

ONLINE GAMING: A GOOD BET FOR MONEY LAUNDERING? AN ANALYSIS OF MONEY LAUNDERING IN THE CANADIAN ONLINE GAMING INDUSTRY

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I. INTRODUCTION

Governments, policy makers, and administrative bodies have long been attentive to the high-risk of money laundering¹ in land-based gaming facilities.² Online gaming, though, is still an emerging area and has not yet been subject to the same attention. Taken together, the emerging nature and rapid progression of online gaming leads to ambiguity concerning the risks of money laundering, the effectiveness of current legal regimes, and the need for revision of these regimes. The aim of this article is to provide some clarity within this environment of ambiguity.

The article proceeds as follows: Part I sets out a synopsis of the current legal landscapes of both online gaming and money laundering. It also considers the legislative convergence between gaming and anti-money laundering (“AML”) laws. Part II discusses the recent expansion of online gaming in Canada. Part II(A) analyzes the growth of legal online gaming, and Part II(B) discusses the growth of illegal offshore online gaming. Part III then explicates

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¹ Money laundering is the process of converting or transferring funds or other assets generated from illegal activity in order to conceal their illegal origins. *See generally* MARGARET E BEARE & STEPHEN SCHNEIDER, *MONEY LAUNDERING IN CANADA: CHASING DIRTY AND DANGEROUS DOLLARS* ix-xv (Univ. of Toronto Press 2007).

² *See generally Risk Assessment Guidance*, GOV’T OF CAN. (Jan. 4, 2021), <https://www.fintrac-canafe.gc.ca/guidance-directives/compliance-conformite/rba/rba-eng>; PETER M. GERMAN, *DIRTY MONEY: AN INDEPENDENT REVIEW OF MONEY LAUNDERING IN LOWER MAINLAND CASINOS CONDUCTED FOR THE ATTORNEY GENERAL OF BRITISH COLUMBIA* 27 (2018); *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada*, GOV’T OF CAN. (July 31, 2015), <https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html>.

the concern over whether the growth of online gaming will facilitate money laundering. Part III(A) considers the money laundering risks in legal online gaming, and Part III(B) considers the money laundering risks in illegal offshore online gaming. Part III(C) analyzes the specific methods through which criminals may launder money in online gaming, including money laundering through anonymous online payment channels such as prepaid cards and cryptocurrency. Other methods such as withdrawing from a betting account, betting with a counterpart, and player-to-player transfers are also considered. Lastly, Part IV analyzes the two central legislative ‘gaps’ that increase the risks of money laundering through online gaming and puts forward recommendations in response. Part IV(A) examines the lack of adherence to existing AML laws. In response, this article recommends increased administrative penalties for non-compliance with AML regulations and increased successful criminal prosecution of money laundering. Part IV(B) considers the pressing issue of offshore online gaming operators as a preferred method of money laundering. This article identifies the underlying reasons for this and proposes three recommendations in response. Specifically, it recommends that offshore online gaming operators be subject to Canadian AML regulations and criminal prohibitions, and that federal and provincial governments take legislative action to deter reliance on offshore online gaming operators.

A proposal pertaining to a smoking ban would likely not gain much support. At the outset of this paper, three clarifications are necessary. First, use of the phrase “online gaming” in this paper refers to online games of mixed skill and chance as defined in Section 197(1) of the *Criminal Code of Canada* [“*Criminal Code*”].³ In accordance with judicial interpretation, this phrase does not include online games where a player has no risk of loss, such as video games.⁴ Second, to the extent that this paper refers to “online gaming,” it is also referring to online betting, notwithstanding the fact that “betting” and “gaming” are defined separately in the *Criminal Code*. Third, this paper has a single focus—to analyze, at a high level, the money laundering risks in online gaming and propose recommendations to combat such activity. This paper is not intended as a detailed compliance guide for online gaming operators.

II. THE LEGAL LANDSCAPES

A. The Legal Landscape of Online Gaming

Canada’s online gaming laws “have their origins in . . . traditional, land-based operations and realities.”⁵ Unlike the United States, which has a federal

³ Criminal Code, R.S.C. 1985, c C-46, § 197(1) (Can.).

⁴ *Di Pietro v. The Queen*, [1986] 1 S.C.R. 250 (Can.); *R. v. Irwin* (1982), 1 C.C.C. 3d 212, 220 (Can. Ont. C.A.).

⁵ Ilkim Hinçer, *The Future of Gaming: The Challenge of Regulation in a World of Change*, CANADIAN GAMING L., Summer 2016, at 9.

statute governing online gaming,⁶ Canada “does not use a separate legal framework for addressing internet gambling specifically.”⁷ Rather, online gaming is regulated under the scope of Canada’s gaming laws at large.

Gaming⁸ in Canada is a “heavily regulated industry.”⁹ The central piece of legislation regulating gaming is the *Criminal Code*. Part VII of the *Criminal Code*¹⁰ applies to gaming and betting. Broadly speaking, the *Criminal Code* provisions governing gaming in Canada are based on a “paradox”¹¹—that is, gaming is criminal activity unless it isn’t. In particular, Part VII¹² places a prohibition on all forms of gaming,¹³ but Section 207¹⁴ allows for a small number of exceptions to this prohibition.¹⁵

⁶ Unlawful Internet Gambling Enforcement Act of 2006, Pub. L. No. 109–347, 120 Stat. 1952 (codified as amended at 31 U.S.C. §§ 5361–5366).

⁷ Ian Wilenius, *A Safe Bet: Regulating Online Gambling and Lotteries Through the Criminal Code*, 27 DALHOUSIE J. LEGIS. STUD. 1, 3 (2018).

⁸ The *Criminal Code* defines a “game” as a “game of chance or mixed skill.” *Criminal Code*, R.S.C. 1985, c C-46 (Can.). The *Criminal Code* has no requirement that courts weigh between skill and chance: something can satisfy the definition of a “game” if it is half skill and half chance. For example, in *Ross v. The Queen*, the Supreme Court of Canada (the “Supreme Court”) held that the card game Bridge was a game of mixed skill and chance. Importantly, where the player has no risk of loss, the *Criminal Code* prohibitions on gaming do not apply. See *Ross v. The Queen*, [1968] S.C.R. 786, 791–92 (Can.).

⁹ ROBERT KROEKER & JEFFERY SIMSER, *CANADIAN ANTI-MONEY LAUNDERING LAW: GAMING SECTOR 7* (Toronto: Carswell 2017).

¹⁰ *Criminal Code*, R.S.C. 1985, c C-46, §§ 197–213 (Can.).

¹¹ KROEKER & SIMSER, *supra* note 9, at 7.

¹² *Criminal Code*, R.S.C. 1985, c C-46, §§ 197–213 (Can.).

¹³ *Id.*

¹⁴ *Id.* at § 207.

¹⁵ The notable exceptions in Section 207 of the *Criminal Code* are as follows:

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

(a) for the government of a province . . . to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;

(b) for a charitable or religious organization . . . to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose;

(c) for the board of a fair or of an exhibition, or an operator of a concession leased by that board, to conduct and manage a lottery scheme in a province where the Lieutenant Governor in Council of the province . . . has:

(i) designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and

(ii) issued a license for the conduct and management of a lottery scheme to that board or operator.

