

***STANDING SENATE
COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS***

Bill C-290, An Act to amend the Criminal Code (sports betting)

Kevin J. Weber
Dickinson Wright LLP
222 Bay Street, P.O. Box 124
Toronto, Ontario
M5K 1H1

Benefits of Bill C-290

My partner Michael Lipton spoke of the benefits to the public that would arise from enacting Bill C-290 as presently drafted. I want to provide some detail on one item he mentioned briefly, namely detecting and combating match-fixing. As Mr. Lipton noted, concerns about match-fixing were what inspired the current restriction against single-event sports betting that is repealed by Bill C-290.

Allowing for Monitoring of Betting to Combat Match-Fixing

- By making it so that a criminal would need to “fix” multiple outcomes in order to win a bet, the idea was that the activity would become too difficult to successfully carry out.
- A sensible precaution in 1985, when the relevant provision was first enacted.
- In 1985, a person physically present in Canada had to place their bet in Canada, and was therefore subject to the single-event betting restriction. Had to physically leave the country to place the single-sport bets required to capitalize on his match-fixing efforts.

- Since the advent of online betting, the single-event betting restriction in the *Criminal Code* has posed absolutely no obstacle to match-fixing.
- Gamblers inclined to illegally influence the outcome of a sporting event in Canada will simply place their bets on an offshore website, without having to leave Canada.
- In a world in which the Internet makes betting-related bans unenforceable, what is the new tool for combating match-fixing? Information.
- Provincial governments can institute measures whereby betting patterns are monitored for the kind of unusual activity that indicates bets are being made on some kind of inside information.
- This information can be shared with other jurisdictions that monitor sports betting activity. The major U.S. sports leagues work with the Las Vegas sportsbooks in this way, and in Europe the Olympic committee and FIFA work with online betting operators and betting exchanges such as Betfair.
- The primary limitation on this process is that only bets that are placed in regulated jurisdictions can tracked in this fashion.
- By providing regulated betting on single-event sports, the provinces can bring a large percentage of Canadian bets into a system regulated and monitored by governments that are responsible to Canadians.

- This will make Canada part of the solution. Without this amendment, Canada will continue to push its sports betting public towards offshore websites. Some of these websites are well-regulated by mature gaming jurisdictions, and they will provide adequate protection both to bettors and to the integrity of sport. Others are less well-regulated. Bill C-290 will

Proposed Amendment to Bill C-290

It has been proposed that Bill C-290 be amended to allow the operators of pari-mutuel horse racing betting to accept single-event sports bets. As Mr. Lipton detailed in his presentation, this proposal if adopted would raise a host of regulatory issues, all of which would be the responsibility of the provincial governments to deal with:

1. Because proposed amendment sidesteps the crucial legal question of what entity would be responsible for “conducting and managing” this sports betting, it is not clear whether the provincial government or the pari-mutuel betting operator would be the operating mind of the betting. This may result in the pari-mutuel betting operators intruding upon the exclusive provincial jurisdiction over the regulation of gaming and betting, which could well have the effect of reducing or restricting the rights of the provinces in the field of gaming and betting.
2. Under the proposed amendment, the pari-mutuel betting operators would be dually regulated – by the federal government

in their pari-mutuel betting activities, and the provinces in their fixed-odds sports betting activities. The provincial governments have never before undertaken this type of regulation, and it is unknown whether they are prepared to undertake it, as there has been absolutely no input from the provincial governments into this proposed amendment. By contrast, Bill C-290 as it presently reads has received the unanimous approval of all provincial governments, according to the evidence of the Member of Parliament from Windsor West on October 4, 2012.

Because of these issues, the proposed amendment if enacted could involve the federal government in a dispute with the provincial governments, based upon the 1985 inter-provincial agreement between Canada and all ten provinces which set out the present relationship between governments on issues pertaining to lawful betting and gaming.

Section 1.1 of the 1985 Agreement provides that the Government of Canada undertakes to refrain from re-entering the field of gaming and betting, except to the extent of its present role with respect to horse races, and to ensure that the rights of the Provinces in that field are not reduced or restricted.

Section 1.2 put forward draft amendments to the Criminal Code as a Schedule to the agreement, and committed the Government of Canada to consult with provincial Justice Ministers before amending the Code in accordance with that draft.

Section 2.2 provides that the Provinces are to continue making indexed payments to the Government of Canada in accordance with an inter-provincial agreement signed in 1979. We are advised that those payments amounted to \$66.6 million in 2010.

