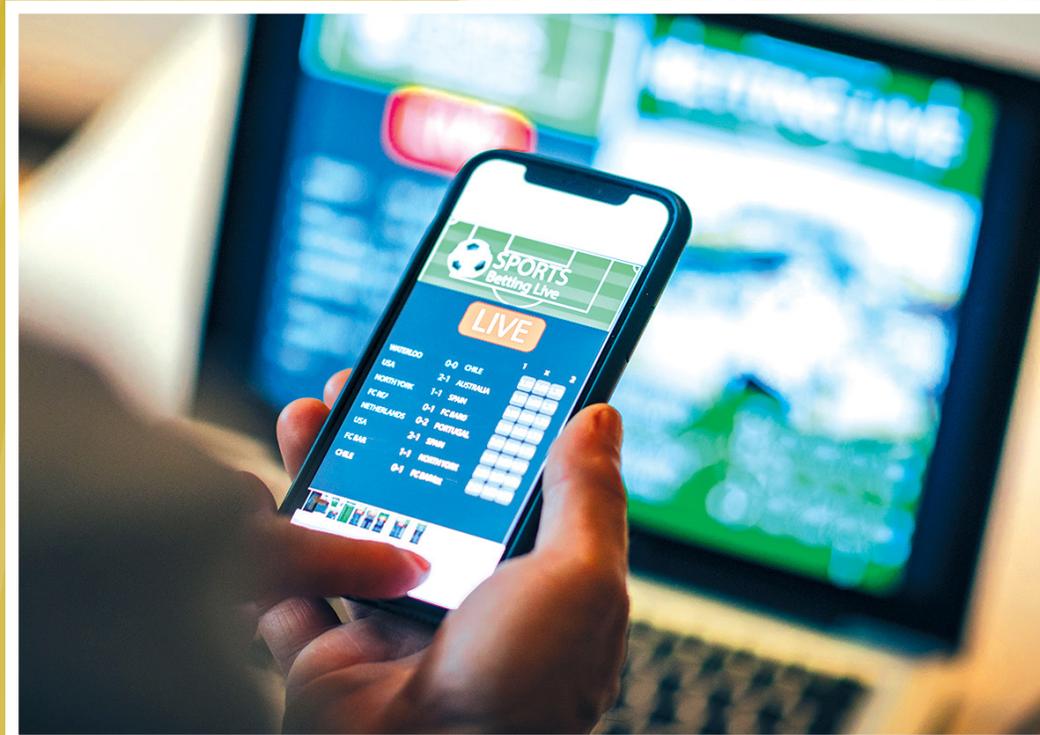




Office of the Auditor General of Ontario

# Internet Gaming in Ontario



*December 2021*



# Internet Gaming in Ontario

## 1.0 Summary

In April 2019, the Ontario Government announced plans to establish a competitive market for Internet gambling, referred to in this report as “gaming.” The proposed new model for Internet gaming brings existing private gaming operators into a regulated market where they would pay the province a percentage of their gross gaming revenues from Ontario gaming consumers. On July 6, 2021, the government passed a regulation to create a new (and first) subsidiary of the Alcohol and Gaming Commission of Ontario (AGCO), iGaming Ontario, with the objective of offering Internet gaming in Ontario through private gaming operators.

The *Criminal Code* of Canada prohibits all commercial gaming unless it is conducted and managed by a province. To fulfill the “conduct and manage” requirement of the *Criminal Code*, provincial governments have created Crown corporations that offer various gaming products to consumers, including lotteries, land-based casinos and Internet gaming. As of October 2021, the Ontario Lottery and Gaming Corporation (OLG) is the sole legal provider of commercial gaming in Ontario for both land-based and Internet gaming. Following the establishment of Ontario’s new Internet gaming market, OLG will continue to conduct and manage its own direct Internet gaming offerings, while iGaming Ontario will be responsible for the conduct and management of all other Internet gaming through private gaming operators.

Ontario’s proposed model for Internet gaming is unique in the Canadian context, although it has several similarities to the “licence-and-tax” system adopted by other countries around the world. iGaming Ontario will enter into commercial agreements with private gaming operators who would offer their games to Ontario consumers. iGaming Ontario will provide a share of revenues generated from Ontario consumers to private gaming operators.

Our Office has concerns surrounding the legal risks of the new Internet gaming model under the *Criminal Code*, the governance risks of iGaming Ontario’s structure, and the province’s diminished role in ensuring the fairness and integrity of Internet gaming.

