

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

BETWEEN:

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

Appellants  
(Intervenors)

– and –

ATTORNEY GENERAL OF ONTARIO

Respondent  
(Respondent)

– and –

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

Intervenors  
(Intervenors)

---

**FACTUM OF THE INTERVENERS, NSUS GROUP INC. and NSUS LIMITED**  
(Pursuant to Rule 37 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

---

**Borden Ladner Gervais LLP**  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3400  
Toronto, ON M5H 4E3

**Graeme Hamilton | Teagan Markin**  
Tel: 416.367.6746 | 613.367.6379  
Fax: 416.367.6749  
Email: [ghamilton@blg.com](mailto:ghamilton@blg.com) |  
[tmarkin@blg.com](mailto:tmarkin@blg.com)

Counsel for the Intervenors,  
NSUS Group Inc. and NSUS Limited

**Borden Ladner Gervais LLP**  
World Exchange Plaza  
1300 – 100 Queen Street  
Ottawa, ON K1P 1J9

**Nadia Effendi**  
Tel: 613.787.3562  
Fax: 613.230.8842  
Email: [neffendi@blg.com](mailto:neffendi@blg.com)

Agent for the Intervenors,  
NSUS Group Inc. and NSUS Limited

ORIGINAL TO: **REGISTRAR**  
 Supreme Court of Canada  
 301 Wellington Street  
 Ottawa, ON K1A 0J1

COPY TO:

**Davies Ward Phillips & Vineberg LLP**  
 155 Wellington Street West  
 Toronto, ON M5V 3J7

**Matthew Milne-Smith | Chanakya A. Sethi |  
 Ryan Reid**  
 Tel: 416.863.5595  
 Fax: 416.863.0871  
 Email: [mmilne-smith@dwpv.com](mailto:mmilne-smith@dwpv.com) |  
[csethi@dwpv.com](mailto:csethi@dwpv.com) | [rreid@dwpv.com](mailto:rreid@dwpv.com)

Counsel for the Appellants,  
 Atlantic Lottery Corporation,  
 British Columbia Lottery Corporation and  
 Manitoba Liquor and Lotteries Corporation

**Attorney General of Ontario**  
 Crown Law Office – Civil  
 720 Bay Street, 8th Floor  
 Toronto, ON M7A 2S9

**Joshua Hunter | Ananthan Sinnadurai |  
 Hera Evans | Ryan Ng**  
 Tel: 416.908.7465  
 Fax: 416.326.4015  
 Email: [joshua.hunter@ontario.ca](mailto:joshua.hunter@ontario.ca) |  
[ananthan.sinnadurai@ontario.ca](mailto:ananthan.sinnadurai@ontario.ca) |  
[hera.evans@ontario.ca](mailto:hera.evans@ontario.ca) |  
[ryan.ng@ontario.ca](mailto:ryan.ng@ontario.ca)

Counsel for the Respondent,  
 Attorney General of Ontario

**Michael Sobkin Law Corporation**  
 331 Somerset Street West  
 Ottawa, ON K2P 0J8

**Michael J. Sobkin**  
 Tel: 613.282.1712  
 Fax: 613.288.2896  
 Email: [msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

Agent for the Appellants,  
 Atlantic Lottery Corporation,  
 British Columbia Lottery Corporation and  
 Manitoba Liquor and Lotteries Corporation

**Juristes Power Law**  
 1313 – 50 O'Connor Street  
 Ottawa, ON K1P 6L2

**Darius Bossé | Maxine Vincelette |  
 Isabelle Côté (law clerk)**  
 Tel: 613.702.5560  
 Fax: 613.702.5573  
 Email: [dbosse@powerlaw.ca](mailto:dbosse@powerlaw.ca) |  
[mvincelette@powerlaw.ca](mailto:mvincelette@powerlaw.ca)  
[icote@juristespower.ca](mailto:icote@juristespower.ca)

Agent for the Respondent,  
 Attorney General of Ontario

**McCarthy Tétrault LLP**

66 Wellington Street West  
Suite 5300, TD Bank Tower  
Toronto, ON M5K 1E6

**Danielle M. Bush | Adam Goldenberg |  
Gregory Ringkamp | Mathew Zaia**

Tel: 416.601.4343

Fax: N/A

Email: [dbush@mccarthy.ca](mailto:dbush@mccarthy.ca) |  
[agoldenberg@mccarthy.ca](mailto:agoldenberg@mccarthy.ca) |  
[gringkamp@mccarthy.ca](mailto:gringkamp@mccarthy.ca) |  
[mzaia@mccarthy.ca](mailto:mzaia@mccarthy.ca)