Id.

The *Criminal Code* is extensively detailed in its description of the specific gaming activities it prohibits. Section 201¹⁶ prohibits the operation of locations where gaming and betting occur. Section 202¹⁷ prohibits other gaming-related activities, such as registering bets¹⁸ and possessing a device used for gaming.¹⁹ Further, Section 206 prohibits a “diverse range”²⁰ of gaming activity under the umbrella label of “lottery schemes.” The Section 206 prohibitions are categorized in two broad groups; the first is “lotteries and games of chance,” while the second is a group of offenses related to the specific card game three-card monte.²¹ The offenses in the “lotteries and games of chance” group include, amongst others, prohibitions on conducting, managing, or being a party to gaming²² and the advertising of gaming activity.²³ Importantly, none of these *Criminal Code* prohibitions on betting or gaming apply where there is no risk of loss to the player.²⁴

A unique feature of this framework is the distinction made between the phrase “gaming” and “betting.” Pursuant to Section 197,²⁵ “[g]aming” refers to any mixed game of skill and chance²⁶ where there is a risk of loss to the player,²⁷ whereas “betting” is narrower than gaming, as it refers only to a bet placed on any contingency or event.²⁸ This includes events such as horse races, fights, and sporting events.²⁹ However, this distinction is only relevant to a few nuanced

¹⁶ *Id.* at § 201.

¹⁷ *Id.* at § 202.

¹⁸ *Id.* at § 202(1)(d).

¹⁹ *Id.* at § 202(1)(b).

²⁰ It is suggested by commentators that the language of Section 206 is extremely broad and complex, making it difficult to determine the exact activities that fit into the scope of this section. *See* Wilenius, *supra* note 7, at 4.

²¹ Three-card monte is a game in which persons are tricked into betting a sum of money, on the assumption that they can find a black card among three face-down playing cards. Skilled street performers, through deception and sleight of hand, can make it virtually impossible for a player to identify a black card. *See* John M. Norwood *Gambling in the 21st Century*, 74 *Miss. L.J.* 779, 786 (2005). The *Criminal Code* Sections 206(1)(g) through 206(1)(j) define numerous three-card monte offenses. *Criminal Code*, R.S.C. 1985, c C-46, §§ 206(1)(g)–(j) (Can.).

²² *Id.* at § 206(1)(e).

²³ *Id.* at § 206(1)(a).

²⁴ *Di Pietro v. The Queen*, [1986] 1 S.C.R. 250, 250 (Can.); *R. v. Irwin* (1982), 1 C.C.C. 3d 212, 220 (Can. Ont. C.A.) (citing *R. v. O’Meara* (1915), 25 C.C.C. 16 (Can.)).

²⁵ *Criminal Code*, R.S.C. 1985, c C-46, § 197 (Can.).

²⁶ *Id.* at § 197(1).

²⁷ *Di Pietro v. The Queen*, [1986] 1 S.C.R. 250, 250 (Can.); *R. v. Irwin* (1982), 1 C.C.C. 3d 212, 220 (Can. Ont. C.A.) (citing *R. v. O’Meara* (1915), 25 C.C.C. 16 (Can.)).

²⁸ *Criminal Code*, R.S.C. 1985, c C-46, § 197(1) (Can.).

²⁹ *Id.*

provisions that are beyond the scope of this paper, so this paper uses the phrases “gaming” and “betting” interchangeably.

As previously discussed, the “paradox”³⁰ of Canadian gaming law is that all gaming is criminal activity unless it falls under an exception in Section 207. Subsection 207(1) permits “lottery schemes” that are “conducted and manage[d]” by a licensed charitable organization, a licensed board of a fair or exhibition, or, importantly, by a provincial government (the “*Provincial Operation Exemption*.”).³¹ Subsection 207(4) sets out the broad definition of a “lottery scheme” as including activities in which a person pays money for the chance to win a prize.³² Essentially, a lottery scheme encompasses anything that is colloquially seen as gambling or betting.

The majority of legal online gaming in Canada operates by virtue of the *Provincial Operation Exemption*. Provinces that offer online gaming do so through their respective regulatory bodies responsible for the conduct and management of gaming.³³ These regulatory bodies offer their own online gaming platforms that are only available to consumers within their respective jurisdictions.³⁴ Most provinces’ gaming regulatory bodies are granted their power through provincial statutes governing gaming.³⁵

An important caveat to the aforementioned gaming laws is that popular offshore online gaming operators do not fall within any of the Section 207 exceptions, and thus are operating illegally and contrary to the *Criminal Code*. This creates the potential for money laundering because, unlike legal gaming operators, offshore operators are not clearly subject to Canadian AML laws.

B. Legal Landscape of Money Laundering

Money laundering, the act or attempted act to disguise the origin of money or assets derived from criminal activity, is regulated by federal AML legislation. Canada’s AML laws are primarily contained in two statutes: (1) the *Criminal Code* and (2) the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the PCMLTFA).

³⁰ See KROEKER & SIMSER, *supra* note 9, at 7.

³¹ *Criminal Code*, R.S.C. 1985, c C-46, § 207(1) (Can.).

³² *Id.* at § 207(4). The complete definition of a “lottery scheme” is a game or “any proposal, scheme, plan, means, device, contrivance or operation described in any of paragraphs 206(1)(a) to (g), whether or not it involves betting, pool selling or a pool system of betting.” *Id.* at § 206, § 207(4).

³³ For example, the gaming regulatory body in Ontario is the Alcohol and Gaming Commission of Ontario. In Quebec, it is Loto Quebec. See Appendix #1 (providing a full list of provincial regulatory bodies).

³⁴ See *id.*

³⁵ For example, in Saskatchewan, Section 2 of the Alcohol and Gaming Regulation Act of 1997 provides the Saskatchewan Gaming Commission the power to manage gaming in the province. The Alcohol and Gaming Regulation Act, 1997, S.S. 1997, c A-18.011. See also Appendix #2 (providing a full list of provincial gaming statutes).

1. *Criminal Code*

Laundering the proceeds of crime is a criminal offense in Canada. By virtue of Section 462.31 of the *Criminal Code*,³⁶ anyone who “transfers the possession of . . . property or . . . proceeds with intent to . . . convert that property or those proceeds, knowing or believing that, or being reckless as to whether . . . that property or . . . proceeds was obtained . . . as a result of [crime]”³⁷ is guilty of an indictable offense which is punishable with up to 10 years of imprisonment.³⁸ Canada first criminalized money laundering in 1989 with the enactment of Part XII.2 of the *Criminal Code*.³⁹ The addition of money laundering as a criminal offense complemented the existing offense of possession of proceeds of crime under Section 312 (now Section 354).⁴⁰ Today money laundering remains a criminal offense under Section 462.31.⁴¹ However, a critical consideration is that money laundering is rarely successfully prosecuted. A mere 9% of all charges under Section 462.31 between 2012 and 2017 resulted in a conviction or guilty plea, and 86% of charges were stayed or withdrawn.⁴² Meanwhile, during that same time frame, 64% of all criminal charges resulted in a finding of guilt.⁴³ As this paper discusses in Part IV(A), this abysmal prosecution rate is a clear cause for concern and does not adequately disincentivize money laundering in any setting, including in online gaming.