This report highlights three key concerns:

- While certain details of Ontario’s Internet gaming initiative have yet to be finalized, there are indicators that a significant amount of decision-making power and business risk will rest with private operators. As a result, there is legal risk with respect to whether iGaming Ontario meets the “conduct and manage” threshold set out in the *Criminal Code*. Consideration for whether a province has illegally delegated the “conduct and manage” function in a gaming scheme to a private entity has been the subject of past legal challenges in Canada. We conclude that iGaming Ontario’s business model could be subject to legal challenges.
- The governance structure of iGaming Ontario creates potential conflicts of interest and compromises the AGCO’s independence as a

regulator. Under the new model, the AGCO maintains its regulatory responsibilities over Internet gaming and is also mandated to oversee iGaming Ontario's online lottery schemes, which will generate revenue for the province. There is inherent conflict established in legislation between iGaming Ontario's goal of generating profit-based revenue for the province and the AGCO's goal of effectively administering regulatory oversight of the gaming sector.

- There is limited public information as to how specifically iGaming Ontario will protect Ontario gaming consumers through ensuring the integrity of games offered by private gaming operators. Issues of integrity and fairness in a new gaming market are sources of significant reputational risk for AGCO as a regulator, iGaming Ontario as a revenue-generator, and more broadly, the province. Under Ontario's new model for internet gaming, key responsibilities to maintain integrity and fairness have been entrusted to the private sector such as direct testing of internet gaming systems, game design, gaming systems, determination of payouts, and odds-setting.

This report contains three recommendations, with five action items, to address our concerns.

## 2.0 Background

### 2.1 Overview of Gaming in Canada

Canada's legal framework for gaming is unique. The *Criminal Code* is the overarching law that governs gaming activity in Canada. Broadly, gaming refers to a scheme that contains all three of the following components: (1) a prize, (2) a chance to win a prize, and (3) the exchange of consideration or a fee for a chance to win a prize including lotteries, table games, sports betting and slot machines. The scope of the *Criminal Code* covers traditional land-based gaming and Internet gaming.

While gaming is generally illegal under the *Criminal Code*, there are two categories of exceptions where gaming is permitted: (1) lottery schemes that are conducted and managed by provincial governments; and (2) provincially licensed lottery schemes. With respect to provincially licensed gaming schemes, provinces are allowed to issue a licence to conduct and manage gaming schemes to the following parties:

- a charitable or religious organization if the proceeds are used for a charitable or religious purpose;
- a board of a fair or exhibition or by an operator of a concession leased by that board;
- a person at a public place of amusement; and
- a person licensed to conduct and manage lottery schemes in one or more other provinces.

Aside from these limited circumstances that may provide occasion for a provincial licence, gaming in Canada is legal only when it is conducted and managed by a provincial government.

The scope and meaning of the phrase "conduct and manage" is not specifically defined in the *Criminal Code*; however, its meaning has been refined through past court judgments to hinge on which entity—the government or the private operator—is acting as the "operating mind" of a gaming scheme.

Conducting and managing does not mean that a province has to control and perform every aspect of a gaming scheme. Conversely, when a government partners with a private entity to provide operational services for a gaming scheme, the role of the private entity cannot be to conduct and manage the gaming scheme. If this transpires, a provincial government would have improperly delegated its authority granted under the *Criminal Code* for legally permitted gaming schemes.

To fulfill the "conduct and manage" requirement of the *Criminal Code*, provincial governments have created Crown corporations that offer various gaming products to consumers, including lotteries, land-based casinos and Internet gaming. In addition, most provinces also have a separate entity to regulate gaming activity. **Appendix 1** summarizes

the government entities responsible for conducting and managing gaming activity and the government authority responsible for regulating gaming in each province and territory in Canada. In accordance with the requirements of the “conduct and manage” exception in the *Criminal Code*, provinces and territories have enacted legislation that further governs gaming activity in their jurisdictions.

## 2.2 Overview of Gaming in Ontario

The provincial laws that govern the conduct, management and regulation of gaming activity in Ontario are: (1) *Gaming Control Act, 1992*, (2) *Ontario Lottery and Gaming Corporation Act, 1999* and (3) *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*.

- The *Gaming Control Act, 1992* provides the legal and regulatory framework for gaming in Ontario.
- The *Ontario Lottery and Gaming Corporation Act, 1999* establishes the Ontario Lottery and Gaming Corporation (OLG), a Crown corporation that is responsible for conducting and managing gaming activities in Ontario.
- The *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996* establishes the Alcohol and Gaming Commission of Ontario (AGCO) as a Crown agency that is responsible for regulating gaming activity in Ontario. In addition to regulating gaming activity, the AGCO is also responsible for regulating alcohol, horse racing and retail cannabis activities in Ontario.

