

¹⁰⁵ *Agraira v. Canada (Public Safety and Emergency Preparedness)*, [2013 SCC 36](#) at para. [81](#).

¹⁰⁶ “Bill C-81, an Act to amend the Criminal Code (lotteries),” 2nd reading, House of Commons Debates, 33-1, vol. VI (November 6, 1985), AGO Record Vol. 2 at p. 539

through the contrasting use of “other province[s]” and “place[s]” in the legislative text, it is strange to believe that Parliament nevertheless understood that activities “in that province” also permitted international activities.

71. *Second*, where Parliament expressly authorized foreign gambling activities, it did so with unambiguous language that signalled a clear departure from its general prohibition against foreign lotteries. For example, s. 204(1) exempts bets on certain horse races “in *or out of* Canada.”¹⁰⁷ Similarly, s. 207.1 permits certain betting on “voyages on an *international* cruise ship.”¹⁰⁸ It is a familiar principle of statutory interpretation that “if a statute specifies one exception (or more) to a general rule, other exceptions are not to be read in.”¹⁰⁹ Yet reading “in that province” as permitting international activities effectively reads in a new exception permitting “international elements” under s. 207(1)(a)—even though Parliament has spoken clearly on other occasions when it wishes to permit lottery schemes with international elements.

72. *Third*, where s. 207(1)(a) refers to coordinated activities by a provincial government and others, it speaks only to activities “in conjunction with the government of another province ... in [the first] province and the other province”, with no mention of activities in conjunction with other actors in other jurisdictions. Moreover, each of the exceptions in ss. 207(1)(b) and (c) contemplate

(discussing s. [207\(1\)\(h\)](#) and how “Canadian companies have been highly regarded for their expertise in matters related to technology and printing”).

¹⁰⁷ *Criminal Code*, s. [204\(1\)](#) (emphasis added).

¹⁰⁸ *Criminal Code*, s. [207.1](#) (emphasis added).

¹⁰⁹ *Grosman v. Cookson*, [2012 ONCA 551](#) at para. [21](#) (emphasis added); see also Sullivan, 8.09 [3], ABOA, Tab 7 (“Patterns in legislation are assumed to be intended rather than inadvertent. Once a pattern has been established, it becomes the basis for expectations about legislative intent.”); J. A. Corry, “Administrative Law and the Interpretation of Statutes” (1936) 2:1 UTLJ 286 at p. 298, ABOA, Tab 1 (“[I]f parliament in legislating speaks only of specific things and specific situations, it is a legitimate inference that the particulars exhaust the legislative will. The particular which is omitted from the particulars mentioned is the *casus omissus*, which the judge cannot supply because that would amount to legislation.”).

a provincial government working with “a charitable or religious organization” and a “board of a fair or of an exhibition”, respectively, yet there is no exception that contemplates collaboration with international operators. If Parliament was also content to have provincial governments partner with international actors, that point would have been made explicitly.

73. Finally, a territorial limitation fits comfortably with Parliament’s purpose in enacting s. 207(1), as seen from the provision’s legislative history. Parliament’s commitment to a “local option” was carefully cabined. The legislative record is littered with references that make plain that a provincial government’s autonomy over gambling activities was limited “within their boundaries”.¹¹⁰ Moreover, Parliament never resiled from its longstanding concern about the deleterious impact of “foreign lotteries”, which then-Attorney General Turner reassured Members of Parliament “remain[ed] illegal” even while Parliament empowered provincial governments.¹¹¹ Thus, there should be no ambiguity: Ontario’s proposal to partner with foreign operators while simultaneously disclaiming any responsibility for the manner in which the foreign operators conduct themselves falls within the core of activities about which Parliament was deeply concerned.