2. *PCMLTFA*

The PCMLTFA is Canada’s comprehensive federal AML regime aimed at “implement[ing] specific measures to detect and deter money laundering.”⁴⁴ Simply put, this act is the “centrepiece” of the Canadian AML regime.⁴⁵

³⁶ Criminal Code, R.S.C. 1985, c C-46, § 462.31 (Can.).

³⁷ *Id.* at § 462.31(1).

³⁸ *Id.* at § 462.31(2).

³⁹ Daniel P. Murphy, *Canada’s Anti-Money Laundering Regime*, 58 U.N. ASIA AND FAR EAST INST. RES. MATERIAL 286, 286 (2001).

⁴⁰ Criminal Code, R.S.C. 1985, c C-46, § 354 (Can.).

⁴¹ *Id.* at § 462.31(1).

⁴² Marco Chown Oved, *In Canada, Nearly All Accused Money Launderers Get Their Charges Dropped*, TORONTO STAR (Dec. 27, 2019), <https://www.thestar.com/news/investigations/2019/12/26/in-canada-nearly-all-accused-money-launderers-get-their-charges-dropped.html>.

⁴³ *Id.*

⁴⁴ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17 (Can.).

⁴⁵ HON. AUSTIN F. CULLEN, COMMISSION OF INQUIRY INTO MONEY LAUNDERING IN BRITISH COLUMBIA 9 (2020).

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In response to international pressure for countries to do more to combat money laundering, Canada enacted the PCMLTFA in 2000.⁴⁶ Specifically, there was pressure to ensure that institutions “maintain[ed] . . . records on transactions” and “report[ed] promptly” when suspicious transactions arose.⁴⁷ The PCMLTFA sets out these reporting and record-keeping requirements. The PCMLTFA’s primary objective is to implement specific measures in order “to detect and deter money laundering” and facilitate investigations of the crime.⁴⁸

⁴⁶ *InfoSource*, GOV’T OF CAN. (Sept. 28, 2022), <https://www.fintrac-canafe.gc.ca/atip-aiprp/infosource-eng>.

⁴⁷ In 1990, the Financial Action Task Force published a document of forty recommendations for countries to combat money laundering. The focus of these recommendations was enacting legislation that would allow for the tracing, reporting, and monitoring of the laundering of proceeds of crime through certain high-risk financial institutions. Canada enacted the PCMLTA in response to these recommendations. FIN. ACTION TASK FORCE, *THE FORTY RECOMMENDATIONS OF THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING 1990* (1990).

⁴⁸ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act and Associated Regulations*, GOV’T OF CAN. (Mar. 12, 2022), <https://www.fintrac-canafe.gc.ca/act-loi/1-eng>.

The most critical parts of the PCMLTFA are the provisions that outline reporting, record keeping and client identification, and risk assessment requirements for certain entities seen as vulnerable to money laundering risks (“reporting entities”). These provisions are the cornerstone of the Act. Section 5⁴⁹ establishes a list of the reporting entities to which the Act applies.⁵⁰ These entities are in the sectors of the economy which are seen by the federal government as vulnerable to money laundering risks. Part 1 and 2 of the PCMLTFA set out reporting requirements.⁵¹ Importantly, Part 3 establishes the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), which is the entity responsible for assisting in the detection, prevention, and deterrence of money laundering in Canada.⁵² FINTRAC is independent of police and law enforcement, and is responsible for ensuring that reporting entities comply with the legislation and regulations. Critically, in accordance with the legislation and regulations, FINTRAC receives and reviews financial transaction reports and voluntary information, maintains a registry of money services businesses in Canada, and hands out sanctions and penalties where appropriate.⁵³

⁴⁹ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17, § 5 (Can.).

⁵⁰ Reporting entities include financial entities such as banks (those listed in Schedule I or II of the *Bank Act*) or authorized foreign banks with respect to their operations in Canada, credit unions, financial services cooperatives, credit union centrals, trust companies, loan companies, life insurance companies, brokers and agents, securities dealers, money services businesses, dealers in precious metals and stones, casinos, and persons and entities dealing with virtual currencies. *Id.*

⁵¹ *Id.* at §§ 7, 11.

⁵² *Id.* at §§ 41–72.

⁵³ FINTRAC is also responsible for safeguarding personal information under its control, producing financial intelligence relevant to investigations of money laundering, terrorist activity financing and threats to the security of Canada, researching and analyzing data from a variety of information sources that shed light on trends and patterns in money laundering and terrorist activity financing and enhancing public awareness and understanding of money laundering and terrorist activity financing. *Id.* at §§ 40(c)–(d), 58(1)(b).

C. The Convergences of Gaming and Money Laundering Legislation

The primary convergence of AML and online gaming laws lies in Section 5(k.1) of the PCMLTFA.⁵⁴ This section stipulates that “the government of a province that, in accordance with paragraph 207(1)(a) of the Criminal Code, conducts and manages a lottery scheme . . . that is accessible to the public *through the Internet* (emphasis added) or other digital network” is a reporting entity under the PCMLTFA.⁵⁵ In other words, all provincial online gaming operators legally operating by virtue of Section 207 of the *Criminal Code* are identified in Section 5(k.1) of the PCMLTFA as a reporting entity that must comply with all compliance and reporting requirements in the PCMLTFA.⁵⁶ At a high level, these requirements include registration, record keeping, identity verification, and registering and reporting certain large and suspicious transactions to FINTRAC.

The specific compliance requirements applicable to online gaming operators are expressed in the regulations of the PCMLTFA.⁵⁷ These requirements include, amongst others, appointing a compliance officer responsible for the implementation of a compliance program,⁵⁸ developing detailed, written, and up-to-date policies and procedures,⁵⁹ implementing a compliance education program for employees,⁶⁰ and conducting a compliance audit review every two years.⁶¹

⁵⁴ *Id.* at § 5(k.1).

⁵⁵ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17, § 5(k.1) (Can.).

⁵⁶ Section 5(k.1) identifies all legally operating online gaming operators who operate gaming that “is accessible to the public through the Internet or other digital network” as reporting entities. *Id.*

⁵⁷ Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184, § 156(1) (Can.).

⁵⁸ *Id.* at § 156(1)(a).

⁵⁹ *Id.* at § 156(1)(b).

⁶⁰ *Id.* at § 156(1)(d).

⁶¹ *Id.* at § 156(3). *See also* FINTRAC, GUIDELINE 4: IMPLEMENTATION OF A COMPLIANCE REGIME 11 (2011) (explaining that compliance regimes for online casinos must be tailored to each individual casino’s needs, including the size and complexity of its operation).