The regulated gaming industry in Ontario is primarily comprised of provincial lotteries, land-based casinos, slot machines at racetrack facilities, charitable gaming and Internet gaming. **Figure 1** summarizes the major types of regulated gaming products currently offered in Ontario. The province has a long history of conducting and managing gaming activities. Aside from the limited circumstances where the province can license others (for example, charitable and religious organizations) to conduct gaming activity, OLG has historically been responsible for the conduct and management of all

**Figure 1: Types of Regulated Gaming Products Offered in Ontario**

Prepared by the Office of the Auditor General of Ontario

| Gaming Product              | Description   |
|-----------------------------|---|
| Lottery products (in-store) | Various lottery products (terminal-based lotteries, instant win scratch tickets, sports betting, etc.) operated by the Ontario Lottery and Gaming Corporation (OLG) and sold in-store by private-sector retailers.  |
| Land-based gaming           | Slot machines at casino and racetrack facilities as well as live table games at casino facilities operated by private sector service providers that are responsible for day-to-day operations pursuant to service agreements with OLG.                                      |
| Charitable gaming           | Lottery events (e.g., bingo, raffles, break open tickets) that are conducted by charities and religious organizations. OLG also conducts and manages the operations of numerous charitable gaming centres across Ontario where a portion of the proceeds goes to charities. |
| Internet gaming             | Slot machines, table games, lottery products and sports betting offered through OLG’s website.  |

legal gaming activity in Ontario, both land-based and online.

In 1975, Ontario created the Ontario Lottery Corporation (OLC) to operate provincial lotteries. In 1994, Ontario established the Ontario Casino Corporation (OCC) with the mission of building and operating casinos. In 2000, the OLC and the OCC were merged to form OLG. For the year ended March 31, 2021, OLG reported total proceeds from all its gaming lines of businesses of \$4,801 million (year ended March 31, 2020 – \$8,289 million). Refer to **Figure 2** for a breakdown of the OLG’s proceeds by major line of business for the years ended March 31, 2021 and March 31, 2020.

The AGCO is a provincial regulatory agency reporting to the Ministry of the Attorney General. The AGCO regulates the alcohol, gaming, horse-racing and cannabis retail sectors in Ontario. With respect to the gaming sector, the AGCO is responsible for the administration of the *Gaming Control Act, 1992*. The

**Figure 2: OLG's Proceeds<sup>1</sup> by Major Line of Business (\$ millions)**

Source: OLG 2020-21 Annual Report

| Line of Business               | Year ended<br>March 31, 2021 | Year ended<br>March 31, 2020 |
|--------------------------------|------------------------------|------------------------------|
| Lottery                        | 4,234                        | 4,078                        |
| Land-based gaming <sup>2</sup> | 116                          | 3,871                        |
| Digital gaming                 | 356                          | 139                          |
| Charitable gaming              | 95                           | 201                          |
| <b>Total OLG Proceeds</b>      | <b>4,801</b>                 | <b>8,289</b>                 |

1. According to OLG's 2020-21 Annual Report, proceeds represent sales from lottery products before the deduction of lottery prizes awarded, net win from casino-style games played on OLG.ca and net win from charitable gaming and land-based gaming before the deduction of service provider fees.
2. According to OLG's 2020-21 Annual Report, the pandemic-related closures of casinos and charitable gaming centres throughout fiscal year 2020-21 had a significant impact on its land-based gaming and charitable gaming lines of business. This explains the sharp decrease in revenues from 2019/20 to fiscal 2020/21.

AGCO is responsible for performing the following regulatory activities:

- licensing and registration;
- inspections and related compliance activities;
- investigations; and
- enforcement (including education training and awareness focused on compliance).

## 2.3 Overview of Internet Gaming in Ontario

### 2.3.1 Current State of Internet Gaming in Ontario

As of October 2021, the OLG is the only legal provider of Internet gaming in Ontario. Ontarians can access the OLG's Internet gaming offerings through OLG's website or the OLG mobile app. OLG's Internet gaming platform was launched province-wide in January 2015. Digital offerings include casino games (for example, online slots and table games) and sports betting. The OLG also offers the sale of select lottery products (that is, Lotto Max, Lotto 649, Encore, etc.) online. Revenue from these lottery games, even when purchased online, are recorded to the OLG's lottery line of business. Proceeds from

the OLG's Internet gaming segment have grown from \$49 million in fiscal year 2015/16 to \$356 million in fiscal year 2020/21.

Recent amendments to the *Criminal Code* have also resulted in the OLG expanding its online offerings for sports betting. Effective August 27, 2021, single-event sports betting was legalized in Canada. Prior to this amendment, it was only legal to bet on parlays (which are bets on multiple events as part of one wagering transaction). On August 27, 2021, the OLG launched its new online sports betting platform (PROLINE+), which enables Ontarians to place bets on single events on OLG's website or mobile app.