74. In sum, as Justice van Rensburg correctly concluded in dissent, text, context, and purpose leave “no doubt” about Parliament’s choice to territorially limit provincial lottery schemes.¹¹²

(iv) The Court of Appeal’s Statutory Analysis Was Deeply Flawed

75. In reaching its contrary conclusion, the Court of Appeal made a series of basic methodological errors.

76. *First*, and most significantly, the majority failed to have regard for the fact that s. 207(1) is an *exception* to the general statutory prohibition against gaming activities contained elsewhere in Part VII of the *Criminal Code*. This failure infected its entire analysis.

¹¹⁰ See *supra* at paras. 12-18.

¹¹¹ 1969 Committee, AGO Record Vol. 2 at pp. 455-456.

¹¹² Decision at para. [267](#), *per* van Rensburg J.A., dissenting.

77. At numerous points, the majority queried whether s. 207(1)(a) affirmatively “preclude[d] international play”.¹¹³ But that is not the proper question. As explained,¹¹⁴ s. 207(1)(a) does not exist against a permissive backdrop—quite the contrary, it exists against the backdrop of a blanket prohibition. As a result, it makes no sense to ask, as the majority did, whether s. 207(1)(a) affirmatively *prohibits* particular activity; there is no need for that, because doing so would be superfluous. Rather, the appropriate question is whether s. 207(1)(a) affirmatively *permits* the impugned activity. Put another way, as this Court has admonished, “when the legislature makes a general rule and lists certain exceptions, the latter must be regarded as exhaustive and so strictly construed”.¹¹⁵ Or, as Professor Côté has explained, “[t]he principle is that exceptions should not be extended; where there is doubt, the general rule is favoured over the exception.”¹¹⁶

78. As just one illustration of the majority’s error, consider its observation that s. 207(1)(a) “is silent” on whether “international linkages” with provincially-managed lotteries are permitted.¹¹⁷ In the majority’s view, Parliament’s omission of an “express[] prohibit[ion] [of] all such international linkages” is highly probative because “an express reference [to prohibitions] is expected” in s. 207(1)(a).¹¹⁸ In fact, the opposite is true. There is no legitimate expectation that Parliament would have to affirmatively prohibit international activities by provinces, especially when foreign lotteries are already banned under s. 206(7).¹¹⁹ The majority appeared to reason that an express reference is expected because Parliament must explicitly criminalize extraterritorial conduct by foreign persons.¹²⁰ But that remark is puzzling to say the least, because Parliament’s prohibitions in Part VII do not concern extraterritorial conduct by foreign persons, but rather

¹¹³ Decision at paras. [143](#) (heading), [156](#) (heading), [157](#).

¹¹⁴ See discussion *supra* at paras. 6-8.

¹¹⁵ *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [\[1994\] 3 S.C.R. 3](#) at p. 18; see also *Macdonell v. Quebec (Commission d'accès à l'information)*, [2002 SCC 71](#) at para. [18](#).

¹¹⁶ Côté at p. 536, ABOA, Tab 2.

¹¹⁷ Decision at para. [148](#).

¹¹⁸ Decision at para. [148](#).

¹¹⁹ See Decision at para. [289](#), *per van Rensburg J.A.*, dissenting (discussing the implied exclusion or negative implication canon).

¹²⁰ Decision at para. [148](#).

domestic conduct by *Canadian* persons—including, as evident from s. 206(7), Canadian persons who bring foreign lotteries to Canada’s shores.

79. *Second*, the majority rejected the CLC Members’ contextual arguments largely on the premise that “Ontario would not conduct and/or manage a foreign lottery ... although some of the games Ontario conducts and manages in Ontario would now have links to foreign jurisdictions”.¹²¹ As explained above,¹²² however, the majority’s premise is false, because Ontario’s proposed model depends on domestic players playing in a single game with international players—and thus in a single “lottery scheme” for purposes of s. 207(1)(a). The majority’s reasons fail to grapple with the significance of that statutory definition, which is fatal to its analysis.