Moreover, the specific record keeping and reporting requirements applicable to online gaming operators include, amongst others, recording electronic fund transfers that arise from the request of a consumer,⁶² reporting international electronic funds transfer over \$10,000 CAD,⁶³ and virtual currency transactions over \$10,000 CAD.⁶⁴ These requirements are important in the context of online gaming, as all online gaming transactions generally occur through electronic fund transfers. However, as discussed later in this paper, some online gaming transactions may also occur through virtual currency.

Critically, new amendments to the PCMLTFA regulations may also subject some illegal offshore online gaming operators to the requirements of the PCMLTFA. Amendments that came into force on June 1, 2021⁶⁵ now require foreign money service businesses to “broadly comply with the full requirements under the PCMLTFA”.⁶⁶ FINTRAC defines “foreign money service businesses” (*FMSB*) as those which do not have a place of business in Canada, but which provide a money service business that is directed at and provided to persons or entities in Canada.⁶⁷ It is not clear if any (or all) offshore online gaming operators fall under this *FMSB* classification. Specifically, it is not clear if offshore online gaming operators provide a money service business. FINTRAC defines a money service business as including foreign exchange, money transferring, issuing or redeeming money orders, or dealing in virtual currency. Virtual currency is defined as including a “cryptographic system,” which can be taken to include cryptocurrency and bitcoin.⁶⁸ Thus, all operators, including offshore online gaming operators who permit gaming with cryptocurrency and bitcoin, will now likely be subject to reporting and compliance requirements under the PCMLTFA.⁶⁹ It remains to be seen whether other offshore online operators may

⁶² Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR/2002-184, § 74(2)(c).

⁶³ *Id.* § 70(1)(a)–(b).

⁶⁴ *Id.* § 70(1)(c).

⁶⁵ Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SOR/2019-240 (Can.).

⁶⁶ Prior amendments introduced some obligations for foreign money services businesses, but only required domestic money service businesses to comply with all of the reporting and compliance obligations under the PCMLTFA. The new amendments require foreign money services businesses to comply with the same requirements as domestic money service businesses. ELIZABETH SALE ET AL., OSLER, HOSKIN & HARCOURT LLP, *ANTI-MONEY LAUNDERING IN CANADA: A GUIDE TO THE JUNE 1, 2021 CHANGES* 59 (2021).

⁶⁷ *Money Services Businesses*, GOV'T OF CAN.: FIN. TRANSACTIONS ANALYSIS CTR. OF CAN., <https://www.fintrac-canafe.gc.ca/msb-esm/fmsb-eng> (Aug. 18, 2022).

⁶⁸ Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations, SOR/2001-317 (Can.).

⁶⁹ P. Jason Kroft, et al., *Regulating Money Service Businesses in Canada: The Not So Well Known Money Service Business Regime*, LEXOLOGY (Nov. 30 2022),

be found to fall under the *FMSB* classification. As previously discussed, offshore online gaming operators pose a real risk for money laundering. Thus, this development will have important implications in the fight against money laundering in online gaming.

III. THE GROWTH OF ONLINE GAMING IN CANADA

Online gaming in Canada has progressed rapidly in recent years, with Canadians showing an “incredible appetite” for online gaming.⁷⁰ Statistics Canada estimates that 65% of eligible Canadians will place at least a single bet at an online casino within the upcoming calendar year.⁷¹ Global gaming revenue is expected to exceed \$600 billion USD by 2022, with online gaming accounting for a “significant portion” of that.⁷² The size of the global online gambling market is expected to exceed \$153.6 billion USD by 2030, registering a compound annual growth rate of 11.7% from 2020 to 2030.⁷³

The general technology-centered direction of our world is a catalyst to this rapid progression. As is the case in most Canadian industries, technology is transitioning historically in-person activities to more technology-driven ones.⁷⁴ Analysts suggest that a large portion of the development of online gaming is driven by technological advancements, which lead online games to be “constantly evolving and improving” their functionalities to attract more consumers.⁷⁵ In the current global landscape, the COVID-19 pandemic has further increased consumer reliance on technology and “accelerated” the demand

<https://www.lexology.com/library/detail.aspx?g=2de6ad5c-f190-466f-be77-a529801619a5>.

⁷⁰ Ryan, J Black et al., *Canada Legalizes Single Event Sports Betting, and Ontario is All in*, DLA PIPER (Aug. 16, 2021), <https://www.dlapiper.com/en/us/insights/publications/2021/08/canada-legalises-online-sports-betting/>.

⁷¹ “Eligible” Canadians refers to Canadians who are of legal gaming age.

⁷² Wilenius, *supra* note 7, at 2.

⁷³ *Online Gambling Market Worth \$153.6 Billion by 2030*, GRANDVIEW RSCH. INST., <https://www.grandviewresearch.com/press-release/global-online-gambling-market> (last visited Oct. 30, 2022) [hereinafter GRANDVIEW RSCH. INST.].

⁷⁴ *How COVID-19 Has Pushed Companies Over The Technology Tipping Point—And Transformed Business Forever*, MCKINSEY & CO. (Oct. 5, 2020), <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever>; Alana Semuels, *Millions of Americans Have Lost Jobs in the Pandemic—And Robots and AI Are Replacing Them Faster Than Ever*, TIME (Aug. 6, 2020), <https://time.com/5876604/machines-jobs-coronavirus/>.

⁷⁵ Zack Jones, *Rise of the iGaming Industry: Is the United States Ready to Accept Online Casinos?*, FORBES (Apr. 21, 2021, 11:05 AM), <https://www.forbes.com/sites/zackjones/2021/04/21/the-rise-of-the-igaming-industry-what-is-in-store-for-the-citizens-of-united-states/?sh=12a7d26a3555>.

for online gaming.⁷⁶ With millions of Canadians out of jobs and “locked up in their homes [without] anything exciting to do, many tried their hands”⁷⁷ at online gaming for entertainment.⁷⁸ Others, who have historically been regular in-person gamers, “made it a point to play online” while in-person gaming facilities were shut down.⁷⁹

Importantly, both legal and illegal online gaming are growing.⁸⁰ In 2020, legal online gaming in Canada generated \$1.2 billion USD in revenue. However, a substantial portion of Canada’s online gaming still takes place via illegal, offshore private operators. The Canadian Gaming Association estimates that Canadians spend an additional \$4 billion USD annually on these websites.⁸¹

A. The Growth of Legal Online Gaming in Canada

⁷⁶ GRANDVIEW RSCH. INST., *supra* note 73.

⁷⁷ *Worldwide Online Gambling 2021 Industry Market Report - COVID-19 Has Resulted in High Growth*, GLOBENEWSWIRE (Jan. 20, 2021), <https://www.globenewswire.com/news-release/2021/01/20/2161513/0/en/Worldwide-Online-Gambling-Industry-2021-Market-Report-COVID-19-has-Resulted-in-Hugh-Growth.html> [hereinafter GLOBENEWSWIRE].

⁷⁸ A study of 1,500 Canadians found that 6% of respondents signed up for a new online gaming account between March 2020 and May 2020 alone. *See Online Gambling/Betting Survey Results*, ABACUS DATA (June 1, 2020), <https://www.greo.ca/Modules/EvidenceCentre/Details/online-gambling-betting-a-survey-of-1-500-canadians-during-the-covid-19-pandemic>.