Counsel for the Intervener,  
Canadian Gaming Association

**Henein Hutchison Robitaille LLP**

235 King Street East, 1st floor  
Toronto, ON M5A 1J9

**Scott C. Hutchison | Kelsey Flanagan |  
Brandon Chung**

Tel: 416.368.5000

Fax: 416.368.6640

Email: [shutchison@hhllp.ca](mailto:shutchison@hhllp.ca)

Counsel for the Intervener,  
Flutter Entertainment plc

**Olthuis, Kleer, Townshend LLP**

250 University Avenue, 8th Floor  
Toronto, ON M5H 3E5

**Nick Kennedy | Sarah Glickman**

Tel: 416.981.9943

Fax: 416.981.9350

Email: [nkennedy@oktlaw.com](mailto:nkennedy@oktlaw.com) |  
[sglickman@oktlaw.com](mailto:sglickman@oktlaw.com)

Counsel for the Intervener,  
Mohawk Council of Kahnawà:ke

**Supreme Advocacy LLP**

100 – 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Marie-France Major**

Tel: 613.220.7490

Fax: N/A

Email: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

Agent for the Intervener,  
Flutter Entertainment plc

## Table of Contents

	<b>Page</b>
PART I – OVERVIEW AND STATEMENT OF FACTS .....	1
A. Overview .....	1
PART II – STATEMENT OF ISSUES .....	1
PART III – STATEMENT OF ARGUMENT .....	2
A. Ontario is only “conducting and managing” a lottery scheme in Ontario .....	2
B. The Proposed Model is consistent with Parliament’s intention .....	4
C. <i>Earth Future</i> is distinguishable on its facts .....	9
PART IV – SUBMISSIONS ON COSTS .....	10
PART V – ORDER SOUGHT .....	10
PART VI – SUBMISSIONS ON PUBLICATION .....	10
PART VII – AUTHORITIES .....	12
Case Law .....	12
Secondary Sources .....	12
Statutes, Regulations, Rules, etc. ....	13

## PART I – OVERVIEW AND STATEMENT OF FACTS

### A. Overview

1. It is undisputed that the Government of Ontario, through its agent iGaming Ontario (“iGO”), lawfully conducts and manages a lottery scheme for online gaming and sports betting (“iGaming”) in the Province of Ontario. That lottery scheme is currently limited to players physically located in Ontario. Ontario now proposes to allow Ontario players to participate in virtual games and shared betting pools with players located outside of Canada, whose involvement would be facilitated through separate platforms offered by international operators in their local jurisdictions (the “**Proposed Model**”). Brought to the Court of Appeal for Ontario by a Reference, a majority found that the Proposed Model was lawful under the *Criminal Code*.

2. NSUS Group Inc. and NSUS Limited (together, “NSUS”) submit that the majority was correct to find the Proposed Model lawful under s. 207(1)(a) of the *Criminal Code*, which permits the government of a province to conduct and manage a lottery scheme “in that province”. While Ontario would continue to conduct and manage all aspects of Ontario play, players outside of Canada would participate in virtual games and betting pools through platforms offered by foreign operators—Ontario would not “conduct and manage” aspects of the scheme outside of Ontario. The Proposed Model meets the requirements of s. 207(1)(a) and fulfils Parliament’s objective in exempting provincially-run lottery schemes for persons within the province from its general prohibition on gaming in Canada. This Court should uphold the conclusion reached by the majority of the Court of Appeal and affirm that the Proposed Model is lawful.

## PART II – STATEMENT OF ISSUES

3. The questions in this Reference were stated by Ontario as follows:

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?<sup>1</sup>

---

<sup>1</sup> *Reference re iGaming Ontario*, [2025 ONCA 770](#), para. 1 (“**Decision**”).