While OLG provides the only regulated Internet gaming in Ontario, there are thousands of unregulated gaming websites that are accessible to Ontarians. In 2015, the AGCO's Report *Unregulated Internet Gaming in Ontario* estimated that approximately 2,200 gaming websites, operated by 745 companies, were accessible to Ontarians. According to OLG's 2017/18 Annual Report, at the time OLG launched its Internet gaming platform in 2015, Ontarians were spending more than \$500 million per year on gambling websites. This amount has grown by approximately 15% per year. A recent estimate from a July 6, 2021, news release from the Ministry of the Attorney General indicates that Ontarians spend approximately \$1 billion per year on online gaming, with 70% of that amount taking place on unregulated gaming websites.

### 2.3.2 Changes to Internet Gaming in Ontario

In February 2019, the government directed the Ministry of Finance and the Ministry of the Attorney General to develop a new Internet gaming strategy for Ontario. The 2019 Ontario Budget, released in April 2019, announced the government's plans to establish a regulated competitive market for Internet gambling in Ontario. **Figure 3** presents the timeline of key events that have occurred up to September 30, 2021, with respect to Ontario's new Internet gaming initiative.

The proposed model involves bringing existing grey market private gaming operators into a

**Figure 3: Timeline of Key Events and Public Communications Relating to Ontario’s Internet Gaming Initiative (up to September 30, 2021)**

Prepared by the Office of the Auditor General of Ontario

| Date         | Event Description  |
|--------------|--|
| Apr 11, 2019 | The 2019 Ontario Budget announces the government’s intention to establish a competitive market for online legal gambling in Ontario.   |
| Nov 5, 2020  | The 2020 Ontario Budget announces that the government is introducing legislation that would result in the AGCO having authority to conduct and manage Internet gaming, in addition to also having the regulatory role. Under the proposed legislation, a subsidiary corporation of the AGCO would be created to conduct and manage the new regulated Internet gaming market. |
| Jan 29, 2021 | The government appoints Birgitte Sand as Special Advisor, Commercial Project Lead of Ontario’s Internet gaming initiative. Her role is to work with the government and the AGCO to provide recommendations and assist in creating a new Internet gaming model for Ontario.   |
| Feb 25, 2021 | The government publishes the discussion paper <i>A model for Internet gaming in Ontario</i> . This discussion paper details the government’s plans for Ontario’s Internet gaming model, which would feature AGCO’s subsidiary entering into commercial agreements with private gaming operators on behalf of the province.   |
| May 19, 2021 | The AGCO issues the discussion paper <i>iGaming Eligibility</i> , outlining the AGCO’s proposed model for assessing eligibility of entities, individuals and technology to participate in the new Internet gaming market in Ontario.   |
| Jun 15, 2021 | The AGCO releases the discussion paper <i>iGaming Compliance</i> , which outlines the AGCO’s approach to regulatory compliance for Internet gaming operators, gaming-related suppliers and independent testing laboratories.   |
| Jul 6, 2021  | The government announces the creation of iGaming Ontario, the new legal subsidiary of the AGCO that will conduct and manage new Internet gaming offerings in Ontario.  |
| Jul 14, 2021 | The AGCO releases the <i>Registrar’s Standards for Internet Gaming</i> , which outlines the regulatory standards that are expected to be applicable to Internet gaming operators and gaming-related suppliers when the new market is launched.   |
| Sep 13, 2021 | The AGCO opens the registration application system for Internet gaming operators and gaming-related suppliers that are interested in participating in Ontario’s new Internet gaming market.  |

regulated market where they would pay the province a percentage of their gross gaming revenues from Ontario consumers. At the centre of the Ontario Government’s new model for Internet gaming is the AGCO. The AGCO maintains its regulatory role for Internet gaming. In addition to its regulatory responsibilities, the AGCO, would oversee the online lottery schemes of its legal subsidiary, iGaming Ontario.

On July 6, 2021, a subsidiary corporation of the AGCO, iGaming Ontario, was created through regulation (O. Reg. 517/21: Lottery Subsidiary – iGaming Ontario) under the *Alcohol, Cannabis and Gaming Regulation and Public Protection Act, 1996*. Under that legislation, iGaming Ontario’s mandate is to conduct and manage online lottery schemes in Ontario. According to its public website, iGaming Ontario plans to:

- execute commercial agreements with private Internet gaming operators that have been registered by the AGCO and oversee contract obligations;
- implement and oversee reconciliation of Internet gaming revenues on behalf of the province;
- provide market insights and facilitate operator integration into the regulated market;
- implement responsible gambling requirements for operators;
- develop and oversee an anti-money laundering program; and
- establish a dispute resolution process to respond to customer concerns.