⁷⁹ GLOBENEWSWIRE, *supra* note 77.

⁸⁰ Operating an offshore online gaming company is illegal. As discussed in Section I of this paper, Part IV of the Criminal Code prohibits the operation of gaming in Canada, and Section 207 provides for a small number of exceptions to the general prohibition on gaming. Offshore gaming websites do not fall within any Section 207 exceptions, thus these companies are illegal. Despite widespread recognition that these companies are contrary to Canadian law, to date, there have been no charges laid against an offshore online gaming operator. The issue is simply a question of jurisdiction. The question is whether these offshore companies have enough connection to Canada to be subject to prosecution under Canadian law. Michael Lipton, a partner at Dickinson Wright LLP, believes these companies have enough of a connection to Canada to be prosecuted here. Lipton explains that the fact these companies advertise here and enter into contracts to accept bets from Canadians indicates they have enough of a substantial connection to the jurisdiction to be subject to prosecution in Canada. *See* Sandra Rubin, *Gaming the System*, LEXPORT MAG. (May 19, 2016), <https://www.osler.com/osler/media/Osler/Content/Press/Lexport-Gaming-the-System.pdf>.

⁸¹ *Canadian Gaming Association Calls on All Party Support for Single-Event Sports Betting*, CANADIAN GAMING ASS’N (Oct. 10, 2019), <http://canadiangaming.ca/canadian-gaming-association-calls-on-all-party-support-for-single-event-sports-betting/>.

Two recent legislative changes have significantly contributed to the growth of legal online gaming in Canada: (1) Ontario's Internet Gaming Framework and (2) Bill C-218, which legalized single event sports betting. Both of these legislative mechanisms have supported the growth of legal and regulated online gaming.

First, Ontario's new internet gaming framework will provide legal and regulated online gaming to all Ontarians. In an effort to "foster an exciting gaming experience . . ., create a competitive marketplace. . ., combat the unregulated market, [and] ensure market integrity and safety."⁸² The Ontario government recently announced its plan to introduce an expanded and regulated internet gaming ("iGaming") market in Ontario.⁸³

While Kanie Kastroll's case did not get very far in court, it shows just how dedicated a casino dealer can be to the fight for clean air at work. In filing her suit, Kastroll was not seeking any sort of monetary resolution; she simply wanted injunctive relief for those past, present, and future employees in her position. Not only does this show how difficult it must be to work in an environment that is bad for one's health, but it shows how tough it is to try to challenge casino smoking laws. To "bring this market to life,"⁸⁴ the Ontario government passed Bill 229,⁸⁵ which codified the establishment of a distinct subsidiary within the Alcohol and Gaming Commission of Ontario⁸⁶ that is responsible for "the conduct and management of [the iGaming market]."⁸⁷ This subsidiary, iGaming Ontario, was established in July 2021, and it went live on April 4, 2022.⁸⁸

⁸² *Discussion Paper: A Model for Internet Gaming in Ontario*, GOV'T OF ONT., <https://www.ontario.ca/page/discussion-paper-model-internet-gaming-ontario> (Mar. 31, 2022) [hereinafter *iGaming Discussion Paper*].

⁸³ *Ontario's New iGaming Market to Launch*, GLOBAL NEWS, (Apr. 4, 2022) <https://www.globenewswire.com/news-release/2022/01/28/2375201/0/en/Ontario-s-New-iGaming-Market-to-Launch-April-4-2022.html>.

⁸⁴ Bryson A. Stokes et al., *Internet Gaming Changes Coming to Canada*, BLAKE, CASSELS & GRAYDON LLP, (Dec. 16, 2020), <https://www.blakes.com/insights/bulletins/2020/internet-gaming-changes-coming-to-canada>.

⁸⁵ Bill 229, *An Act to Implement Budget Measures and to Enact, Amend and Repeal Various Statutes*, 1st Sess, 42nd Leg, Ontario, 2020.

⁸⁶ *Id.* at Schedule 1.

⁸⁷ *iGaming Discussion Paper*, *supra* note 82.

⁸⁸ *Ontario's New iGaming Market to Launch April 4, 2022*, IGAMING ONTARIO, <https://igamingontario.ca/en/news/ontarios-new-igaming-market-launch-april-4-2022> (last visited Jan. 11, 2023); *Player Support & Information - Online Gambling (iGaming) and Sport and Event Betting*, ALCOHOL AND GAMING COMM'N OF ONTARIO, <https://www.agco.ca/lottery-and-gaming/player-support-information-online-gambling-igaming-and-sport-and-event-betting> (last visited Jan. 11, 2023).

Importantly, the Ontario iGaming market welcomes private operators.⁸⁹ Currently, the Ontario Lottery Corporation is the only legal provider of commercial gaming in Ontario, and it provides the province's only official online gaming platform.⁹⁰ Thus, under the new iGaming structure, the availability of legal online gaming platforms will soon transition from a single platform to hundreds or thousands of platforms.⁹¹ Naturally, the continued growth of the iGaming market may drive significant overall economic growth and generate robust financial returns⁹² for the province.⁹³

Despite the Ontario government implementing the iGaming regulation, there is still a question of whether Ontario's iGaming model is actually legal. The concern is that "[t]he province may in fact be breaking the law and inducing private gaming operators to contravene [Section 207 of] the Criminal Code."⁹⁴ As discussed above, Section 207 permits the government of a province to "conduct and manage" gaming.⁹⁵ However, under Ontario's iGaming model, it is not clear whether the provincial government or the private operators will be "conducting and managing" the online gaming platforms.⁹⁶ In December 2021, the Auditor General of Ontario released a report expressing this concern.⁹⁷ The report explains that there is a real "legal risk with respect to whether iGaming Ontario meets the 'conduct and manage' threshold"⁹⁸ because the Ontario iGaming model permits private operators, not the provincial government, to control "key decision-making activities."⁹⁹ In response to these concerns, the Auditor General recommended that the Ontario government delay its launch of

⁸⁹ iGaming Ontario, *What We Do*, <https://igamingontario.ca/en/player/what-we-do> (last visited Dec. 17, 2022) (stating "iGaming Ontario (iGO) has established a new online gaming market provided through private gaming companies (Operators).").

⁹⁰ See Section I of this paper for an outline of the legal landscape of gaming, and an explanation as to what a "legal provider" of gaming is.

⁹¹ The Ontario government has expressed that there will be no cap on the number of registrants permitted.

⁹² *iGaming Discussion Paper*, *supra* note 82.

⁹³ It is worth noting that the Ontario government has addressed the fact that the financial benefits of the iGaming market may specifically help accelerate recovery from the adverse financial impacts of COVID-19.

⁹⁴ Ron Segev, *Ontario: Is the Province's Hands-off Approach Illegal?*, iGB (Aug. 18, 2021), <https://igamingbusiness.com/legal-compliance/licensing/ontario-provincial-oversight-illegal/>. (emphasis added).