4. The answer to the first question is yes, and it is unnecessary to answer the second question.

### **PART III – STATEMENT OF ARGUMENT**

#### **A. Ontario is only “conducting and managing” a lottery scheme in Ontario**

5. As correctly held by the majority of the Court of Appeal, the Proposed Model is lawful because the Government of Ontario would conduct and manage a lottery scheme in the Province of Ontario within the meaning of s. 207(1)(a) of the *Criminal Code*, properly interpreted.<sup>2</sup> This section provides:

**207 (1)** Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful

(a) for 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.<sup>3</sup>

6. Where the government of a province conducts and manages a lawful lottery scheme, s. 207(1)(g) similarly renders lawful other activities in the province required for the conduct, management or operation of the permitted lottery scheme or to participate in the lottery scheme.<sup>4</sup>

7. It is not disputed that the Government of Ontario currently conducts and manages the iGaming scheme which limits participation to players physically located in Ontario, and that this is a lawful lottery scheme under s. 207(1)(a) of the *Criminal Code*. As the majority of the Court of Appeal concluded, linking that lottery scheme to a foreign lottery scheme as set out in the Proposed Model does not change the lawfulness of Ontario’s conduct under this provision, because Ontario would not conduct or manage a foreign lottery scheme or allow a foreign lottery scheme to be conducted or managed in Ontario.<sup>5</sup>

8. This conclusion is correct. The Proposed Model contemplates two or more separate “lottery schemes” interacting with one another to permit players in Ontario to participate in the

---

<sup>2</sup> Decision, paras. [145-146](#), [167](#).

<sup>3</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(1\)\(a\)](#) [emphasis added].

<sup>4</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(1\)\(g\)](#).

<sup>5</sup> Decision, paras. [167](#), [171](#).

same virtual games and betting pools as players outside of Canada, while respecting the requirements of s. 207(1)(a) of the *Criminal Code*. Ontario players would continue to access iGaming through platforms operated by agents of iGO, for which the Government of Ontario sets and enforces regulatory standards to ensure the protection of players in Ontario, just as they do under the current iGaming scheme. However, players outside of Canada would participate through platforms offered by foreign operators in their local jurisdictions, governed by local regulations. The Government of Ontario would not conduct or manage these platforms—it would only conduct and manage the iGaming scheme in Ontario as permitted by s. 207(1)(a).

9. This analysis is consistent with Parliament’s use of the phrase “conduct and manage” as the linchpin of the exception under s. 207(1)(a). This phrase has been interpreted by the Ontario Superior Court of Justice to mean a sufficient level of control and decision-making power to constitute the “operating mind” behind the lottery scheme.<sup>6</sup> In *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, the Superior Court concluded that the Government of Ontario “conducts and manages” the current iGaming scheme in Ontario within the meaning of s. 207(1)(a), despite the involvement of private sector operators who operate iGaming platforms as agents on behalf of iGO, because Ontario exercises such extensive control over the private operators that it is the ultimate decision-maker and operating mind behind the scheme.<sup>7</sup>

10. While Ontario would continue to exercise this level of control over private operators in Ontario under the Proposed Model, it would not do so in relation to the foreign operators who facilitate the involvement of players outside of Canada. Ontario would not be the “operating mind” of those lottery schemes with control over decisions about which games to offer, how to advertise, or how to manage customer relations.<sup>8</sup> The role contemplated for Ontario in relation to these foreign lottery schemes does not meet the threshold of control or decision-making such that Ontario would be “conducting and managing” anything outside of Ontario to take it beyond the geographical restriction in s. 207(1)(a).

---

<sup>6</sup> *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, [2024 ONSC 2726](#) at paras. [98](#) and [101-104](#).

<sup>7</sup> *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, [2024 ONSC 2726](#) at para. [101](#).

<sup>8</sup> *Mohawk Council of Kahnawà:ke v. iGaming Ontario*, [2024 ONSC 2726](#) at para. [102](#).

11. The Appellant lottery corporations argue that the concept of multiple lottery schemes, which was implicit in the majority of the Court of Appeal’s reasons, is untenable based on the definition of a “lottery scheme” under s. 207(4).<sup>9</sup> A lottery scheme is defined as

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 [exceptions that do not apply here].<sup>10</sup>

The Appellants contend that the granularity of this definition is fatal to the majority’s interpretation, because each and every “game” that players participate in is a single lottery scheme.<sup>11</sup> In her dissenting opinion, Van Rensberg J.A. similarly critiqued the “two-scheme” approach as “artificial” because players would participate in a single game under the same rules and betting pool.<sup>12</sup>

12. However, while there may be a single game from the perspective of players, it is possible for that game to be the product of multiple “lottery schemes” pursuant to the text and scheme of the *Criminal Code*. Although players in Ontario may participate with players outside of Canada in a single “game” in the colloquial sense, the players outside of Canada are not participating in the Ontario “lottery scheme” when one considers the aspects of the game that Ontario is conducting and managing. The exception in s. 207(1)(a) focuses on the actions the province takes in “conducting and managing” the lottery scheme, and under the interpretation given to “conducting and managing” in *Kahnawà:ke*, Ontario can only truly be said to be conducting and managing the participation of the Ontario players in the colloquial “game”.