Section 4 provides that should any dispute arise with respect to the Government of Canada's fulfilment of its undertakings under Section 1 of the agreement, the Provinces are entitled to withhold the annual payments set out in s. 2 until the dispute is resolved. In addition, the Provinces are entitled "to exercise all recourses they may have with respect to such dispute."

Section 7 of the agreement provides that the agreement is a commercial matter, and the Governments undertake not to invoke any Crown Prerogative or immunity in any dispute, including any court proceedings, arising from the 1985 agreement.

Section 8 provides that the Agreement may only be terminated or amended by the unanimous consent of the Provinces and the Government of Canada.

Unless the Committee has received submissions from the Provincial Governments of which I am not aware, we do not know how they view the proposed amendment to Bill C-290. Given the issues raised by Mr. Lipton, it is at least possible that some or all of them may view this proposed amendment as reducing or restricting their rights in the field of gaming and betting, given the uncertainty over which entity will conduct and manage the betting conceived of by the proposed amendment. This would be a breach of s. 1.1 of the Agreement, and the provinces could respond by withholding their annual payments and also by bringing action in court. If they take such a view, it could also have political consequences upon federal-provincial relations generally.

Since 1985, it has been the practice of the Government of Canada to seek provincial consent before amending the provision of the Code relating to lawful gaming and betting. Whether this is a matter of precedent, or whether it is related to the 1985 Agreement, I am not certain. I can point to section 1.2 of the Agreement, in which it was stated that the 1985 amendments to the Code required provincial consultation. As well, section 8 of the Agreement at least introduces the possibility that future amendments to the provisions of the Code

relating to lawful gaming and betting, affecting as they do rights set out in the 1985 Agreement, require the unanimous consent of all 11 governments. Clearly, Parliament cannot be bound from doing as it wishes in the field of criminal law. However, section 8 of the 1985 Agreement may create a private right of action on the part of the Provinces should the Government of Canada act unilaterally in the field of gaming and betting, which is an area of shared federal and provincial jurisdiction. How a unilateral change would play out in terms of federal/provincial relations, whether there would be litigation, whether the courts would find that the parties have standing to initiate a court proceeding, and the chances of success of such a proceeding, are all matters of conjecture, and I will not venture a guess in that direction. However, the multitude of issues raised certainly indicates why the Government of Canada has since 1985 sought to obtain broad provincial consent before amending the provision of the Code relating to lawful gaming and betting.

As noted previously, at the very least the proposed amendment to Bill C-290 would result in the provinces having a possible regulatory burden which they have not anticipated. At the highest, it could be interpreted as restricting or reducing the rights of the provinces in the field of gaming and betting. Both on the letter and spirit of the 1985 Agreement, these issues would seem to require that as a matter of

prudence the provinces be consulted before considering the proposed amendment.

THIS AGREEMENT entered into as of the 3rd day of June 1985,

BETWEEN

THE GOVERNMENT OF CANADA,

AND

THE GOVERNMENT OF ALBERTA,
THE GOVERNMENT OF BRITISH COLUMBIA,
THE GOVERNMENT OF MANITOBA,
THE GOVERNMENT OF NEW BRUNSWICK,
THE GOVERNMENT OF NEWFOUNDLAND,
THE GOVERNMENT OF NOVA SCOTIA,
THE GOVERNMENT OF ONTARIO,
THE GOVERNMENT OF PRINCE EDWARD ISLAND,
THE GOVERNMENT OF QUEBEC AND
THE GOVERNMENT OF SASKATCHEWAN

(hereinafter collectively referred to as the
"Provinces")

WITNESSETH THAT, in consideration of the mutual covenants
herein set forth, the parties hereto agree as follows:

1. The Government of Canada undertakes

- 1.1 to refrain from re-entering the field of gaming and betting (except to the extent of its present role under section 188 of the Criminal Code with respect to horse races) and to ensure that the rights of the Provinces in that field are not reduced or restricted;
- 1.2 to introduce amendments to the Criminal Code in substance in accordance with the a draft attached hereto as Schedule A, which amendments shall be subject to consultation with the Provincial Ministers responsible for the administration of Justice, and to use its best efforts to ensure that approved amendments are proclaimed in force as soon as possible; and in any event, no later than December 31, 1985.
- 1.3 to use its best efforts to ensure that Bill C-2 (An Act respecting the winding up of the Canadian Sports Pool Corporation and Loto Canada Inc.) is assented to and proclaimed in force not later than September 30, 1985 and that Loto Canada Inc. is wound up not later than October 31, 1985; and
- 1.4 to cause the Attorney General of Canada, within two weeks of execution of this Agreement, to desist without costs from its appeal to the Supreme Court of Canada from the Quebec Court of Appeal judgment in the case of the Attorney General of Canada vs Lotto-Quebec.