80. *Third*, the majority’s assessment of statutory purpose represents a textbook illustration of what one scholar has described as “the purpose error”.¹²³ Relying on a selection of legislative materials, the majority reasoned that Parliament’s purpose in enacting s. 207(1)(a) was “to allow for provincial choice that would reflect varied public sentiment about gambling across the country”.¹²⁴ That is true enough, but “[courts] are concerned not only with Parliament’s intention to address a particular mischief, *but its intention to do so a particular way*.”¹²⁵ As this Court has now repeated multiple times in recent years, “courts do not have to interpret—let alone implement—the objective underlying a legislative scheme or provision; what they must interpret is the text through which the legislature seeks to achieve [its] objective”.¹²⁶ The majority’s contrary approach essentially prizes whatever interpretive result provides greater latitude to Ontario, to the point of negating Parliament’s clear intent to cabin Ontario’s (and other provinces’) autonomy to their own borders. That is not statutory interpretation; it is statutory subversion.

¹²¹ Decision at para. [172](#).

¹²² See discussion *supra* at paras. 59-66.

¹²³ Mancini, Mark, “The Purpose Error in the Modern Approach to Statutory Interpretation” (2022), [59 Alta. L. Rev. 919](#) at pp. 920-22.

¹²⁴ Decision at para. [174](#).

¹²⁵ Plaxton, Michael, *Sovereignty, Restraint and Guidance* (Toronto: Irwin Law, 2019) at p. 106 (emphasis in original), ABOA, Tab 6, citing *Reference re Supreme Court Act, ss. 5 and 6*, [2014 SCC 21](#) at paras. [58-59](#).

¹²⁶ *MediaQMI inc. v. Kamel*, [2021 SCC 23](#) at para. [39](#); see also *R. v. Archambault*, [2024 SCC 35](#) at para. [66](#); *R. v. Breault*, [2023 SCC 9](#) at para. [26](#).

81. For the reasons discussed above, the text of s. 207(1)(a) and its surrounding context is best read as including a geographic limitation. Invocations of “broad” and “general” statutory objectives cannot trump statutory text and context that are otherwise clear.¹²⁷ For text and context that point in one direction to be overwhelmed by an appeal to statutory purpose, the key question is whether the plain meaning of the text and its context is “incompatible” with or “frustrate[s]” a statutory purpose that points in a different direction.¹²⁸ The contrary is true here. As described above, Parliament’s statutory purpose was to enact a broad prohibition on gambling while carving out defined exceptions that granted provinces autonomy within their own respective borders. That is exactly what the language of “in that province” reflects.¹²⁹

82. *Fourth* and finally, the majority’s passing reliance¹³⁰ on dynamic interpretation is particularly ill-suited in a case with significant policy ramifications, such as this one. That is one thing on which Ontario and the CLC Members appear to agree. As Ontario said below, “[t]he wisdom and feasibility of the proposed model is a question of policy that is for the elected branches of government to determine.”¹³¹ Thus, even if this Court ultimately favours Ontario’s proposed model as a matter of policy, it should decline any invitation to wade into the policy waters to “update” s. 207(1)(a).

¹²⁷ *Telus Communications Inc. v. Federation of Canadian Municipalities*, [2025 SCC 15](#) [“*Telus*”] at paras. [69-70](#).

¹²⁸ *Telus* at paras. [72](#), [74](#), [78](#).

¹²⁹ Even the legislative history quoted by the majority—but not underscored in its opinion—makes clear that Parliament was content to leave lotteries to the provinces on the understanding that provincial lotteries would be limited to “within provincial boundaries”. Decision at para. [178](#), quoting 1969 Committee, AGO Record Vol. 2 at pp. 457-460; Senate, Standing Senate Committee on Legal and Constitutional Affairs, *Evidence*, 33-1, No. 32 (December 11, 1985), AGO Record Vol. 2 at p. 639.

¹³⁰ Decision at para. [185](#).

¹³¹ [Factum of the Attorney General of Ontario](#), *Reference re iGaming Ontario* (Court File No. COA-24-CV-0185) at para. 11.

