



ACSUS

OCCASIONAL PAPERS ON PUBLIC POLICY SERIES

VOL. 1 No. 3

THE OPTIONS FOR INTERNET GAMBLING IN CANADA

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Globally, online gambling is now at least a \$15.5 billion a year market (James 2006). Currently there are around 2,000 online gambling sites around the world, many of which are operating in small countries like Antigua and Barbuda (537 sites) and Costa Rica (474 sites) (BBC 2007). Estimates suggest that US residents spend more money on online gambling than any other public, supplying more than half of all revenues while increasing their activity at a rate of more than 20 percent per year (Stewart 2006, 1-2). On the other hand, a relatively small number of Canadians may gamble online. One survey of Ontario adults suggested 5.3 percent had gambled on the internet in the past year (MacKay 2004, 7). Other national research suggests a much lower figure—less than one percent (MacKay 2004, 7). In any event, some Canadians do

gamble on-line, and while some do so legally through province-sponsored sites, others do so through sites that exist in unclear legal terrain.

As online gambling has grown, national governments have developed different ways to handle it. The UK has taken a regulation and taxation approach; Parliament passed the Gambling Act in 2005, to be fully implemented by September of 2007, which allows online gambling sites to operate inside the UK while being regulated and taxed by the government (Dept. for Culture, Media and Sport). In the US, the federal government has taken nearly the opposite approach. Recently, it has tried to eliminate online gambling indirectly by making illegal the use of US credit card accounts for online gambling payment mechanisms (Stewart 2006, 5). Traditionally it

has also interpreted the 1961 Wire Act as banning online gambling, although contrasting interpretations of the law exist (Stewart 2006, 7).

Canada, however, so far has chosen not to move policy in either the US or UK directions. As Terri L. MacKay of the Addictions Foundation of Manitoba puts it, in Canada, online gambling “waits in legal purgatory.” This paper aims to offer a way out of purgatory for online gambling in Canada. We begin with an examination of the status of online gambling in Canada. This is followed by an analysis of the two most prominent and contrasting options for regulating online gambling, using as exemplars the US and UK approaches.¹ We conclude with a call for Canada to recognize the growing trend of online gambling and the need to develop policy to address it.

Canada

Before 1969, the Criminal Code of Canada banned all forms of gambling other than parimutuel betting on horse races, charity lotteries, and lotteries at fairs (Seelig and Seelig 1996). In 1969 the Code was amended to allow the federal and provincial governments to hold lotteries, but in 1985 the federal government left gambling entirely to the provinces in exchange for a payment of \$100 million (Seelig and Seelig 1996). Every province in Canada now has a lottery, and there are dozens of casinos in Canada.

It remains somewhat unclear if the Criminal Code of Canada bans internet gambling other than that provided by provincial lottery corporations. The Code makes it illegal to run or to be found in a betting house, but does not state whether a virtual betting house falls under the ban. The Criminal Code of Canada permits the provinces to allow myriad forms of gambling, including “lottery schemes,” and Section 207 defines lottery schemes to include those operated on or through a computer. The Atlantic provinces as well as British Columbia have taken advantage of section 207 to offer limited online gambling, although participants must be residents of the province and within its borders at the time of purchase in order to buy tickets legally.²

Elsewhere in Canada, the Kahnawake Mohawk Nation in Quebec has been running an online casino since 1999, which makes them a \$2 million profit per year (Beazley 2007). Additionally, the Nation is the third largest host of online gambling websites in the world (401 sites), according to a report by Britain’s Department of Culture, Media, and Sport (Perkins 2006, D01). The Attorney General has called the operation illegal (MacKay 2004, 7). However, no legal action has been taken against the Nation, further contributing to the legal gray zone for online gambling. Under the tutelage of the Mohawks, the Alexander First Nation based near Edmonton,

is in the process of creating an identical online casino operation. Currently, “the Alexander Gaming Commission is still negotiating with a handful of international e-gambling operations for the lease of server space in the band’s 25,000-square-foot data centre. No contracts have been inked yet” (Beazley 2007). Solicitor General Fred Lindsay has told the Nation to stop. “If they don’t, we will do what we have to do. We’ll (lay charges). You bet,” he said (Beazley 2007).

The murky legal status of non-provincially run online gambling has influenced provincial legislation concerning the practice. The Liberal government in Ontario has introduced a measure to ban advertising for online gambling. Said Paul de Zara, spokesperson for the Ministry of Government Services, about the scope of the bill, “for example, the Toronto football team would not be permitted to put Pokerstars.com or any of those pay-to-play websites on the field” (Vallerius 2007).³ The Minister of Government Services Gerry Phillips said the measure is intended to reduce the number of young people gambling online and used strong language about the status of online gaming saying “I don’t see us moving to legalize Internet gaming—that’s not an option we’re even considering” (Spicer 2006).