In order for private gaming operators to participate in Ontario’s new Internet gaming market, they would first have to be registered with the

AGCO. Next, private gaming operators would need to enter into a commercial agreement with AGCO's subsidiary, iGaming Ontario. Private gaming operators would pay licensing and registration fees to the AGCO as well as a percentage of their gross gaming revenues to iGaming Ontario. The government intends to launch this new Internet gaming market in the near future.

## 3.0 Risks of Ontario's New Internet Gaming Initiative

### 3.1 Legality of Ontario's Proposed Internet Gaming Model under the *Criminal Code*

The Ontario Government's new Internet gaming model is similar to the licensing model adopted in other countries around the world. However, Ontario's proposed model is unique in the Canadian context and may be open to legal challenge under Canada's *Criminal Code*. As noted in **Section 2.1**, Canada's legal framework for gaming requires provincial governments to conduct and manage gaming offerings in their jurisdiction.

In evaluating whether a provincial government has illegally delegated its responsibility to conduct and manage, the entirety of the factual context of the relationship between the government and the private entity needs to be considered. Past court judgments have held that determining which party is the "operating mind" of the gaming scheme gives a critical indication of management and control. In making such a determination, there are a variety of elements in the relationship between the government and the private entity that may be considered, including:

- responsibility for strategic decision-making;
- operational control;
- profit-sharing arrangements;
- relationship with players;
- control of funds;
- control over game selection and rules of play; and

- control over physical infrastructure and intellectual property.

To fulfill the "conduct and manage" requirement, a provincial government needs to be actively involved in the delivery of gaming activity. An arrangement where the government only issues gaming licences to private operators and oversees their activities through a provincial regulator would be in contravention of the *Criminal Code*.

The key component of iGaming Ontario's business model is entering into commercial agreements with private gaming operators. This commercial agreement is the mechanism that governs the relationship between iGaming Ontario and private gaming operators. As of September 30, 2021, iGaming Ontario has not entered into any commercial agreements with operators. Consideration for the final contents of any commercial agreement, along with the substance of the relationship between iGaming Ontario and private gaming operators, is critical in establishing whether Ontario's Internet gaming initiative is compliant with the *Criminal Code*. However, there are indications from publicly released literature that iGaming Ontario is delegating significant management and control responsibilities to the private gaming operators. For instance, the *Internet Gaming Operator Application Guide* (a document that provides information to assist private gaming operators in applying for registration with the AGCO) describes what it means to operate a gaming site as follows:

*Given the wide range of potential variations in company organization and structure, there is not a definitive list of activities that illustrates what it means to "operate a gaming site." In general, for igaming, operating a gaming site means having on ongoing responsibility for the gaming site as a whole, including:*

- *Key decision-making activities,*
- *Meeting compliance obligations for the gaming site, and*
- *Having authority to retain suppliers in relation to the gaming site, such as choosing whether Gaming Related Suppliers (GRSs) are used and which GRSs are used.*

While certain details of Ontario's Internet gaming initiative have yet to be finalized, the *Internet Gaming Operator Application Guide* indicates that key decision-making power and business risk will rest with private operators. The province asserts that iGaming Ontario will maintain core "conduct and manage" functions with respect to Internet gaming, including: revenue reconciliation; financial forecasting; data insights; market and technology facilitation; promoting public awareness of benefits of the legal market; and anti-money laundering programs. The majority of these functions may well influence the operations and decisions of private operators. However, these functions do not, in substance, appear to conduct or manage the operations and decisions of private operators.

Ontario's existing approach to Internet gaming is comparable to other Canadian jurisdictions. For example, Alberta, British Columbia and Quebec offer Internet gaming websites through their respective provincial lottery corporations, while Manitoba has partnered with British Columbia and makes use of the British Columbia Lottery Corporation's online platform.

Internationally, many jurisdictions including Denmark, France, Italy, the United Kingdom and some US states have adopted a system where private operators are issued licences from a government regulatory body. Ontario's proposed Internet gaming approach is most comparable to Denmark's. Denmark's state-owned gaming operator (Danske Spil) operates a website that offers a variety of online gaming products. While Danske Spil has a monopoly over lotteries, it competes with licensed private gaming operators on other gaming offerings such as casino games, sports betting and bingo. Notably, Denmark, along with other countries that have adopted a licensing model for Internet gaming, have different legal frameworks that govern gaming. The laws in these jurisdictions do not have requirements for the government to conduct and manage gaming schemes.