### **B. The Proposed Model is consistent with Parliament’s intention**

13. Given that Ontario would conduct and manage all aspects of the iGaming scheme in Ontario and nowhere else, the Proposed Model meets the requirements of s. 207(1)(a) and fulfils Parliament’s objective in exempting provincially-run lottery schemes for persons in the province from its general prohibition on gaming in Canada.

---

<sup>9</sup> Appellants’ Factum, para. 61, 79.

<sup>10</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(4\)](#).

<sup>11</sup> Appellants’ Factum, paras. 62-64.

<sup>12</sup> Decision, paras. [245](#), [249](#).

14. As the majority of the Court of Appeal concluded, the *Criminal Code* is silent on the circumstances in which a provincial government can link its lottery scheme to another country.<sup>13</sup> The scope of the geographical restriction imposed by the words “in that province” must be interpreted in light of Parliament’s intention to leave it to provincial governments to decide on the scope of permissible gaming within their own borders. The majority of the Court of Appeal conducted a rigorous statutory interpretation analysis and concluded that Parliament was primarily concerned with “preventing provincially-run lottery schemes spilling over into other provinces without the other provinces’ consent, rather than about preventing interprovincial spillover as something that was inherently contrary to public policy”.<sup>14</sup>

15. This conclusion is without error. Parliament granted provincial governments the power to regulate gaming within their provincial boundaries, either by conducting and managing a lottery scheme themselves under s. 207(1)(a), or by authorizing another person or specified entity to conduct and manage a lottery scheme under a license issued by the provincial government under ss. 207(1)(b)-(d).<sup>15</sup> While each of these provisions contains a geographical restriction within the province,<sup>16</sup> they accept that the lottery scheme may exceed those boundaries so long any impacted provinces consent. For example, under s. 207(1)(a), a province can directly conduct and manage a lottery scheme in its own boundaries and in another province “in conjunction with the government of another province”.<sup>17</sup> Section 207(1)(e) and (f) further define circumstances in which a provincial government or any other person can carry out activities relating to a lawful lottery scheme conducted and managed by one provincial government in the boundaries of another province in accordance with an agreement or license.<sup>18</sup>

---

<sup>13</sup> Decision, para. [147](#).

<sup>14</sup> Decision, para. [152](#).

<sup>15</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), ss. [207\(1\)\(a\)-\(d\)](#).

<sup>16</sup> These provisions variously use the phrases “in that province”, “in the province” and “in a province”.

<sup>17</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(1\)\(a\)](#).

<sup>18</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), ss. [207\(1\)\(e\)-\(f\)](#).

16. Notably, s. 207(1)(e) directly supports the conclusion that the geographic restriction under s. 207(1)(a) does not preclude *all* activities outside the province, but is concerned with impacts on other provinces without their consent. Section 207(1)(e) provides that it is lawful

for the government of a province to agree with the government of another province that lots, cards or tickets in relation to a lottery scheme that is by any of paragraphs (a) to (d) authorized to be conducted and managed in that other province may be sold in the province.<sup>19</sup>

Under this provision, a provincial government can conduct and manage a lottery scheme involving the sale of tickets in its own province but sell tickets in another province, with that second province’s consent. However, Parliament did not consider this to be “conducting and managing” the lottery scheme in the second province—otherwise, this provision would be superfluous given s. 207(1)(a).

17. The focus on provincial consent in s. 207(1), rather than a geographical limitation for its own sake, reflects Parliament’s intention to decriminalize gaming in Canada and leave it to each province to decide what gambling activities can take place within its own jurisdiction based on the differing attitudes towards gaming across the country:

We feel that public opinion in this country is not unanimous about it and that it might vary from region to region. We are, therefore, leaving it to the regions, as that public opinion may be interpreted by provincial governments that their provincial Attorneys General have control over whether or not there should be lotteries permitted within provincial boundaries.<sup>20</sup>

As the majority of the Court of Appeal found, the legislative history demonstrates that Parliament’s purpose in enacting s. 207(1) 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*”.<sup>21</sup>

---

<sup>19</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(1\)\(e\)](#).