The Ontario legislation was supported by the horse-racing industry, which asserts it is los-

ing tens of millions of dollars to illegal internet gambling sites. "We've identified 130 sites that bet on our races without paying for it," said David Wilmot, CEO of Woodbine Entertainment Group (Vallerius 2006). "Our wagering in the last three years, which is really when this stuff starting taking off, is down over \$100 million dollars, and we attribute all of that to the online gaming sites" (Vallerius 2006). Wilmot added that Woodbine would like to open its own poker, casino and sportsbook site on the internet, but is prevented by Canadian law from doing so. Currently Canadian law permits horse tracks to take bets on races from across the country, and the federal government collects 0.8 percent of every wager (Wiecek 2006).

Since 2004 Canada has been governed by successive Liberal and Conservative minority governments. Neither the Martin nor Harper governments introduced any legislation to alter the status of non-provincially provided internet gambling in the Criminal Code of Canada. Neither the federal NDP nor the Bloc Quebecois has made altering the status of internet gambling an important element of their platforms. Internet gambling is not currently on the national agenda in Canada.⁴

US Policy

Unlike Canada, the US national government has taken a stance on Internet gambling, and has attempted to wipe it out. One

major method has been to pressure banks and companies like Paypal and Neteller, which specialize in online money transfers, to stop wiring money to the offshore online gambling accounts (Stewart 2006, 5). At the state level, the attorneys general in both Florida and New York successfully pressured banks to stop offshore money transfers to gambling sites (Stewart 2006, 5). The Justice Department reached a settlement recently with e-wallet PayPal, which was forced to hand over \$10 million for conducting online gambling transfers (Stewart 2006, 5).

Additionally, several pieces of legislation have been used to restrict online gambling. Although decades old, the Wire Act of 1961, which originally sought to prohibit gambling over telephone "wires," has been interpreted by the federal government as applying to, and prohibiting online gambling (Stewart 2006, 7). More recently, in an amendment to a port security bill, Congress added a measure entitled the Unlawful Internet Gambling Enforcement Act, which updates the Wire Act to include the internet and orders financial institutions to stop any transactions to online gambling sites (Weisman 2006). After passage of the law, the Canadian co-founders of e-wallet Neteller were arrested by US officials and accused of money laundering for transferring \$2.9 billion from US gamblers to off-shore sites (Blitz 2007, 19).

Although the U.S. has taken a prohibitionist stance regarding online gambling, not all forms are illegal. The Interstate Horseracing Act of 1978 was updated by Congress in December, 2000 to allow bets across state lines by both telephone and "other electronic media" (Rose 2002, 81). This seeming contradiction in policy has recently caused the US some trouble with the World Trade Organization.

The small island nation of Antigua and Barbuda, where a large number of online gambling sites operate, brought a case against the US through a WTO panel. Antigua alleged that the ban on internet gambling through laws like the Unlawful Internet Gambling Enforcement Act of 2006 coupled with the Interstate Horseracing Act unfairly discriminate against foreign online gambling providers, while protecting US-based companies (James 2006, 1). The US countered that this seemingly contradictory policy was allowable and invoked an exception in WTO rules, which allows for actions to be taken to protect "public morals and public order" (James 2006, 1). Although the WTO panel ruled in November, 2006 in what seemed to be Antigua's favor, an appeal ruling in 2007 appeared more in favor of the US because it held that the US may unilaterally declare internet gambling out of the purview of its WTO commitments, but would have to com-

pensate other WTO members for doing so (Blustein 2007). The US can avoid compensation if it rectifies the contradiction in its online gambling policies by either allowing foreign competitors, or outlawing all forms of internet gambling, including domestic forms (Rivlin 2007). Neither option is likely. Currently, Antigua is demanding compensation of \$3.4 billion as well as the right, which has precedent in international law, to violate US intellectual property law (Rivlin 2007). The possibility of such violation will likely inspire opposition from Hollywood, computer software makers like Microsoft, and the music industry to push Washington to find a compromise with Antigua, which opens the door for a change in US online gambling policy in the future (Rivlin 2007).

