

Chapter 1

Section **1.20**

Ministry of the Attorney General Follow-Up on 2021 Report **Internet Gaming in Ontario**

RECOMMENDATION STATUS OVERVIEW						
# of Actions Recommended	Status of Actions Recommended					
	Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable	
Recommendation 1	1					1
Recommendation 2	2					2
Recommendation 3	2			2		
Total	5	0	0	2	2	1
%	100	0	0	40	40	20

Overall Conclusion

The Ministry of the Attorney General (Ministry), as of November 23, 2023, has not fully implemented any of the five actions we recommended in our *2021 Annual Report*. The Ministry has made little progress in implementing two of the recommended actions relating to the fairness and integrity of Internet gambling (hereafter referred to in this report as “Internet gaming”). Two other recommended actions relating to the governance structure of iGaming Ontario will not be implemented. Our recommendation pertaining to compliance with the *Criminal Code* of Canada, made prior to the launching of the new Internet gaming market is no longer applicable, since the new Internet gaming market was launched in April 2022. The status of actions taken on each of our recommendations is described in this report.

Background

On July 6, 2021, the Ontario government passed a regulation to create a 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 (*Criminal Code*) prohibits 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. Prior to the creation of iGaming Ontario, the Ontario Lottery and Gaming Corporation (OLG) was the sole legal provider of commercial Internet gaming in Ontario. Following the establishment of Ontario’s new

Internet gaming market, OLG continued to conduct and manage its own direct Internet gaming offerings, while iGaming Ontario became responsible for the conduct and management of all other Internet gaming through private gaming operators.

Ontario's model for Internet gaming is unique in the Canadian context. iGaming Ontario enters into operating agreements with private gaming operators who offer their games to Ontario consumers. iGaming Ontario provides a share of revenues generated from Ontario consumers to private gaming operators as variable compensation for the services provided.

At the time of our report in 2021, details of the government of Ontario's Internet gaming initiative had yet to be finalized. Our Office expressed 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.

Our report highlighted three key concerns:

- There were indicators that a significant amount of decision-making power and business risk was going to rest with private operators. As a result, there was legal risk with respect to whether iGaming Ontario met the "conduct and manage" threshold set out in the *Criminal Code*. Consideration of whether a province had illegally delegated the "conduct and manage" function in a gaming scheme to a private entity had been the subject of past legal challenges in Canada. We concluded that there was a risk that iGaming Ontario's business model could be subject to future legal challenges.
- The governance structure of iGaming Ontario created the potential for conflicts of interest that could compromise the AGCO's independence as a regulator. Under the new model, the AGCO maintained its regulatory responsibilities over Internet gaming and was also mandated to oversee iGaming Ontario's online lottery schemes. There was 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 Internet gaming sector.

- There was limited public information as to how specifically iGaming Ontario would 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 posed significant reputational risk for AGCO as a regulator, iGaming Ontario as a revenue generator, and more broadly, the Province.

We made three recommendations, consisting of five action items, to address these concerns.

Status of Actions Taken on Recommendations

We conducted our work between April 2023 and November 2023. We obtained written representation from the Ministry of the Attorney General that effective November 23, 2023 it has provided us with a complete update of the status of the recommendations we made in the original report.

Legality of Ontario's Proposed Internet Gaming Model Under the *Criminal Code*

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.*

Status: No longer applicable.

Details

In our 2021 report, we noted there was legal risk with respect to whether the Province's model for Internet

gaming meets the “conduct and manage” threshold set out in the *Criminal Code* of Canada. The concept of whether a province had illegally delegated the “conduct and manage” function to a private entity had been the subject of past legal challenges in Canada. Based on our review of publicly released literature available at the time of our original report, we noted Ontario’s model for Internet gaming passed on a significant amount of business risk and strategic decision-making power to private gaming operators.

Through our follow-up work, we found that the Internet gaming model was reviewed and approved by both Cabinet and Treasury Board/Management Board of Cabinet. Consistent with the model, iGaming Ontario finalized and entered into operating agreements with operators prior to the launch of the Internet gaming market. On April 4, 2022, private gaming operators that registered with the AGCO and executed an operating agreement with iGaming Ontario began offering their games to players in Ontario.

In August 2022, our Office completed an audit of iGaming Ontario’s first set of financial statements for the period ended March 31, 2022. In our *Independent Auditor’s Report* for these financial statements, we included an “Other Matter” paragraph to highlight that iGaming Ontario had assumed the legal risk of whether the operating model for Internet gaming met the “conduct and manage” requirement in the *Criminal Code*.

On November 28, 2022, the Mohawk Council of Kahnawà:ke started a legal action against iGaming Ontario and the Attorney General of Ontario. The application seeks a declaration that the Ontario government does not “conduct and manage” online gaming as required under the *Criminal Code*. The application also challenges the legislative and constitutional authority that underpins the regulated Internet gaming market scheme in Ontario.

In August 2023, our Office completed an audit of iGaming Ontario’s financial statements for the year ended March 31, 2023, the first year of operations in the new Internet gaming market. As at March 31, 2023, iGaming Ontario had entered into operating

agreements with 46 operators. Disclosure of the notice of application by the Mohawk Council of Kahnawà:ke against iGaming Ontario was included in the notes to iGaming Ontario’s financial statements. In our *Independent Auditor’s Report* for these financial statements, we included an “Emphasis of Matter” paragraph to draw users’ attention to this significant legal matter, disclosed in Note 17 to the financial statements. The above-noted court application is expected to be heard in February 2024.

Governance Structure for Internet Gaming in Ontario

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.*

Status: Will not be implemented.