<sup>20</sup> House of Commons Standing Committee on Justice and Legal Affairs, 1st Session, 28th Parliament, 1968-1969 (March 11, 1969), p. 331, Court of Appeal for Ontario Record of the Attorney General of Ontario, Vol. II, p. 457 (“**AGO Record**”).

<sup>21</sup> Decision, para. [183](#).

18. The Proposed Model is entirely consistent with this interpretation of the phrase “in that province” under s. 207(1)(a). Ontario would only conduct and manage aspects of the scheme involving Ontario players. Permitting Ontario to link its provincially-run lottery scheme to foreign countries does not limit the ability of any other Canadian province to decide what gaming activities it will permit within its own borders. If Ontario intended to expand its iGaming scheme into other provinces, for example by allowing residents of other provinces to access Ontario’s iGaming platforms, it could only do so only with the cooperation of that other province.<sup>22</sup> The Proposed Model respects the authority of each province to determine, within its own provincial boundaries, the extent to which its residents will engage in permitted lotteries, and to limit that province’s ability to carry out its lottery scheme in another province.

19. The Proposed Model also ensures that players in Ontario only participate in lawful lottery schemes under the oversight of a provincial government and for the benefit of Canadians. The Appellants point out that foreign lotteries remain prohibited under s. 206(7) of the *Criminal Code*, which states that the gaming prohibitions in s. 206 generally apply to activities in relation to a “foreign lottery”, including advertising, selling tickets, and “the conducting and managing of any scheme”.<sup>23</sup> As set out above, the Proposed Model does not require the Government of Ontario to conduct or manage a foreign lottery scheme. Nor does it allow a foreign lottery scheme to be operated in Canada.

20. The purpose of this prohibition on foreign lotteries—which developed long before there were exclusions for provincial lotteries—was to ensure that prohibitions applied to both domestic and foreign gaming schemes because both pose the same potential harms to the Canadian public that the prohibitions on gambling were designed to address.<sup>24</sup> When gaming was subsequently decriminalized, Parliament opted for an approach that would permit lottery schemes that are either directly conducted and managed or otherwise regulated by the government of a province, ensuring that permitted lotteries would be subject to sufficient regulatory oversight by a province. Under the Proposed Model, when individuals in Canada access gaming, whether it involves players outside of Canada or not, it will be through a scheme

---

<sup>22</sup> *Criminal Code*, [R.S.C. 1985, c. C-46](#), ss. [207\(1\)\(a\)](#) and [207\(1\)\(f\)](#).

<sup>23</sup> Appellants’ Factum, paras. 9-11, 73, 78; *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [206\(7\)](#).

<sup>24</sup> *R. v. World Media Brokers Inc.*, [1998 CanLII 27761 \(ON CJ\)](#) at [204](#).

that is conducted and managed or otherwise licensed by the government of a province, as Parliament intended.

21. In addition, the Proposed Model is consistent with Parliament’s intention to ensure that gaming in Canada takes place under the regulatory oversight of a provincial government, because it encourages players in Ontario to participate in the regulated market conducted and managed by iGO, rather than the international market which does not have the same regulatory standards and oversight. Ontario’s current closed liquidity system significantly restricts the experiences available for players seeking to engage in peer-to-peer gaming, including online poker.<sup>25</sup> When every game is limited to players physically in Ontario, in the same Ontario time zone, there are fewer available tables, fewer participants at those tables, fewer varieties of poker, smaller betting pools and lower prizes.<sup>26</sup> Ontario players are deprived of the high-value, large-scale play available in pooled liquidity markets.<sup>27</sup> This diminished experience is not just a problem for Ontarians who want to play poker—it also undermines Ontario’s effort to transition internet gaming in the province to an effective regulatory regime, because large numbers of Ontario players are driven to unregulated black-market operators who offer international play that is not so limited.<sup>28</sup> Pooled liquidity addresses this concern by improving the province’s regulated offerings, which makes the black-market offerings less attractive to Ontario players.<sup>29</sup>

22. Moreover, the Proposed Model is consistent with Parliament’s intention, including in its more recent amendments to Part VII of the *Criminal Code* which authorized single-event sports betting, to limit competition between the jurisdictions and ensure that gaming revenue benefits Canadians, not foreign operators.<sup>30</sup> When online poker and sports betting does not meet

---

<sup>25</sup> Affidavit of Jesse Todres sworn May 31, 2024, paras. 42-46 (“**Todres Affidavit**”), AGO Record, Vol. I, Tab 4, pp. 39-40.

