

Upping the ante: Ontario's iGaming model will be industry game changer

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The developments that occurred this past year in the regulation of gaming activities in Canada can only be described as "game-changing."

Perhaps the most significant for the gaming industry is the development of an Internet gaming (iGaming) regulatory framework in Ontario. The iGaming agency model between iGaming Ontario (iGO) and private Internet gaming operators is the first of its kind in Canada, moving beyond the limited online gaming platforms offered exclusively through government lottery corporations to involve regulated participation by private operators. The new model is paving the way for similar initiatives by other provinces. The opportunities in this area are immense. The [Canadian Gaming Association](#) estimates that Canadians currently spend \$14 billion yearly on offshore betting websites.

The focus of the new iGaming model is on protecting consumers by regularizing a market that has long been operating in a legally ambiguous "grey" zone. At the same time, the iGaming model promises to provide meaningful revenue-generation opportunities for both private operators and the Government of Ontario, though that could, in part, depend on the liquidity model selected by Ontario, which remains outstanding.

The development of this new model coincides with the legalization by the federal Parliament of single event sports betting – one of the most popular forms of betting in the market. This was a welcome development for players, governments and industry, particularly since the provisions of the *Criminal Code* prohibiting most forms of gambling in Canada are rarely amended. As a result of these amendments and Ontario's new iGaming regulations, private operators will be able to offer single event sports betting to consumers in Ontario, under the oversight of the Alcohol and Gaming Commission of Ontario (AGCO).

As the iGaming regulatory landscape in Ontario continues to develop, we are working diligently with numerous operators and gaming-related supplier clients who recognize the importance of the Ontario market as part of their North American licensing strategy.

Legalization of single event sports betting

On June 22, 2021, the Senate approved Bill C-218, the [Safe and Regulated Sports Betting Act](#), which amended the *Criminal Code* (Code) to allow betting on the outcome of "any race or

fight, or on a single sport event or athletic contest." Such gaming activity was historically prohibited under s. 207(4)(b) of the Code. The amendment came into force on August 27, 2021, before the federal election.

This amendment will benefit a range of stakeholders, including consumers of this form of gambling, government, and gaming operators and suppliers. The federal government's stated objective in decriminalizing single event sports betting was to permit provinces and territories to conduct and manage these activities in their respective jurisdictions. If provinces and territories choose to do so, Canadians will have an opportunity to place bets in a regulated and safe environment either online or in physical facilities, with the exception of betting on horse racing, which will continue to be regulated by the federal government.

The federal government anticipates that revenues generated from this type of gambling could be used by the provinces and territories to fund programs and services in areas such as healthcare and education, as they currently do with other lottery revenues.

With the development of the iGaming model in Ontario, described below, online single event sports betting (as well as casino, poker and other gaming activities) will be offered by private operators in Ontario, under the oversight of the AGCO.

Ontario's regulated iGaming market breaks new ground

By far the most significant development in the Canadian gaming space is Ontario's iGaming initiative. Other Canadian provinces, such as B.C., Alberta and Québec, have offered or are offering online gaming platforms exclusively through government lottery corporations with no opportunity for participation by private operators. The iGaming model, by contrast, is based on delivery of online gaming by private operators on behalf of the government through commercial relationships with iGO, a newly incorporated subsidiary of the AGCO. It therefore represents an opportunity for private gaming operators that has not previously existed in Canada.

The Ontario government selected the AGCO, which is responsible for administering the *Gaming Control Act* in relation to land-based gaming in the Province of Ontario, as its principal Internet gaming regulator. Under the land-based gaming regime, Ontario has permitted registered private operators to operate land-based casinos for years.

Like the land-based gaming regime, the iGaming model similarly involves registering industry participants who intend to operate Internet gaming sites or act as a gaming-related supplier in Ontario. In addition, iGO, which is a Crown corporation, will enter into commercial relationships with registered private Internet gaming operators.

Since the completion of the government's consultation process in the spring of 2021, the AGCO and iGO have focused on releasing various standards and regulations that are intended to flesh out the requirements that will apply in the newly legalized iGaming market in the province. Osler is assisting a number of industry clients to understand these standards and to navigate the registration process.

Registration process

To become a registered iGaming operator or supplier in Ontario, each operator or supplier must submit an application through the iAGCO portal.

The AGCO opened this iGaming application portal on September 13, 2021 for prospective operators and gaming-related suppliers. For operators, a separate application will be required for each distinct online gaming site. The AGCO application requires prospective operators and suppliers to provide a wide variety of information, including a description of gaming-related goods and services, gaming site information and branding details. In addition, registration requires comprehensive entity and personal disclosures in relation not only to the proposed registrant, but also to certain other entities and individuals associated with the registrant, such as parent companies and individuals holding key management or operational roles.

We expect that the market will launch in early 2022 to allow operators and suppliers sufficient time to complete their application, ensure compliance with applicable requirements and obtain approval to commence operating in Ontario. This includes entering into operating agreements with iGO in the case of operators (which will be in alignment with the timing of registration issuance).