The Office of the Auditor General of Ontario continues to believe this is a significant recommendation and continues to recommend the removal of the governance and operating responsibilities for iGaming Ontario from the Alcohol and Gaming Commission of Ontario, and the transfer of the reporting relationship to the Ministry of Finance.

Details

We found in our 2021 report that the proposed governance structure for Ontario’s new Internet gaming model created the potential for conflicts of interest and could compromise the AGCO’s independence as a regulator. The AGCO maintained its regulatory responsibilities over Internet gaming and was also mandated to oversee iGaming Ontario’s Internet gaming schemes. Until the

creation of iGaming Ontario, the AGCO's responsibilities were strictly regulatory in nature. We found that the AGCO's regulatory responsibilities and oversight of iGaming Ontario's revenue-generating Internet gaming schemes created an inherent conflict of interest.

In our follow-up, we found that the Ministry did not make any changes to the governance structure for Internet gaming in Ontario and intends to continue with iGaming Ontario being a legal subsidiary of the AGCO. The Ministry asserted that sufficient conflict-of-interest policies have been developed to address conflict-of-interest situations that may arise between the regulatory responsibilities of the AGCO and the profit-generating mandate of iGaming Ontario. In addition, the Ministry, the AGCO and iGaming Ontario, entered into a memorandum of understanding (MOU). The MOU details each party's accountabilities and responsibilities to each other. The MOU reiterates the AGCO's legislated mandate to oversee iGaming Ontario's conduct and management of prescribed online lottery schemes. The MOU also states that iGaming Ontario is accountable to the Attorney General for revenue generation, forecasting and reporting. The Ministry believes that since conflicts of interest between the functions of AGCO and iGaming Ontario have been addressed using supplementary policies and the MOU, the benefits of maintaining the status quo outweigh the operational risks and fiscal impacts of establishing a new reporting structure for iGaming Ontario.

Our Office continues to hold the view that, as a regulator, the AGCO should not, in fact or in appearance, be in any way involved in the conduct and management of Internet gaming in Ontario. Instead, a structurally independent government organization (i.e., not a legal subsidiary of the AGCO) should manage the operational and revenue-generating responsibilities for Internet gaming provided through private gaming operators, and be separate and independent of its regulator.

Fairness and Integrity of Internet Gaming in Ontario

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.

Status: Little or no progress.

Details

Our 2021 report found that key responsibilities for maintaining integrity and fairness of Ontario's new model for Internet gaming were being delegated and entrusted to the private sector. It appeared that iGaming Ontario would not be involved in critical aspects of gaming operations such as designing games and gaming systems, determining payouts and odds-setting. At the time of issuance of our 2021 report, there was limited public information as to how specifically iGaming Ontario would protect Ontario gaming consumers by ensuring the integrity of games offered by private gaming operators.

In our follow-up work, we found that iGaming Ontario does not proactively monitor operators in terms of ensuring compliance with gaming standards, including standards relating to the fairness and integrity of games. In response to our recommendation, the Ministry highlighted that the regulator, AGCO, has:

- developed the *Registrar's Standards for Internet Gaming*, which includes specific standards to address game integrity;
- mandated that all games be tested and certified against AGCO Standards by Independent Testing

Laboratories that are registered with the AGCO; and

- developed an iGaming compliance program with a dedicated iGaming Compliance Unit whose sole responsibility is to conduct compliance oversight of registered iGaming operators and suppliers.

In addition to the above actions taken by the AGCO, the Ministry noted that iGaming Ontario established a Customer Care and Dispute Resolution Policy to provide recourse to players who have serious concerns, allegations related to behaviours of an operator, or disputes related to an operator's products or services. The Ministry communicated the above actions, taken by the AGCO and iGaming Ontario, to the Legislature in March 2022.

We note that the majority of actions taken with respect to ensuring game integrity are those undertaken by the AGCO. However, the AGCO, in its capacity as the regulator of Internet gaming, should be the second line of defence for the fairness of Internet games. iGaming Ontario, in its capacity as the conductor and manager of Internet gaming, should be acting as the first line of defence in protecting Ontario consumers through ensuring the integrity of games offered by its operators.

While the AGCO is tasked with enforcing compliance with these standards, iGaming Ontario should take an active role in ensuring integrity (i.e., randomness of game outcomes, fair disclosure of game odds,

and payouts made as described) of Internet games across its operator network. The dispute-resolution process put in place by iGaming Ontario is a reactive, as opposed to a preventative, mechanism to respond to potential issues of fairness and integrity. More action is needed by iGaming Ontario to ensure the fairness and integrity of games it is responsible for conducting and managing. iGaming Ontario should develop a strategy with respect to monitoring compliance of operators with Internet gaming standards, particularly those that relate to fairness and integrity of games.

In April 2023, the AGCO issued monetary penalties against three of iGaming Ontario's operators for offering slot games on Ontario websites that were not approved by the AGCO, nor certified by an Independent Testing Laboratory. These monetary penalties were issued by the AGCO to the respective private gaming operators. iGaming Ontario has ultimate accountability since these gaming operators are acting as its legal agents to operate websites that offer Internet games to players in Ontario. We urge the Ministry to mandate that iGaming Ontario plays a proactive role in ensuring the integrity of games offered through its operator network. Our Office will continue to follow up on the implementation of this recommendation, as it relates to the role iGaming Ontario plays, over the fairness and integrity of games it is responsible for conducting and managing. In addition, we will follow up on whether any additional actions taken by iGaming Ontario are communicated to the Legislature.