UK Policy

Policy in the UK offers an antipode to that in the US. With the Gambling Act of 2005 (to be fully implemented in 2007) the UK will allow fully legal, governmentally regulated online gambling sites within its borders. The act has three main objectives: “keeping gambling crime free, making sure that gambling is fair and open, and protecting children and vulnerable adults” (Dept. for Culture, Media and Sport). To regulate the gaming sites, the Act creates the gaming commission, which will officially grant sites operating licenses. To protect children and the vulnerable,

companies will not be allowed to seek out children and will be responsible for keeping customers aware of their spending. Although the amount of tax revenue the government will collect from online gambling is highly anticipated, the government has yet to set a rate.

The UK is interested in not only allowing legalized internet gambling within its own borders, but is also encouraging other countries to match their policies with the new UK system. In 2006 Britain’s Culture Secretary Tessa Jowell hosted a conference of 32 nations to try to convince them to create an international code of conduct for on-line gaming companies (Donaldson 2006, D02). Canada attended the conference, but the US did not.

Canadian Options

The main advantages of the UK approach include the government’s increased revenue from taxes on gambling profits, as well as regulation of online sites to protect gamblers from corrupt organizations more interested in cheating gamblers or stealing identities, than in offering fair games of chance. Legalization, however, does not address the problem of promoting what some (including lawmakers in the US) see as a morally suspect activity, or breaking the addiction of governments on gambling revenue often derived from those least in a financial position to pay. In terms of US policy, assuming

that making online gambling illegal reduces the number of gamblers, then banning gambling will likely reduce the number of addicted and problem gamblers. Regardless of the strengths and weaknesses of fully legalizing or completely banning online gambling, one advantage these approaches have over the current Canadian hands-off approach to internet gambling not provided by the provinces is that the legal status is transparent to citizens; internet gamblers in the UK know they are abiding by the law and gamblers in the US gamble online at their own risk.

As other countries are actively developing policy, the status of non-provincially provided online gambling in Canada remains uncertain. As online gaming continues to grow globally and groups like the Alexander First and Mohawk Nations test the waters, Canadians may be forced to make policy decisions. What is certain is that some Canadians participate in on-line gambling not provided by their province, and the industry is growing globally in leaps and bounds. Is it reasonable to expect Canada to be immune to this growth? The vibrant provincial lotteries, casinos, and horse-racing industry suggest Canadians enjoy gambling at least as much as many of their neighbors to the south.

What events could cause the status internet gambling to reach the national agenda in

Canada? In 1998, Michael Howlett developed from John Kingdon's work a typology of four different kinds of "policy windows," which are broadly defined as agenda setting opportunities, or chances for an issue to move onto the formal national agenda. *Routine political windows* occur when institutionalized political events such as elections, the Throne Speech or budget proposals occur. If Canada is indeed in a prolonged period of minority governments, these events will occur more frequently, but the apparent lack of interest by either of Canada's governing-oriented political parties in the issue makes it unlikely that internet gambling will reach the agenda through a routine policy window.

Howlett (1998, 500) suggests *discretionary political windows* occur when, "the behaviour of individual political actors leads to less predictable window openings." Think tanks and policy institutes such as CCSA National Policy Working Group and the American Gaming Association have written reports on internet gambling in Canada, while scholars have argued for and against the expansion of gambling overall (for arguments against the expansion of gambling the provinces see Henriksson 1996 and Henriksson and Lipsey 1999). But no prime minister, party leader, cabinet minister or shadow minister has seemed to want to take on internet gambling policy as his or her

issue, and the prospects for that happening in the near future do not look promising.

Spillover problem windows open when related issues are connected with an already open window. Opponents of internet gambling might make use of this opportunity by linking gambling with other controversial uses of the internet such as child pornography, identity theft and fraud. In their 2006 platform the Conservative Party of Canada declared, "Canada has become a haven for internet child pornographers," and pledged to crack down on the practice through a "zero-tolerance" policy and the elimination of the "legitimate purpose" defense. This could provide a very small window for opponents of non-provincially provided internet gambling to piggy-back legislation clearly banning the practice onto other laws.

Finally, *random problem windows* open because of "random events or crises." How likely is a true "crisis" to occur in regard to internet gambling in Canada? Could a flood of addicted internet gamblers overwhelm the mental health system, or cause financial woes to a sufficient number of families that the federal government perceives it as a crisis? This scenario seems unlikely, as provincial governments, at least, have rarely refused an increase in legalized gaming, despite the negative consequences for some gamblers.

Could US arrests of Canadian businessmen such as Neteller co-founders John Lefebvre and Stephen Lawrence become a crisis that prompts Canadian federal government action on the legality of on-line gambling? Lefebvre and Lawrence were arrested in 2007 for transferring billions of dollars from US customers to internet gambling sites (Blitz 2007, 19). National policy changes because of the difficult situation of two citizens seems unlikely.