<sup>26</sup> Todres Affidavit, paras. 42-46, AGO Record, Vol. I, Tab 4, p. 39; Affidavit of George Sweny sworn May 21, 2024, para. 29 (“**Sweny Affidavit**”), AGO Record, Vol. I, Tab 4, p. 367.

<sup>27</sup> Todres Affidavit, paras. 42-46, AGO Record, Vol. I, Tab 4, p. 39; Sweny Affidavit, para. 29, AGO Record, Vol. I, Tab 5, p. 367.

<sup>28</sup> Todres Affidavit, para. 48, AGO Record, Vol. I, Tab 4, p. 40; Sweny Affidavit, paras. 30, 32, AGO Record, Vol. I, Tab 5, pp. 367-68.

<sup>29</sup> Todres Affidavit, para. 53, AGO Record, Vol. I, Tab 4, p. 41.

<sup>30</sup> Official Report, House of Commons Debates, 1st Session, 28th Parliament, 1969 (April 22, 1969), at 7826-7827, AGO Record, Vol. II, pp. 502-503; Hansard, House of Commons Debates, 2nd Session, 43rd Parliament, 2020-2021 (February 5, 2021) [at 4084](#); Hansard, House of

the needs of Ontario players, they will either play less or seek out games from unregulated operators who offer games involving larger international participant pools. Less play in the regulated market results in lower revenues for the government and registered operators.<sup>31</sup> The Proposed Model encourages Ontarians to play in the regulated market and allows all Canadian provinces to better compete against unregulated operators.

**C. *Earth Future* is distinguishable on its facts**

23. Finally, NSUS submits that its proposed interpretation of s. 207(1)(a) does not demand a different interpretation of the words “in that province” from the one adopted in the decision in *Earth Future* under s. 207(1)(b) of the *Criminal Code*.

24. In *Earth Future*, the Prince Edward Island Court of Appeal found that the words “in that province”, used in the exception for lotteries conducted and managed by charitable organizations under s. 207(1)(b) of the *Criminal Code*, imposed a territorial restriction.<sup>32</sup> In particular, the Court held that conducting a lottery scheme “from the province” was not sufficient.<sup>33</sup> This conclusion was upheld by this Court on appeal. The interpretation adopted by the majority of the Court of Appeal in this Reference, and urged upon the Court by NSUS, does not challenge the conclusion in *Earth Future* that the words “in that province” impose a geographic restriction on Ontario’s conduct and management of a lottery scheme.

25. However, as the majority of the Court of Appeal correctly held, the Proposed Model is materially different from the lottery at issue in *Earth Future* and that decision does not decide the Reference questions.<sup>34</sup> The essence of the proposed lottery in *Earth Future* was one that would be conducted and managed from a place of business in Prince Edward Island, but directed at the global market. Tickets would be sold online to participants physically located around the

---

Commons Debates, 2nd Session, 43rd Parliament, 2020-2021 (November 3, 2020), [at 1645, 1646](#); Hansard, Debates of the Senate, 2nd Session, 43rd Parliament, 2020-2021 (May 25, 2021) [at 1507](#); Hansard, Debates of the Senate, 2nd Session, 43rd Parliament, 2020-2021 (May 4, 2021) [at 1384](#); see *Safe and Regulated Sports Betting Act*, [S.C. 2021, c. 20](#).

<sup>31</sup> Todres Affidavit, paras. 53-54, AGO Record, Vol. I, Tab 4, p. 41.

<sup>32</sup> *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#) at para. [10](#), aff’d [2003 SCC 10](#); *Criminal Code*, [R.S.C. 1985, c. C-46](#), s. [207\(1\)\(b\)](#).

<sup>33</sup> *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#) at para. [10](#), aff’d [2003 SCC 10](#).

<sup>34</sup> Decision, para. [111](#).

world, the lottery would be advertised and promoted outside the province, and sales and prizes would be paid in U.S. dollars.<sup>35</sup> On those facts, the proposed lottery scheme exceeded the territorial scope of the exception under s. 207(1)(b) of the *Criminal Code*, because the phrase “in that province” could not be interpreted to mean “from that province”.