2. The Provinces undertake

- 2.1 subject to article 4, to pay to the Government of Canada the aggregate amount of \$100,000,000 in three equal yearly installments, on or before December 31 in each of the years 1985, 1986 and 1987;
- 2.2 subject to article 4, to continue their indexed payments under paragraph 3 of the Agreement evidenced by a letter dated August 23, 1979 signed by the Government of Canada and the Provinces (the "1979 Agreement"); and

2.3 to cause the Attorneys General of all Provinces, within 10 days after all actions referred to in paragraphs 1.2, 1.3 and 1.4 have been completed, to desist without costs from their proceedings in the case of the Attorneys General of all the Provinces of Canada and Interprovincial Lottery Corporation vs Her Majesty the Queen in Right of Canada (Federal Court No. T-622-84).

3. The Provinces agree among themselves that the payments to be made pursuant to paragraphs 2.1 and 2.2 hereof shall be deemed to be Loto Installments under the Agreement entered into as of January 1, 1980 among themselves and Interprovincial Lottery Corporation and the Regional Marketing Organizations, as amended from time to time. The Provinces hereby declare that the provisions of the January 1, 1980 Agreement do not diminish or in any way adversely affect the obligations of the Provinces under paragraphs 2.1 and 2.2.

4. The payments to be made by the Provinces pursuant to paragraphs 2.1 and 2.2 are in consideration of the fulfilment by the Government of Canada of its undertakings under article 1. Should any dispute arise with respect to such fulfilment, the Provinces shall be entitled to withhold their payments until such dispute is resolved and to exercise all recourses they may have with respect to such dispute.

5. This agreement supersedes and replaces all prior Agreements among the parties respecting gaming and betting and constitutes the entire Agreement among the parties, except in respect of those provisions of the 1979 Agreement herein specifically referred to.

6. Any notice, demand or consent which is required or permitted to be given herein shall be in writing and shall be either delivered in person or sent by prepaid registered mail to the respective addresses of the parties appearing below or to such other address of which any party may give notice to the others:

If to the Government of Canada:

The Honourable Minister of State
Fitness and Amateur Sport
Confederation Building
House of Commons
Ottawa, Ontario
K1A 0A6

If to the Provinces:

All Provinces of Canada
c/o Interprovincial Lottery Corporation
Suite 203
101 Bloor Street West
Toronto, Ontario
M5S 1P7

If so mailed, the third business day after the date of mailing shall be deemed to be the date such notice, demand or consent has been given.

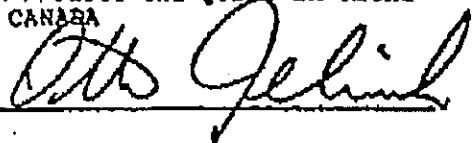
7. this Agreement shall be binding on Her Majesty in Right of Canada and of each of the Provinces and on Her assignees, agents, mandataries, representatives, servants and employees. The parties acknowledge that the subject matter of this Agreement is a commercial matter, and they undertake not to invoke any Crown Prerogative or immunity in any dispute, including any court proceedings, arising from this Agreement.

8. This Agreement may only be amended or terminated by the unanimous consent of the Provinces and the Government of Canada.


Each of the parties hereto has signed this Agreement by its duly authorized Minister(s), on the understanding that this agreement shall be valid and binding only when signed by all parties.