Toronto Star columnist Dave Perkins believes the recent corruption scandal in the Ontario Lottery and Gaming Corporation (OLG) is a sufficient crisis to merit complete overhaul of gambling in Canada. Ticket clerks were found to have won a disproportionate percentage of lottery prizes, and one high profile case of a clerk defrauding a septuagenarian winner prompted the OLG to pay a \$200,000 settlement on the day the victim's trial was to begin. Perkins called for Canada to adopt the British model. It does not yet appear that the government of Ontario is ready to leave the gambling business completely as Perkins proposes, but scandals such as this may open policy windows.

The Canadian economy has suffered from the US ban on transferring money to internet gambling sites. Gambling software manufacturer Cryptologic, based in Toronto, announced plans in 2007 to move to Dublin. The annual Global Interactive

Gaming Summit and Expo, held in Montreal, saw a decrease in attendance from 2006 to 2007 from 1,864 participants to just 640 (Rocha 2007, B1). Also, Neteller cut close to 200 jobs in Calgary after the US ban went into effect (Blitz 2007, 19). Again, while these economic hits are significant, they may not rise to the level of the true crisis that opens a policy window.

Canadians gamble on the internet. Every time they do so through means other than those provided by provincial lottery web-sites, they enter murky legal territory. Is it healthy for a polity to maintain a situation where potentially millions of its citizens bend or break the law on a regular basis with almost no threat of repercussions? The situation is not a crisis, but it is problematic.

No change to the legal status of internet gambling in Canada would come without tremendous opposition from parties whose economic interests would be threatened by greater liberalization, or, less likely, prohibi-

tion. If the federal government followed the UK model and completely legalized all internet gambling and encouraged operators to relocate to Canada, provincial lotteries would be so threatened that a serious crisis in Canadian federalism could result. Perhaps a compromise could be reached where provincial lotteries are allowed to run on-line casinos and sportsbooks where betting on a single sporting event is possible. Certainly this plan would face stiff opposition from gambling's opponents.

Non-provincially run internet gambling in Canada is indeed in purgatory. While it may not be legal, it still exists. But events are moving rapidly regarding this growing global industry, and Canada's friends in the UK and US have presented diametrically opposed policy options. As is often the case, Canada is in the privileged position of getting to select from the best aspects of policies pursued by its friends. We hope decisions are made before a crisis necessitates action that may not be well considered.

Endnotes

¹ Although we focus our attention in this paper on two policy options at opposite ends of the spectrum, the US and UK options are not the only ones. Australia, for example, makes it illegal for domestic companies to offer online gambling, but Australian citizens can legally gamble on overseas sites (Passmore 2006, 35). Additionally, it is legal for Australian companies to offer sports betting via the internet and mobile phones (Passmore 2006, 35).

In France, online gambling may be conducted only by state run bodies as well as domestic casinos (Sage 2006, 53). Just as the US did with operators of the online money transfer company Neteller, the French government arrested two attendees of a conference sponsored by a non-French online gambling provider as well as issued warnings for future arrests to foreign providers offering gambling to French citizens should they set foot in France (Sage 2006, 53). The French football league has banned online gambling sponsorship for jerseys (Bowers 2007, 26).

The French policy of allowing only state and domestic casino run online gambling services has been attacked by the European Commission (Reuters 2007, 9). Under EU rules, states may not place limits on competition, and the commission threatened to sue France if it did not open up its gambling market to foreign competition (Reuters 2007, 9). A similar warning was issued to EU members Sweden and Greece as well (Reuters 2007, 9).

² Serious sports gamblers are not particularly interested in the products offered by these provinces. Because the Criminal Code does not permit making a bet on a single sporting event, these provinces offer multi-wager "parlay" bets, which have worse payouts than those generally offered by the off-shore sites. They also cannot offer the casino games off-shore sites provide.

³ It is interesting he mentioned the Toronto football team because between 2004 and 2005 the Argonauts and the CFL accepted at least hundreds of thousands of dollars in sponsorship from Bowman's, a Mauritius-based betting firm. The CFL did not renew the relationship with Bowman's in 2006, instead inking a deal with partypoker.net, although several CFL clubs maintained Bowman's as sponsors (Koreen 2006).

⁴ According to the CBC, in 1997 federal MP David Mills submitted a private member's bill to make online gambling legal, and regulated by the federal government. The bill was never passed ("On-Line Gambling").

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