26. In contrast, the Proposed Model is fundamentally a lottery scheme conducted and managed by the Government of Ontario in the Province of Ontario. Nobody contests that the current iGaming scheme is a lottery scheme lawfully conducted and managed in Ontario in accordance with the geographical restrictions under s. 207(1)(a). The question is whether it would continue to be lawful merely by introducing players located outside of Canada by linking the iGaming scheme with foreign lotteries that are conducted and managed by foreign operators. *Earth Future* says nothing about that question. The Proposed Model has been carefully crafted to comply with the requirements under s. 207(1)(a), including the requirement that Ontario conducts and manages a lottery scheme “in that province”.

#### **PART IV – SUBMISSIONS ON COSTS**

27. NSUS does not seek costs and asks that no costs be awarded against it.

#### **PART V – ORDER SOUGHT**

28. NSUS respectfully requests that the Court dismiss the appeal and answer the Reference question in the affirmative.

#### **PART VI – SUBMISSIONS ON PUBLICATION**

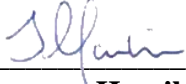
29. N/A

---

<sup>35</sup> *Earth Future Lottery (P.E.I.) (Re)*, [2002 PESCAD 8](#) at para. [13](#), aff’d [2003 SCC 10](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of March 2026.

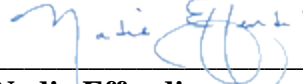
Per:



---

**Graeme Hamilton | Teagan Markin**  
Counsel for the Interveners,  
NSUS Group Inc. and NSUS Limited

Per:



---

**Nadia Effendi**  
Agent for the Interveners,  
NSUS Group Inc. and NSUS Limited

## PART VII –AUTHORITIES

## Case Law

No.	Authority	Paragraph Reference
1.	<i>Earth Future Lottery (P.E.I.) (Re)</i> , <a href="#">2002 PESCAD 8</a>	24, 25, 26, 27
2.	<i>Mohawk Council of Kahnawà:ke v. iGaming Ontario</i> , <a href="#">2024 ONSC 2726</a>	9, 10
3.	<i>R. v. World Media Brokers Inc.</i> , <a href="#">1998 CanLII 27761 (ON CJ)</a>	21
4.	<i>Reference re Earth Future Lottery</i> , <a href="#">2003 SCC 10</a>	24, 25, 26, 27
5.	<i>Reference re iGaming Ontario</i> , <a href="#">2025 ONCA 770</a>	3, 5, 7, 11, 15, 18, 26

## Secondary Sources

No.	Secondary Source	Paragraph Reference
1.	Hansard, House of Commons Debates, 2nd Session, 43rd Parliament, 2020-2021 (November 3, 2020), <a href="#">at 1645, 1646</a>	23
2.	Hansard, House of Commons Debates, 2nd Session, 43rd Parliament, 2020-2021 (February 5, 2021) <a href="#">at 4084</a>	23
3.	Hansard, Debates of the Senate, 2nd Session, 43rd Parliament, 2020-2021 (May 4, 2021) <a href="#">at 1384</a>	23
4.	Hansard, Debates of the Senate, 2nd Session, 43rd Parliament, 2020-2021 (May 25, 2021) <a href="#">at 1507</a>	23
5.	House of Commons Standing Committee on Justice and Legal Affairs, 1st Session, 28th Parliament, 1968-1969 (March 11, 1969), p. 331	18
6.	Official Report, House of Commons Debates, 1st Session, 28th Parliament, 1969 (April 22, 1969), at 7826-7827	23

**Statutes, Regulations, Rules, etc.**

<b>No.</b>	<b>Statute, Regulation, Rule, etc.</b>	<b>Section, Rule, Etc.</b>
1.	<i>Criminal Code</i> , <a href="#">RSC 1985, c C-46</a>	ss <a href="#">206(7)</a> , <a href="#">207</a>
	<i>Code criminel</i> , <a href="#">LRC 1985, c C-46</a>	art <a href="#">206(7)</a> , <a href="#">207</a>
2.	<i>Safe and Regulated Sports Betting Act</i> , <a href="#">SC 2021, c 20</a>	
	<i>Loi sur le pari sportif sécuritaire et réglementé</i> , <a href="#">LC 2021, c 20</a>	