Standards and policies

The newly regulated iGaming market in Ontario will be governed by a complex set of standards which will take effect when the iGaming market is officially launched. On September 9, 2021, the AGCO released the finalized Registrar's Standards for Internet Gaming (the Standards).

These Standards were adapted from the AGCO's existing standards for non-Internet-based gaming and also apply to all sports, esports, novelty, betting exchange and fantasy sports products. The AGCO noted, in releasing these Standards, that the Registrar's focus was on providing increased consumer choice, reducing red tape and fostering stronger consumer protection.

Under the Standards, operators are expected to ensure that any Standards that relate to the creation and operation of their gaming product or platform are met. This requirement applies regardless of who is responsible for carrying out the applicable activities – for example, third parties or suppliers.

Those that receive approval to operate in the legalized iGaming market in Ontario will also need to comply with any documents, including policies, released by iGO.

Areas requiring further consideration

The current regulatory regime proposed for the iGaming market in Ontario raises a number of issues, many of which are in the process of being resolved.

- **Liquidity:** "Liquidity" refers to the ability to have a critical mass of players involved in the game, contributing to the prize pools and to the overall game experience. An international or global "open" liquidity model would permit Ontario players to play against players from outside Ontario. By contrast, a "closed" liquidity model would permit Ontario players to play only against other players in Ontario. Open liquidity provides a number of benefits, including larger prize pools, a broader range of gaming products that can be offered and a richer gaming experience for players looking to participate in different games on demand at different times of day. This in turn improves the revenue-generating potential of Internet gaming for industry participants and government. In the Ontario

government's [Discussion Paper: A model for internet gaming in Ontario](#), in which the government sought feedback from stakeholders regarding the proposed iGaming model, the Government of Ontario stated that the iGaming market will be based on closed liquidity on the basis that an open liquidity model is believed to be contrary to the Code. Over the course of the spring and summer of 2021, the Government of Ontario received a number of submissions in support of the conclusion that an open liquidity model is not prohibited under the Code and that such a model would be in the best interests of the province, Ontario players and industry participants. Osler made two submissions on behalf of stakeholders in this process, including one of the leading global online gaming companies and two gaming associations. At the time of writing, we understand the Government of Ontario may refer the question of whether open liquidity is permitted under the Code to the Ontario Court of Appeal. Depending on the timing of the launch of the iGaming market, as well as the release of any court decision, the iGaming market may well be launched on the basis of a closed liquidity model, with the potential for open liquidity to be considered in future.

- **Anti-money laundering (AML):** AML has always been a major consideration in any regulatory framework involving gaming. The iGaming model is no exception. In addition to the Standards, iGaming operators are required to comply with iGO's AML requirements. In support of such compliance, iGaming operators will be required to maintain internal AML operating procedures that comply with Canadian federal regulatory requirements, as well as the entirety of iGO's AML program. The latter consists of (1) AML Policies and Procedures; (2) Operational Guidance (for implementing the AML policies and procedures); and (3) AML Risk Assessment Framework. For more information, read [Getting ready for the opening of iGaming in Ontario](#) on osler.com. Of potential concern are the breadth and complexity of the AML requirements. The gaming sector is broadly subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and regulated by the Financial Transactions and Reports Analysis Centre (FINTRAC). iGO's AML program is accordingly structured around the threshold requirements established by the PCMLTFA and FINTRAC. However, iGO's AML program sets out its own comprehensive suite of AML obligations for registered operators, and many of its obligations and restrictions go above and beyond FINTRAC's threshold requirements.
- **Operating Agreement:** All registered operators are required to enter into an operating agreement with iGO on iGO's form of agreement as a condition of their admission into the legalized market. The terms of such agreement will likely be a matter for discussion among operators, iGO and their counsel as the launch approaches.
- **Privacy:** An iGaming site necessarily involves the collection, disclosure, processing and use of data, including personal information about the players. There are therefore significant privacy considerations that must be addressed. We expect that the best way to address privacy compliance requirements will also be worked out as operators prepare to participate in the new market. Osler is advising a number of clients on these matters.

What's to come? iGaming in 2022

The legalization of single event sports betting evidences a more modern approach to gaming that involves recognizing the types of activities engaged in by Canadians and opting for regulation, rather than prohibition, of these activities. This relaxation of prior prohibitions came at exactly the right time for operators seeking to participate in Ontario's new iGaming market. This new online gaming model, which is intended to legalize the existing "grey" market for the benefit of Ontario residents (and in turn, the Ontario government), is itself a welcome move to recognize the evolution in technology and its influence on gaming. These changes signal an acknowledgement of a new approach to gaming regulation in the 21st century that better serves the interests of all participants in this industry.

At the time of writing, the future of iGaming in Ontario appears bright. Its potential will be further enhanced if the Government of Ontario determines that an open liquidity model is permissible and if other provinces and territories begin to follow suit to implement their own equivalent regimes.

Osler will continue to monitor these developments, as well as assist industry participants in navigating the registration process to best position themselves to take advantage of the new iGaming market in Ontario.