⁹⁵ Criminal Code, R.S.C. 1985, c C-46, § 207 (Can.).

⁹⁶ *Id.*

⁹⁷ See generally Off. of the Auditor Gen. of Ont., *Internet Gaming in Ontario* (Dec. 2021),

https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR_iGaming_en21.pdf.

⁹⁸ *Id.* at 1.

⁹⁹ Alcohol & Gaming Comm'n of Ont., *Internet Gaming Operator Application Guide*, <https://www.agco.ca/book/export/html/58891> (last visited Oct. 28, 2022). *Accord id.*

the iGaming market until it can “demonstrate how the province will ‘conduct and manage’ [the market.]”¹⁰⁰ For this reason, the launch of the iGaming market was delayed until April 2022, despite the original plan being a January 2022 launch.

The question regarding the legality of Ontario’s iGaming market remains unanswered. The answer will likely depend on the interpretation of the phrase “conduct and manage.” Although the phrase is not defined in the *Criminal Code*, some courts have interpreted it to mean functioning as the “operating mind” of the gaming platform.¹⁰¹ In *Great Canadian Casino Co. v. Surrey*, the Court held that the key determining factors as to whether an entity is the operating mind of a gaming platform are the control of “installation, technical support, monitoring, setting of games and payouts[.]”¹⁰² In *Great Canadian Casino Co.*, these factors were all controlled by the government regulator, making it the operating mind of the gaming platforms and thus satisfying the Section 207 requirement.¹⁰³ Similarly, if Ontario’s iGaming market is to operate in accordance with the *Criminal Code*, the province will have to show that it is the operating mind of the online gaming platform. If the province is found to be operating contrary to Section 207, it will pose a concern for money laundering risks since only online gaming operators operating within the bounds of Section 207 are clearly subject to reporting requirements under the PCMLTFA.¹⁰⁴ Thus, if the Ontario iGaming market is operating contrary to Section 207, hundreds of private operators in Ontario may not be subject to the AML regulations of the PCMLTFA.

A second legislative change bolstering the growth of legal online gaming was Bill C-218, the Safe and Regulated Sports Betting Act. On June 22, 2021, the Senate of Canada passed Bill C-218, which amended the *Criminal Code* to decriminalize single-event betting¹⁰⁵ and allow provincial governments

¹⁰⁰ The Auditor General of Ontario also expressed concern over a potential conflict of interest within the iGaming Ontario model. As discussed earlier in this paper, the Ontario government passed legislation to create a subsidiary of the Alcohol and Gaming Commission of Ontario (AGCO), called *iGaming Ontario*. The current governance structure requires *iGaming Ontario* to have a board of directors that reports to the AGCO’s board of directors. The Auditor General’s concern is that this governance structure gives rise to a conflict of interest because the *iGaming Ontario* board is not truly independent. Given the constraints of this paper, I cannot explore this issue further. To read more about this potential conflict of interest, see Off. of the Auditor Gen. of Ont., *supra* note 97, at 8–11.

¹⁰¹ *Keystone Bingo Centre Inc. v. Manitoba Lotteries Foundation*, [1990] MJ No 649. *See generally*, *Moreira v. Ontario Lottery and Gaming Corp.*, [2013] ONCA 121.

¹⁰² *Great Canadian Casinos Co. v. Surrey (City)*, [1999] B.C.A.C 130 (CA).

¹⁰³ *Id.*

¹⁰⁴ *Criminal Code*, R.S.C. 1985, c C-46, § 207 (Can.).

¹⁰⁵ Prior to Bill C-218, Section 207(4)(b) of the *Criminal Code* prohibited single event sports betting. Section 207 provides that provincial governments have the authority to “conduct and manage” certain permitted “lottery schemes” in their province. However, subsection 207(4)(b) historically provided that single-event

to determine when and how to conduct and manage single-event sports betting within their borders.¹⁰⁶

Historically, betting on the outcome of a single sporting event has been prohibited under Section 207(4)(b).¹⁰⁷ Bill C-218 amends the *Criminal Code* to remove the long-standing prohibition on betting on the outcome of “any race or fight, or on a single sport event or athletic contest.”¹⁰⁸ Following Bill C-218, Section 207(4)(b) no longer prohibits betting on the outcome of a single sporting event.¹⁰⁹

Bill C-218 is the culmination of multiple historical attempts to end Canada’s long-standing prohibition on single-event sports betting.¹¹⁰ With support from stakeholders, including major professional sports leagues, this most recent attempt to legalize single-event sports betting has finally been successful.¹¹¹ The passage of Bill C-218 drastically bolsters the growth of online gaming in Canada, representing a “potentially massive source of revenue for provincial governments”¹¹² and an opportunity to grow the Canadian online gaming industry by billions of dollars. Some analysts suggest that Bill C-218 could grow the online sports betting segment of the industry by \$28 billion CAD

sports betting was not included in the definition of a “permitted lottery scheme.” Bill C-218 amended subsection 207(4)(b) to no longer exclude single-event sports betting from the definition of a “permitted lottery scheme.” See *Criminal Code*, R.S.C. 1985, c C-46, § 207(4)(b) (Can.); Bryson A. Stokes et al., *Senate Passes Bill C-218 Legalizing Single-Event Sports Betting in Canada*, BLAKE, CASSELS & GRAYDON LLP (June 22, 2021), <https://www.blakes.com/insights/bulletins/2021/senate-passes-bill-c-218-legalizing-single-event-s>.

¹⁰⁶ Bryson A. Stokes et al., *supra* note 105.

¹⁰⁷ *Criminal Code*, R.S.C. 1985, c C-46, § 207(4)(b).

¹⁰⁸ *Id.* (emphasis added).

¹⁰⁹ *Id.*; Bill C-218, An Act to Amend the Canadian Criminal Code (sports betting), 2nd Session, 43rd Parliament, 2021.

¹¹⁰ In the previous decade, there have been 3 unsuccessful attempts to repeal or amend the *Criminal Code* restriction on single event sports betting: (1) In 2011, Windsor-Tecumseh NDP MP Joe Comartin put forward Bill C-627, which failed to progress past its first reading in the House of Commons; (2) In 2012, Comartin put forward Bill C-290. Bill C-290 received all party support, but stalled for three years in the Senate and ultimately died when Parliament was dissolved before the 2015 election; (3) In 2016, Windsor-West MP Brian Masse introduced Bill C-221. The bill was defeated by a count of 156-133 at its second reading in the House of Commons. See *Bill C-627 (Historical)*, OPENPARLIAMENT.CA, <https://openparliament.ca/bills/40-3/C-627/> (last visited Oct. 30, 2022); *Bill C-290 (Historical)*, OPENPARLIAMENT.CA, <https://openparliament.ca/bills/41-2/C-290/> (last visited Oct. 30, 2022); *Bill C-221 (Historical)*, OPENPARLIAMENT.CA, <https://openparliament.ca/bills/42-1/C-221/> (last visited Oct. 30, 2022).

¹¹¹ Bryson A. Stokes et al., *supra* note 105.