While the Ontario Government has added elements aimed at enhancing its involvement with

private gaming operators, legal risk remains with respect to whether they meet the "conduct and manage" threshold set out in the *Criminal Code*. The concept of whether a province has illegally delegated the "conduct and manage" function to a private entity has been the subject of past legal challenges in Canada. The new model for Internet gaming passes on a significant amount of business risk and strategic decision-making power to private gaming operators. As a result, iGaming Ontario's business model could be subject to legal challenge.

### RECOMMENDATION 1

To address the legal risks associated with the proposed construct for Internet gaming in Ontario, we recommend that the government take appropriate steps to ensure compliance with the *Criminal Code* prior to launching the new Internet gaming market.

### MINISTRY RESPONSE

Ontario is committed to creating a safe, regulated and competitive online gaming market to help protect consumers. The government will take any additional steps it considers necessary to address any legal risks associated with the proposed framework for Internet gaming in Ontario.

## 3.2 Governance Structure for Internet Gaming in Ontario

The governance structure for Ontario's new Internet gaming model creates potential conflicts of interest and compromises the AGCO's independence as a regulator. Under the new model, the AGCO maintains its regulatory responsibilities over Internet gaming and is also mandated to oversee iGaming Ontario's online lottery schemes, which will generate revenue for the province. Prior to the creation of iGaming Ontario, with respect to the gaming sector, the AGCO's role was to regulate gaming activity in Ontario in accordance with the principles of honesty, integrity and

social responsibility. For a regulator to be effective, it is critical for it to be fully independent of the entities and the core industry activity it regulates.

In Ontario, the functions of regulating gaming activity and operating gaming activity have historically, like most other provinces, been performed by separate Crown corporations; the OLG conducts and manages gaming activity, while the AGCO regulates gaming activity. In July 2021, iGaming Ontario was created as a subsidiary of the AGCO. iGaming Ontario's mandate differs significantly from the AGCO's mandate. Since the AGCO was established in 1998, its primary mandate with respect to the gaming sector is to administer the *Gaming Control Act, 1992*. Until the creation of iGaming Ontario, the AGCO's responsibilities were strictly regulatory in nature. In contrast, the corporate objects of iGaming Ontario, as defined under legislation, are:

- to conduct and manage online lottery schemes;
- to enhance the economic development of the province of Ontario;
- to generate revenues for the province of Ontario; and
- to promote responsible gaming with respect to prescribed online lottery schemes.

The AGCO's regulatory responsibilities and oversight of iGaming Ontario's revenue-generating lottery schemes create inherent conflicts of interest. Recent legislative changes to the *Alcohol, Cannabis and Gaming and Public Protection Act, 1996* acknowledge the potential for conflict of interest. With respect to the governance and operations of iGaming Ontario, there is a requirement to establish conflict of interest rules. The current governance structure requires iGaming Ontario to have a separate Board of Directors that reports to the AGCO's Board of Directors. The founding regulation for iGaming Ontario prescribes the rules for the appointments of members to iGaming Ontario's Board of Directors. During the transition period when iGaming Ontario is first being established, iGaming Ontario's Board members are appointed by the AGCO's Board of Directors and approved by the Attorney General for a term not exceeding two years. After this transition

period, iGaming Ontario's Board members will be appointed by the Attorney General on the recommendation of the AGCO's Board of Directors. In addition, the AGCO's Board of Directors can be cross-appointed to iGaming Ontario's Board of Directors. These cross-appointments are subject to the restriction that the majority of iGaming Ontario's Board of Directors cannot be comprised of individuals that also serve on the AGCO's Board of Directors.

As presented in **Appendix 1**, the majority of provinces in Canada have a Crown corporation responsible for conducting and managing gaming and a separate authority responsible for regulating it. Moreover, in December 2019, British Columbia announced plans to transition the province's gaming regulator in order to provide it with more independence. Gaming in British Columbia is currently regulated by the Gaming Policy and Enforcement Branch (a branch of its Ministry of the Attorney General) but will transition to a new office, the Independent Gambling Control Office.

The recommendation for a new independent regulator stems from the report *Dirty Money*, one of four reports issued as part of the Commission of Inquiry into Money Laundering in British Columbia. In British Columbia's press release announcing plans for a new regulator, it noted that "this change addresses concerns raised in Peter German's Dirty Money report, which highlighted that decisions about regulatory gambling policy should be made separately from decisions about revenue generation." The generation of revenue for the province of Ontario is one of the key corporate objects of iGaming Ontario, while the AGCO's role is to regulate the gaming industry. Because iGaming Ontario is a subsidiary of the AGCO, it is our view that there is inherent conflict between the iGaming Ontario's goal of generating revenue and the AGCO's goal of effectively administering its regulatory oversight.