83. The Federal Court of Appeal’s recent decision in *Re Canadian Security Intelligence Service* illustrates the point.¹³² There, the court was tasked with determining the meaning of a statutory provision that provided that a federal agency could assist with intelligence collection concerning foreign states and persons “within Canada”. The Attorney General of Canada in *CSIS* argued that the court should “take account of technological change in assigning meaning to the phrase ‘within Canada.’”¹³³ Justice Laskin, writing for a unanimous panel, agreed that “evolving social and material realities”—including “advances in technology”—sometimes “requires a dynamic approach” to statutory interpretation.¹³⁴ But he nonetheless rejected the Attorney General’s invitation to update the meaning of “within Canada”.

84. As Justice Laskin explained, “[i]t is not every interpretive exercise that calls for a dynamic approach.” Particularly where “doing so would raise issues of policy more suited for legislative resolution” and where Parliament has shown an inclination to amend the statute, a court should refrain from dynamic interpretation and instead apply the statute as written. In *CSIS*, the court ultimately concluded that “given the plain meaning, purpose and context of the legislation, technological change could not provide a basis for interpreting ‘within Canada’ as the Attorney General proposed.”¹³⁵

85. Justice Laskin’s observations are apt. The extent to which Canadians should interact with foreign lottery schemes was a key element of the Parliamentary debates when the *Criminal Code* was first amended to permit provincial lotteries, as discussed above.¹³⁶ And Parliament has hardly forgotten about the provision, because Parliament has amended s. 207 as recently as 2021.¹³⁷ So if Parliament sees fit to adopt Ontario’s perspective in this Reference, it can again return to update

¹³² *Canadian Security Intelligence Services Act (CA) (Re)*, [2021 FCA 165](#) [“*CSIS*”].

¹³³ *CSIS* at para. [57](#).

¹³⁴ *CSIS* at para. [73-74](#), citing *R. v. 974649 Ontario Inc.*, [2001 SCC 81](#) at para. [38](#).

¹³⁵ *CSIS* at paras. [78-80](#), [82](#). Notably, the Federal Court of Appeal also rejected the Attorney General’s attempt to equate the phrase “within Canada” with a “real and substantial connection” to Canada. See *CSIS* at para. [68](#).

¹³⁶ See discussion *supra* at paras. 12-14.

¹³⁷ *Safe and Regulated Sports Betting Act*, [S.C. 2021, c. 20](#).

the statute—without the need for any judicial assistance. As this Court has cautioned, “[i]n interpreting Parliament’s intent and applying it to developing circumstances, courts must be careful not to engage in policy choices best left to legislatures” because “[i]t is not for the Court to do by ‘interpretation’ what Parliament chose not to do by enactment”.¹³⁸

(v) Ontario’s Novel Theory of Statutory Interpretation Was Correctly Rejected

86. To the extent that Ontario resurrects before this Court its novel theory importing the “real and substantial connection” test to interpret “in that province” in s. 207(1)(a), this Court should join the court below in rejecting it.

87. *First*, and most significantly, no principle of constitutional law, under s. 92 of the *Constitution Act, 1867* or otherwise, compels a construction of s. 207(1)(a) that conflicts with the best interpretation that follows from a textual, contextual, and purposive analysis. As Ontario has itself asserted previously, “the Criminal Law generally has been the *principal government tool* in the control of gambling, first in England and later in Canada.”¹³⁹ And in the exercise of its criminal law powers, “Parliament is free to define the area in which it chooses to act and, in so doing, may leave other areas open to valid provincial legislation.”¹⁴⁰ In particular, “Parliament ... may define those agencies or instrumentalities exempt from the prohibition.”¹⁴¹ The scope of such an exemption is itself “a definition of the crime” and thus “a constitutionally permissive exercise of the criminal law power.”¹⁴² As a result, the scope of the exception in s. 207(1)(a)—whether broad or narrow—should be informed by the well-established tools of statutory interpretation, not a pre-emptive appeal to background constitutional law principles. As discussed above,¹⁴³ those tools leave no doubt that s. 207(1)(a) codifies a geographic limitation, regardless of whatever broader limits may be permitted under s. 92 of the *Constitution Act, 1867*.