¹¹² *Id.*

in the next five years.¹¹³ Bill C-218 only came into effect in August 2021, and has already generated considerable revenue and instigated market growth. Since August 2021, Ontario sportsbook *ProLine+* has already accepted 3.5 million bets.¹¹⁴

Taken together, Ontario's iGaming market and Bill C-218 have dramatically expanded legal online gaming in Canada and spurred substantial growth in an already thriving online gaming industry. One large market player estimates that the combination of the newly legal single-event sports betting market and Ontario's iGaming market will generate as much as \$8 billion CAD in revenue.¹¹⁵ A recent industry report projected that upwards of \$570 million CAD will be generated from online sports betting in Canada in 2022.¹¹⁶ The report also projected that Ontario alone could generate over \$900 million CAD of revenue from online sports betting by 2026.¹¹⁷

B. The Growth of Illegal Offshore Online Gambling in Canada

Despite recent legislative efforts to legalize and regulate online gaming, much of Canada's online gaming continues to occur through illegal offshore online gaming websites. Similar to regulated legal online gaming websites, these illegal offshore websites have grown quickly, and generate substantial revenue from Canada. Canadians spend upward of \$14 million CAD annually on offshore online gaming websites, and Canadian and global participation in offshore online gaming is growing.¹¹⁸ For instance, the parent company of the popular offshore online gaming company Betway expects to earn \$1.5 billion USD in net gaming

¹¹³ DELOITTE INC., *NEW STAKES IN THE GAME: BILL C-13 AND UNLOCKING OPPORTUNITIES THROUGH SPORTS BETTING REFORM IN CANADA* 6 (Feb. 2021).

¹¹⁴ Pat Evans, *What's Popular in the Early Days of Ontario Sports Betting*, LEGAL SPORTS REP. (Oct. 12, 2021), <https://www.legalsportsreport.com/57756/popular-ontario-sports-betting/> (stating "bets on football games accounted for 45% of those total bets, with NFL betting making up 34% of all the bets.").

¹¹⁵ Jeff Lagerquist, *DraftKings Talks M&A, Expects \$8B in Total Canadian Gaming Revenue*, YAHOO SPORTS (Mar. 9, 2021), <https://sports.yahoo.com/draft-kings-talks-ma-expects-8-b-in-total-canadian-gaming-revenue-182310256.html>.

¹¹⁶ STEVE MCALLISTER ET AL., *EILERS & KREJCIK GAMING LLC, CANADA ONLINE GAMBLING TRACKER SPECIAL REPORT* 11 (2021).

¹¹⁷ *Id.*; *Ontario Will Generate More than \$900M in Online Sports Betting Revenue, Predicts Report*, CANADIAN GAMING BUS. (Oct. 4, 2021), <http://www.canadiangamingbusiness.com/OntarioToGenerateMoreThan900MInRevenue.aspx>.

¹¹⁸ MCALLISTER ET AL., *supra* note 116; Pete Evans, *Canada Legalizes Single-Game Sports Betting, Opening Up Billion-Dollar Market*, CBC NEWS (Aug. 12, 2021), <https://www.cbc.ca/news/business/canada-sports-betting-1.6138865>.

revenue by the end of 2021, which is \$4 million USD more than it earned in 2020.¹¹⁹

Despite the best efforts of governments to curtail offshore online gaming through increased legalization and regulation,¹²⁰ the market for offshore online gaming continues to grow and gain popularity. John Tuzyk, a senior counsel and gaming lawyer at Blake, Cassels & Graydon LLP, suggests that this growth may largely be attributed to “their business model, including things like how to search out and maintain new customers[.]”¹²¹ Tuzyk advises that this is a “distinct advantage” that offshore online companies have over legal, government-operated online gaming platforms.¹²²

Another factor that has substantially contributed to the growth of offshore gaming is the offering of online gaming through cryptocurrency. Cryptocurrency is booming in popularity, and offshore online gaming companies have capitalized on this growth by accepting cryptocurrency as a form of payment. For example, Bitcoin, the most popular form of cryptocurrency, is now accepted on at least 127 offshore sports betting websites and at 284 online casinos. This marks a seven- and thirteen-fold increase respectively since 2018.¹²³ Over 780 offshore gaming websites also accept other forms of cryptocurrencies.¹²⁴ Because government-operated gaming platforms do not allow cryptocurrency¹²⁵, the fact that offshore gaming companies do allow cryptocurrency marks another distinct advantage that these companies have over government-operated gaming platforms.

Despite these benefits to consumers, the growth of offshore online gaming also poses an important risk to consumers—the difficulty of suing an

¹¹⁹ *Betway Owner Super Group Expects \$762M Gaming Revenue 1H2*, YOGONET GAMING NEWS (Aug. 23, 2021), <https://www.yogonet.com/international/noticias/2021/08/23/58945-betway-owner-super-group-expects-762m-gaming-revenue-1h21>.

¹²⁰ Through programs such as the iGaming market and the legalization of single-event sports betting, Canadian governments are trying to provide legal access to online gaming to deter consumers from resorting to offshore websites. Regulation is often said to be the most effective way of combating money laundering through online gaming. See Ingo Fiedler, *Online Gambling as a Game Changer to Money Laundering*, SSRN ELEC. J. 13 (2013) (“The obvious way to tackle money laundering in unregulated/illegal online gambling is to introduce legal markets.”).

¹²¹ Rubin, *supra* note 80, at 47.

¹²² *Id.*

¹²³ ASIAN RACING FED’N COUNCIL ON ANTI-ILLEGAL BETTING & RELATED FIN. CRIME, A REPORT OF BLOCKCHAIN AND CRYPTOCURRENCIES IN ILLEGAL BETTING 3 (2021).

¹²⁴ *Id.* at 4.

¹²⁵ Alcohol & Gaming Comm’n of Ont., *Funds Management*, <https://www.agco.ca/funds-management> (last visited Dec. 17, 2022).

offshore online gaming operator for lost winnings.¹²⁶ It is not uncommon for offshore online gaming operators to defraud consumers and not pay out their winnings. It is easy for these operators “to change, move, or entirely remove sites within a matter of minutes, thus making it possible for dishonest operators to take credit card numbers and money from . . . accounts and close down[,]” leaving consumers without access to their winnings.¹²⁷ If a Canadian customer in this position seeks to sue the gaming operator, the lawsuit may have to be filed in the foreign country in which the operator is located. Litigation in a foreign jurisdiction is markedly more costly and time-consuming than litigation in Canada. As offshore online gaming entities continue to grow in popularity, consumers should be aware of the risk of lost winnings, along with the difficulty of challenging any losses in a courtroom.

However, despite this risk, offshore online gaming platforms continue to grow in popularity amongst Canadian consumers. So long as offshore online gaming entities maintain their competitive advantages, and continue to not be prosecuted, it is likely that offshore online gaming companies will continue to experience significant growth.