DATED June 3, 1985


HER MAJESTY THE QUEEN IN RIGHT OF CANADA


by

June 6, 1985

DATED Approved as a binding Intergovernmental Agreement for the Province of Alberta

A/Minister of Federal and Intergovernmental Affairs

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA


by

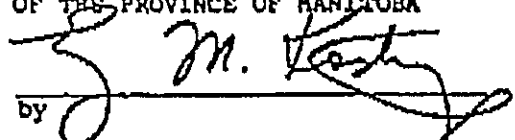
DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA


by

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA


by

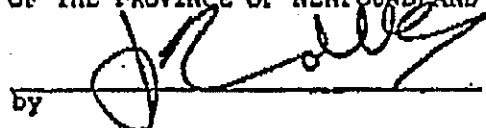
DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK


by

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEWFOUNDLAND


by

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA


by

DATED May 30, 1985

HER MAJESTY THE QUEEN IN RIGHT
ONTARIO

Clarence J. Bennett
by

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF PRINCE
EDWARD ISLAND

Floyd B. Smith
by

DATED June 5, 1985

ON BEHALF OF THE GOVERNMENT OF
QUEBEC

Antoine

Antoine
by

DATED June 3, 1985

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF
SASKATCHEWAN

Richard
by

SCHEDULE A

DRAFT AMENDMENTS TO CRIMINAL CODE

1. Section 188.1 of the Criminal Code is repealed.
2. Section 190 of the Criminal Code is repealed and the following substituted therefore:
 190. (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 such other province, in accordance with any law enacted by the legislature of that province;
 - (b) for a charitable or religious organization, under the authority of licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if
 - (i) the proceeds from the lottery scheme are used for a charitable or religious object or purpose, and
 - (ii) in the case of a lottery scheme conducted by the charitable or religious organization at a bazaar,
 - (A) the amount or value of each prize awarded does not exceed one hundred dollars, and
 - (B) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents;
 - (c) for an agricultural fair or exhibition or an operator of a concession leased by an agricultural fair or exhibition board, under the authority of a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province;
 - (d) for any person, under the authority of a licence issued by the Lieutenant Governor in Council of a province or by such other person or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme at a public place of amusement in that province if
 - (i) the amount or value of each prize awarded does not exceed one hundred dollars, and
 - (ii) the money or other valuable consideration paid to secure a chance to win a prize does not exceed fifty cents;

(e) for the government of a province to agree with the government of another province that lots, cards or tickets in relation of 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;

(f) under the authority of a licence issued by the Lieutenant Governor in Council of a province or such other person or authority in the province as may be designated by the Lieutenant Governor in Council thereof, to conduct and manage in the province a lottery scheme that is authorized to be conducted and managed in one or more other provinces where the authority by which the lottery scheme was first authorized to be conducted and managed consents thereto;

(g) for any person, for the purpose of a lottery scheme which is lawful in a province under any of paragraphs (a) to (f) and in accordance with the applicable law or licence, to do anything in such province which is required for the conduct, management, operation and sale of such lottery scheme or to participate therein; and

(h) for any person to make or print anywhere in Canada or to cause or procure to be made or printed anywhere in Canada anything relating to gaming and betting which is to be used in a place where it can legally be used or to send, transmit, mail, ship, deliver or allow to be sent, transmitted, mailed, shipped or delivered or accept for carriage or transport or convey any such thing where the destination thereof is a place where it is lawful to use such thing.

(2) Subject to this Act, a licence issued by or under the authority of the Lieutenant Governor in Council of a province as described in paragraph (1)(b), (c), (d) or (f) may contain such terms and conditions relating to the conduct and management of the lottery scheme to which the licence relates as the Lieutenant Governor in Council of that province, the person or authority in the province designated by him or any law enacted by the legislature of that province may prescribe.

(3) Subject to paragraph (1)(h), every one who, in any province other than a province in which a lottery scheme is by any of paragraphs (1)(a) to (f) authorized to be conducted and managed, does anything, for the purposes of that lottery scheme, which is not legal under any other provision of this Part relating to gaming and betting, is guilty,

(a) in all cases other than a mere participation in that lottery scheme, of an indictable offence and liable to imprisonment for two years, or

(b) in the case of mere participation in that lottery scheme, of an offence punishable on summary conviction.

(4) In this section "lottery scheme" means a game or any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 189(1)(a) to (g) and includes any of the above activities which involves betting, other than:

(a) a dice game, three-card monte, punch board or coin table,

(b) bookmaking, pool selling and the making or recording of bets, including bets made through the agency of a pool or pari-mutuel system, on any race or fight, or on a single sport event or athletic contest, and

(c) for the purposes of paragraphs (1)(b) to (f) a game or proposal, scheme, plan, device, contrivance or operation described in any of paragraphs 189(1)(a) to (g) which is operated on or through any computer, video device or machine.

(5) Nothing in this section shall be construed as authorizing the making or recording of bets on horse races through the agency of a pari-mutuel system other than in accordance with section 188.