¹³⁸ *Telus* at para. 80, quoting *CBC v. SODRAC 2003 Inc.*, [2015 SCC 57](#) at para. 53.

¹³⁹ AGO Earth Future Factum at para. 7, ABOA, Tab 4 (emphasis in original).

¹⁴⁰ *R. v. Furtney*, [\[1991\] 3 S.C.R. 89](#) at p. 102 [“*Furtney*”].

¹⁴¹ *Furtney* at p. 107.

¹⁴² *Furtney* at pp. 106-107; see also *RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1991\] 3 S.C.R. 89](#) at para. 56, *per* La Forest J., dissenting (but not on this point).

¹⁴³ See discussion *supra* at paras. 68-74.

88. *Second*, Ontario’s reliance on *Unifund Assurance Co. v. Insurance Corp. of British Columbia* and its progeny¹⁴⁴ is particularly inapt. Those cases concern a province’s power to regulate extra-provincial parties, while Ontario has expressly disclaimed any such regulatory authority in this case. As the Supreme Court recently explained, “courts have regularly applied the *Unifund* test when determining whether a provincial regulatory scheme constitutionally applies *to out-of-province defendants*.”¹⁴⁵ In the face of a challenge from an out-of-province defendant to a province’s assertion of extraterritorial jurisdiction, the *Unifund* test “limits, or reads down, the territorial reach of otherwise broadly framed provincial legislation, consistent with the territorial restrictions” in s. 92 of the *Constitution Act, 1867*.¹⁴⁶ Thus, for example, the *Unifund* test has been used to determine whether out-of-province defendants breached provincial securities laws.¹⁴⁷ By contrast, in this case Ontario has disclaimed any intent to regulate out-of-province actors, even by requiring iGO operators and their affiliates to comply with Ontario or Canadian law.¹⁴⁸ As a result, Ontario’s reliance on *Unifund* to justify its express refusal to regulate conduct outside Ontario despite clear impacts in Ontario (and the rest of Canada) turns *Unifund* upside down.

89. *Third* and finally, the consequences of embracing Ontario’s erstwhile theory are potentially sweeping. If the Court were to find that s. 207(1)(a) allows Ontario to extend its lottery schemes to “international elements” outside the province’s boundaries, then Ontario may also one day claim the power to conduct and manage lottery schemes *in other provinces* so long as they also have a “sufficient connection” to Ontario.

¹⁴⁴ *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, [2003 SCC 40](#); see also *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005 SCC 49](#).

¹⁴⁵ *Sharp v. Autorité des marchés financiers*, [2023 SCC 29](#) [**“Sharp”**] at para. [105](#) (emphasis added).

¹⁴⁶ *Sharp* at para. [114](#).

¹⁴⁷ See, e.g., *Berger v. Saskatchewan (Financial and Consumer Affairs Authority)*, [2019 SKCA 89](#); *McCabe v. British Columbia (Securities Commission)*, [2016 BCCA 7](#).

¹⁴⁸ Decision at para. [65](#), per Tulloch C.J.O., Gillese, Hourigan and Dawe JJ.A. & para. [229](#), per van Rensburg J.A., dissenting; see also Hill Supplemental Affidavit at Exhibits 23, 25, 26, CLC Record at pp. 256-257, 263-266.

90. Subsection 207(1)(a) only requires provincial consent as long as Ontario’s lottery schemes are operating “*in* [Ontario] *and* the other province[s].”¹⁴⁹ But because Ontario has previously claimed that a scheme that includes extraterritorial liquidity is “in” Ontario so long as the scheme has a “sufficient connection” to Ontario, by Ontario’s own logic extraterritorial liquidity that encompasses even other provinces could be “in” Ontario—without necessarily triggering the protective condition in s. 207(1)(a) requiring the consent of other provinces for activity that intrudes on their territory.

