

**Governmental Attitudes Towards I-Gaming in Canada -
Reflections From the Federal-Provincial Working Group**

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On April 28, 2010, the 14th Annual Canadian Gaming Summit received a rare glimpse into the discussions of high-level government officials as they relate to Internet gaming (“I-Gaming”). The general counsel to the Alberta Gaming and Liquor Commission, Cameron Smart, reported on the progress of a working group involving officials from all levels of government, and his report provides valuable insight into the attitudes held within Canadian governments by those officials who deal most closely with I-Gaming issues.

In November 2006, the Deputy Ministers Responsible for Justice Coordinating Committee of Senior Officials Working Group (the “Working Group”) was formed to consider and report on a number of issues relating to the Canadian Criminal Code (the “Code”) and I-Gaming. Formed at the initiative of the Province of Alberta, it was initially motivated by concerns about what officials viewed as “unregulated” I-Gaming. “Unregulated” I-Gaming in this context refers to I-Gaming that (i) emanates from Canada and is not conducted and managed by the government of a province, or (ii) emanates from outside Canada and is not conducted and managed by the government of a province, and accepts persons present in Canada as customers. Mr. Smart indicated that at the outset, the Working Group was particularly concerned with I-Gaming emanating from the Territory of the Mohawks of Kahnawá:ke, near Montreal, Quebec (the “Kahnawá:ke Territory”).

Chaired by Hal Pruden, counsel to the Criminal Law Policy Section of the federal Department of Justice, the Working Group has met once or twice each year since its formation. It is composed of senior officials in the Attorney Generals’ offices and Departments of Justice of the ten provinces and the federal government, with some participation from selected provincial gaming regulatory officials. It is generally acknowledged that the pace of the Working Group’s deliberations is lagging behind developments in I-Gaming, both within Canada and internationally, and the anticipated report of the Working Group may well be obsolete by the time it is released.

The Working Group is considering a number of discrete topics concerning gaming law, some of which address I-Gaming, some of which are primarily concerned with land-based gaming, and some of which have potential application to both. This article will focus on I-Gaming, and on what the deliberations of the Working Group reveal about justice officials’ attitudes towards how the Code as presently drafted applies to I-Gaming.

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(1) Approaches to Unlicensed I-Gaming:

- (i) Banning Advertisements (UK “white list” model);
- (ii) Requiring ISPs to Block Access to Websites; and
- (iii) Requiring Financial Transactions to Block I-Gaming Transactions (U.S. “UIGEA” model).

The deliberations of the Working Group have demonstrated that at present, very little support exists among the provincial governments for taking actions against unlicensed I-Gaming. There is no support for adopting a “white list” model which would ban ads relating to unlicensed I-Gaming except in the cases of approved jurisdictions. Nor do the members of the Working Group support an approach similar to that adopted by the U.S. in 2006 with the *Unlawful Internet Gambling Enforcement Act* (“UIGEA”) that would require financial institutions to block transactions relating to I-Gaming, or requiring Internet Service Providers to block the reception of offshore I-Gaming transmissions within Canada. The members of the Working Group appear concerned solely with enforcing the Code against I-Gaming websites operating from within Canada that are not conducted and managed by any of the provincial governments.

The responsible authorities appear to have no intention of expending the resources and effort required to prosecute individuals or corporations for unlicensed I-Gaming activities that emanate from outside Canada, or for activities that take place on the Kahnawá:ke Territory. The deliberations of the Working Group confirm that this remains the case, regardless of whether Canadian jurisprudence on jurisdiction over online activities would theoretically allow for such prosecutions.

Officials in the Working Group have reportedly indicated a willingness on the part of the authorities to prosecute for I-Gaming related activities that physically take place in Canada. This is consistent with the handful of prosecutions that have occurred in Canada relating to I-Gaming. Each such prosecution has addressed circumstances where computer servers used for I-Gaming were located in Canada, or where support activities relating to I-Gaming originating from the Kahnawá:ke Territory took place within Canada and outside the Kahnawá:ke Territory.

(2) Criminalizing the Activity of Betting or Gambling Through Unlawful Means

The Code at present does not make it an offence to place a bet or to gamble. The closest it comes to such an offence is at s-s. 206(4) of the Code, which makes it an offence to buy, take or receive a lot, ticket or other device for disposing of property by a mode of pure chance. As well, s-s. 207(3)(b) of the Code states that it is an offence to do anything for the purposes of a lottery scheme that is not authorized by or pursuant to a provision of section 207 of the Code, including “participating in that lottery scheme.”

One of the questions under consideration by the Working Group in connection with I-Gaming is whether an offence should be introduced into the Code which would penalize the actions of Canadians who access I-Gaming that is not regulated by provincial governments. Mr. Smart advises that the Working Group has shown no interest in criminalizing the activities of

individuals who bet or gamble on offshore I-Gaming websites, being fully aware of the authoritarian tactics that would be required to enforce such a prohibition.

The very fact that the question is being considered by the Working Group tends to confirm the position taken by some that s-s. 207(3)(b) of the Code does not provide the basis for a prosecution against individuals for the act of placing a bet or gambling online. The legislative history of this offence indicates that it is directed at persons who permit “authorized” gaming and betting conducted and managed by a provincial government or charity to operate beyond the authority granted to those entities by the Code. Accordingly, it would appear not applicable to participation in I-Gaming that is not conducted and managed by a provincial government.

The Working Group is operating from the premise that an amendment to the Code is required before individual bettors and gamblers could be prosecuted for participation in I-Gaming that is not conducted and managed by a provincial government. This implies that Canadian justice officials agree that s-s. 207(3)(b) of the Code does not provide the basis for a prosecution against individuals for the act of placing a bet or gambling online.