Our 2020 value-for-money audit on the Alcohol and Gaming Commission of Ontario recommended that the Ministry of the Attorney General and the Ministry of Finance consider using a separate government organization to conduct and manage the online gaming model in order to maintain the AGCO's

independent regulatory oversight. Notwithstanding our concerns as to whether iGaming Ontario is truly conducting and managing online gaming, we continue to be of the view that a government organization independent of the AGCO should be used to manage the operational/revenue-generating responsibilities for Internet gaming.

## RECOMMENDATION 2

To address the governance and regulatory risks associated with the proposed construct for Internet gaming in Ontario, we recommend that the Ministry of the Attorney General:

- remove the governance and operating responsibilities for iGaming Ontario from the Alcohol and Gaming Commission of Ontario; and
- should the business model of iGaming Ontario meet the conduct and manage requirements under the *Criminal Code*, transfer the reporting relationship of iGaming Ontario to the Ministry of Finance.

## MINISTRY RESPONSE

The regulation establishing iGaming Ontario requires that the Board of Directors develop and maintain a conflict of interest policy for the directors, officers and employees of iGaming Ontario. Similarly, the Alcohol and Gaming Commission of Ontario's (AGCO's) conflict of interest policy is being updated to account for its relationship with iGaming Ontario.

These policies will deal with potential and actual conflicts that may arise between the regulatory interests of the AGCO and conduct and manage (operating mind and revenue generation) interests of iGaming Ontario. The aim is to assist employees and Board members to avoid conflicts of interest or mitigate the risks associated with any conflicts that exist or develop and to identify when their activities and interests working on Internet gaming regulatory matters or providing services to

iGaming Ontario may be, or may be perceived to be, in conflict with their obligations to the AGCO.

These measures will help to protect the regulatory effectiveness and independence of the AGCO and the Registrar while recognizing the ongoing role of conflict-of-interest management within the larger context of the AGCO's relationship with iGaming Ontario.

Given the approach taken to date, and that any risks associated with a conflict of interest between the functions of the AGCO and iGaming Ontario have been addressed through the structure and requirement for supplementary policies, the benefits of maintaining the status quo outweigh the operational risks and fiscal impacts of establishing a new reporting structure for iGaming Ontario.

## 3.3 Fairness and Integrity of Internet Gaming in Ontario

An important aspect of consumer protection for gaming is the integrity and fairness of games and gaming systems. Under the *Gaming Control Act, 1992*, the AGCO has the authority to establish standards to ensure the integrity of gaming schemes and adequate player protection. The *Registrar's Standards for Internet Gaming*, released by the AGCO, outline the regulatory standards that will be applicable to the activities of iGaming Ontario and Internet gaming operators. The Registrar's Standards contain many requirements pertaining to fair game design, randomness of game outcomes, information provided to players and deterrence, prevention and detection of collusion and cheating.

The AGCO has an in-house electronic gaming equipment testing laboratory that is used to conduct technical assessments and testing of gaming equipment and systems against regulatory standards. Currently, technical assessments and testing are performed for all gaming equipment and systems in Ontario, including slot machines, electronic table games, card shufflers, random number generators and cashless wagering systems. Based on the results

of these technical assessments and testing, the AGCO issues regulatory approvals for gaming equipment and systems.

Under Ontario's new model for internet gaming, key responsibilities to maintain integrity and fairness have been entrusted to the private sector. For example, the AGCO will not be directly testing internet gaming systems through its in-house gaming testing laboratory. Instead, gaming operators will engage and pay for private testing laboratories that have registered with the AGCO to perform this work. These testing laboratories will test and certify key components of internet gaming systems against the *Registrar's Standards for Internet Gaming* at the time the regulated market commences. Annually, instead of undergoing an AGCO compliance audit, gaming operators will provide the AGCO with a self-assessed statement of assurance that confirms their compliance with the Registrar's Standards.

Further, iGaming Ontario will not be involved in critical aspects of gaming operations such as designing games and gaming systems, determining payouts and odds-setting. Under the commercial agreements between iGaming Ontario and private operators, these risk decisions rest with the operators and their gaming-related suppliers. On its website, iGaming Ontario notes that it will support the province's competitive internet gaming objectives, which includes ensuring game integrity. There is limited public information as to how specifically iGaming Ontario will protect Ontario gaming consumers through ensuring the integrity of games offered by private gaming operators.

In our view, the overall integrity and fairness of games offered in the new market is critical to establishing the public's trust in regulated Internet gaming. Issues of integrity and fairness in a new gaming market are also sources of significant reputational risk for AGCO as a regulator, iGaming Ontario as a revenue-generator, and more broadly, the province. The approach of shifting responsibility for key operating decisions to operators, and systems testing to private laboratories, diminishes

the province's ability to respond to new risks and weakens iGaming Ontario's role as the designated conductor and manager of Ontario's regulated Internet gaming market.