91. To be sure, the Court of Appeal predicated its opinion on the assumption that “players located outside of Ontario but within Canada will not be permitted to participate in games or betting” in the proposed model without the consent of those other provinces.¹⁵⁰ That is a welcome assumption for the CLC Members, but it contrasts with Ontario’s refusal to accept any responsibility for illegal conduct of affiliates of iGO operators in the rest of Canada.¹⁵¹ Nor has Ontario explained how it would ensure Canadians outside Ontario are precluded from accessing the International Sites that would share liquidity with Ontario-based users.

92. This Court is under no obligation to accept any assurances from Ontario regarding the exclusion of Canadians outside Ontario, particularly when neither iGaming Ontario, nor its regulator, nor Ontario have shown either the inclination or the ability to do anything about Canadians outside Ontario accessing the very International Sites with which Ontario now wishes to pool liquidity. Moreover, even if Ontario had taken enforcement actions in the past, there could be no guarantee that a future Attorney General of Ontario would do the same. Thus, this Court should rule that Ontario’s proposed scheme—both on the language of s. 207(1)(a) and on the record of how iGO operators and their affiliates currently operate—would be contrary to law and cannot be saved in its current incarnation.

¹⁴⁹ *Criminal Code*, s. [207\(1\)\(a\)](#) (emphasis added).

¹⁵⁰ Decision at para. [188](#).

¹⁵¹ *See, e.g.*, Todres Transcript, JBT at pp. 71-73, 85-86, 88-89, qq. 176-180, 208-209, 215-217; Cross-Examination Brief of Jesse Todres (September 5, 2024), JBT at Tabs 10-15, pp. 278-314.

93. Fittingly, it was an earlier Attorney General of Ontario who warned in *Earth Future* of the prospect that provinces would extend their lottery schemes outside their borders to other provinces if the Supreme Court adopted an expansive interpretation of s. 207(1)(b). As the Attorney General explained, if such an expansive view of the “in that province” language were adopted:

there is nothing to stop any one of the thirteen provincial or territorial governments (or indeed, all thirteen) from establishing any number of similar high stakes lotteries with the goal of increasing the amount of gambling in other parts of Canada. ... [The provinces would] compete with each other for gambling dollars without necessary regard for the integrity of gambling regimes which impact upon communities completely beyond their own borders.¹⁵²

94. The same risk exists here. The Court should make no mistake about the logical implications of Ontario’s dramatic assertion of statutory authority. While the issue today is international liquidity, the next case may involve a province seeking to assert authority to conduct lottery schemes that extend across the country. And indeed, even if that is not what Ontario proposes *de jure* at this time, it is what it proposes *de facto* given the ubiquity of illegal gambling using International Sites among Canadians outside Ontario.

PART IV – SUBMISSIONS ON COSTS

95. The CLC Members do not seek costs and request that no costs be awarded against them.

PART V – ORDERS SOUGHT

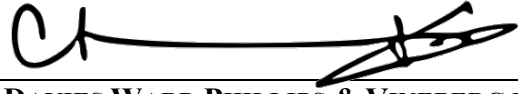
96. The CLC Members respectfully request that their appeal be allowed. The answer to the first Reference question is “no”. The answer to the second Reference question is that Ontario’s proposed model, like the model in *Earth Future*, is contrary to s. 207(1)(a) because it is predicated on lottery schemes involving both Ontario-based and international participants.

PART VI – SUBMISSIONS ON CASE SENSITIVITY

97. This appeal does not involve a sealing order, publication ban, or confidential information.

¹⁵² AGO *Earth Future* Factum at para. 16, ABOA, Tab 4.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 13TH DAY OF FEBRUARY, 2026.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a long horizontal line and a final flourish.

DAVIES WARD PHILLIPS & VINEBERG LLP
Matthew Milne-Smith, Chanakya A. Sethi, and
Ryan Reid

PART VII – TABLE OF AUTHORITIES

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