### RECOMMENDATION 3

We recommend that the Ministry of the Attorney General:

- clearly demonstrate how the province will conduct and manage Ontario's proposed Internet gaming market without directly verifying the fairness and integrity of games being offered by registered private operators; and
- make this information available to the Ontario Legislature prior to the launch of the Internet gaming market.

### MINISTRY RESPONSE

Ontario is committed to ensuring fairness and integrity of online games. Game integrity for all gaming products, regardless of the channel through which they are offered, is a regulatory responsibility of the Alcohol and Gaming Commission of Ontario (AGCO). The AGCO has developed the *Registrar's Standards for Internet Gaming* that address game integrity, which are available at: <https://www.agco.ca/lottery-and-gaming/guides/registrars-standards-internet-gaming>.

The AGCO will be mandating that all games be tested and certified against the AGCO Standards by registered Independent Testing Laboratories (ITLs). In establishing this framework, the AGCO has taken several additional steps to ensure that ITLs obtain a registration from the AGCO and, in doing so, the ITLs will undergo AGCO's eligibility assessment process. AGCO has also established a dedicated ITL Oversight Unit to conduct focused compliance and quality assurance activities with respect to ITL operations.

More generally, the AGCO has developed an iGaming compliance program that includes a dedicated iGaming Compliance Unit whose sole responsibility will be to conduct intensive

compliance oversight of registered iGaming operators and suppliers, including with respect to game integrity. The Unit's activities will be supported by resources from existing AGCO branches, including the Audit and Financial Investigations Branch, Anti-Money Laundering Unit, Enterprise Data and Analytics Branch as well as AGCO's in-house gaming laboratory and dedicated bureau of Ontario Provincial Police Officers assigned to the AGCO.

Additionally, iGaming Ontario is establishing a Customer Care and Dispute Resolution Policy

regarding providing recourse to players who have serious concerns, allegations related to behaviours of an operator or disputes related to an operator's products and/or services. iGaming Ontario will review the nature of these disputes, concerns or allegations and will work with the operator and player on remedies to achieve resolution.

The Ministry of the Attorney General will work with the AGCO and iGaming Ontario to ensure that this information is made available to the public.

## Appendix 1: Entities Responsible for Conducting, Managing and Regulating Gaming Activity in Canadian Provinces and Territories

Prepared by the Office of the Auditor General of Ontario

| Province/Territory        | Conduct and Manage Entity                                | Regulatory Authority  |
|---------------------------|--|---|
| Alberta                   | Alberta Gaming, Liquor and Cannabis Commission           | Alberta Gaming, Liquor and Cannabis Commission  |
| British Columbia          | British Columbia Lottery Corporation                     | Gaming Policy and Enforcement Branch, Ministry of the Attorney General <sup>1</sup>                 |
| Manitoba                  | Manitoba Liquor and Lotteries Corporation                | Liquor, Gaming and Cannabis Authority of Manitoba   |
| New Brunswick             | New Brunswick Lotteries and Gaming Corporation           | Gaming, Liquor and Security Licensing Branch, Department of Justice and Public Safety               |
| Newfoundland and Labrador | Government of Newfoundland and Labrador                  | Department of Digital Government and Service NL   |
| Northwest Territories     | Northwest Territories and Nunavut Lotteries <sup>2</sup> | Department of Municipal and Community Affairs   |
| Nova Scotia               | Nova Scotia Gaming Corporation                           | Alcohol, Gaming, Fuel and Tobacco Division, Department of Service Nova Scotia and Internal Services |
| Nunavut                   | Northwest Territories and Nunavut Lotteries <sup>2</sup> | Consumer Affairs, Department of Community and Government Services                                   |
| Ontario                   | Ontario Lottery and Gaming Corporation                   | Alcohol and Gaming Commission of Ontario  |
| Prince Edward Island      | Prince Edward Island Lotteries Commission                | Consumer, Corporate and Financial Services Division, Department of Justice and Public Safety        |
| Quebec                    | Société des loteries du Québec (Loto-Québec)             | Régie des alcools, des courses et des jeux  |

1. In December 2019, the British Columbia provincial government announced plans to transition regulatory powers to a new office (Independent Gaming Control Office).

2. The Northwest Territories and Nunavut Lotteries is a territorial marketing organization that works in conjunction with the Western Canada Lottery Corporation (WCLC) to market lottery and gaming-related activities in the Northwest Territories and Nunavut.



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