IV. THE CONCERN: HOW THE GROWTH OF ONLINE GAMING FACILITATES MONEY LAUNDERING

The aforementioned growth of online gaming is exciting due to market growth and consumer enjoyment. However, the growth of online gaming could very well foster the growth of money laundering as well. Online gaming has the potential to act as the ideal vessel for money laundering: it is a “game changer” for money launderers.¹²⁸

This section will examine how the growth of legal and illegal online gaming each facilitate money laundering in different ways.

A. How the Growth of Legal Online Gaming May Facilitate Money Laundering

While growth of *legal* online gaming *should* deter money laundering since it will regulate gaming and subject operators to stringent AML laws under the PCMLTFA, this deterrence is not certain. It will be dependent on how strictly the PCMLTFA regulations are enforced. The AML regime that applies to legal online gaming under the PCMLTFA is rather robust. However, this regime is only as effective as operators’ compliance to it. If a provincial gaming operator does not adequately comply with its monitoring and reporting requirements under the PCMLTFA, these AML safeguards amount to nothing. In the absence

¹²⁶ Bunnam Sprehichet, *Pirates of the Caribbean: Offshore Internet Gambling Sites Cursed by Unlawful Internet Gambling Enforcement Act*, 30 HASTINGS COMM. & ENT. L.J. 139, 152 (2018).

¹²⁷ *Id.*

¹²⁸ Fiedler, *supra* note 120, at 13.

of a comprehensive system of regulation and compliance, money laundering will “corrode the very fabric of society.”¹²⁹ This is especially concerning given Canada’s historic struggles regarding AML compliance. British Columbia is an example of a province with lackluster AML compliance, particularly amongst gaming operators. In the early 2000s, the British Columbia Lottery Corporation (BCLC), British Columbia’s gaming regulator, failed to adhere to its AML reporting requirements under the PCMLTFA, leading to the laundering of millions of dollars through gaming operators in the province.¹³⁰ Another concern surrounding AML adherence is that the penalties for failing to report suspicious transactions to FINTRAC are “not significant enough to act as an effective deterrent” to money laundering and to motivate strict adherence to AML requirements.¹³¹ For example, in the BCLC case, FINTRAC fined BCLC \$700,000 CAD, which was the largest administrative penalty ever imposed on a government gaming corporation. But this is mere pocket change in the grand scheme of a billion-dollar provincial budget. Similarly in 2020, Loto Quebec, the Quebec gaming regulator, failed to submit a suspicious transaction report as required by the PCMLTFA. FINTRAC fined the province \$147,015 CAD, which amounted to just 0.05% of Loto Quebec’s 2020 revenue.¹³² The penalties for non-compliance with Canada’s AML regime are simply inadequate to generate serious motivation for gaming operators to adhere to AML requirements.

Ultimately, if adherence to AML requirements is inadequate or non-existent, legal and regulated online gaming will almost certainly function as an additional vehicle for money laundering. Based on Canada’s historically inadequate compliance with AML laws, this is a real concern. As the growth of legal and regulated online gaming continues to expand, so too does the urgency surrounding this concern. Canada’s AML regime as it stands today is a vigorous “game plan” to inhibit money laundering in online gaming, but a game plan is only as effective as its execution. As discussed in Part IV of this paper, implementing measures to enhance adherence to AML laws is a crucial aspect of curbing the risk of money laundering in online gaming.

B. How the Growth of Illegal Offshore Online Gaming Will Facilitate Money Laundering

While it is not certain that the growth of legal online gaming will

¹²⁹ CULLEN, *supra* note 45, at 52.

¹³⁰ BCLC failed to adequately report large cash transactions over \$10,000 and the fact that casinos were allowing high rollers to simply identify themselves as “self-employed” or “business owners.” See CULLEN, *supra* note 45, at 27–28.

¹³¹ *Id.* at 19.

¹³² Loto Quebec reported revenue of \$2.74 billion in 2020. See *Loto-Québec Presents Results in Line With Its Budget Target for the 2019–2020 Fiscal Year*, LOTTO QUEBEC (Sept. 15, 2020), https://societe.lotoquebec.com/en/media-and-partners/press-releases/2020/septembre-2020/rapport-annuel-2019-2020_2020-09-15.

facilitate and increase money laundering, it is far more apparent that the continued growth of illegal offshore online gaming will facilitate and significantly increase¹³³ the growth of money laundering. This is “due to the fact that . . . supervision and regulation are completely absent, and no preventive measures are applied to players” on offshore websites.¹³⁴

Unlike legal online gaming operators, these offshore online gaming operators are not clearly subject to any AML laws.¹³⁵ Without AML regulation, there are no metrics to trace, report, and help combat money laundering on these platforms.

Further, many of these offshore platforms offer features that are conducive to money laundering. For example, as discussed in Part III(C) below, cryptocurrency is an ideal method for money laundering in online gaming. Accordingly, cryptocurrency is not permitted on most legal gaming platforms. Ontario, for example, makes it clear that “[c]ryptocurrency is not legal tender and shall not be accepted.”¹³⁶ However, cryptocurrency is accepted on many popular offshore gaming platforms including BitStarz and CloudBet.¹³⁷ Another feature offered strictly on offshore platforms is player-to-player transfer. As discussed in Part III(C)(4) below, player-to-player transfer is a common method used by money launderers in online gaming. Many popular offshore online gaming platforms, such as BetOnline and Xbet, offer player-to-player transfer. However, legal online gaming platforms have policies prohibiting this feature.¹³⁸

The lack of legal safeguards present on offshore platforms, along with the offering of features that facilitate money laundering, indicate that the continued growth of offshore online gaming poses a material risk to money laundering prevention efforts. This risk is a pressing concern for Canadian lawmakers. Money laundering is a “necessity for organized crime”.¹³⁹ This is because without laundering the proceeds of crime, most crime would not pay. The goal of many criminal acts is to generate a large profit for the individual or

¹³³ MONEYVAL, COUNCIL OF EUR., RESEARCH REPORT: THE USE OF ONLINE GAMBLING FOR MONEY LAUNDERING AND THE FINANCING OF TERRORISM PURPOSES 12 (2013).

¹³⁴ *Id.*

¹³⁵ As noted above, recent amendments provide that “foreign money service businesses” are to comply with the requirements in the PCMLTFA. However, it is not clear that offshore online gaming operators fall within this category.

¹³⁶ See ALCOHOL AND GAMING COMM’N OF ONT., REGISTRAR’S STANDARDS FOR INTERNET GAMING § 5.69 (2021).

¹³⁷ These are not small operations. Both of these online gaming platforms net upwards of \$5 million in revenue annually. See *BitStarz Casino Information*, ROCKET REACH, https://rocketreach.co/bitstarz-casino-profile_b4b9513cfb25fe18 (last visited Dec. 17, 2022); *Who is Cloud Bet*, ZOOM INFO, <https://www.zoominfo.com/c/cloudbet/415927875> (last visited Dec. 17, 2022).

¹³⁸ See, e.g., ALCOHOL AND GAMING COMM’N OF ONT., *supra* note 137, at § 5.79 (stating that “Funds shall not be transferred between player accounts.”).

¹³⁹ Fiedler, *supra* note 120, at 79.

group that carries out the crime. Money laundering by definition is the processing by which these criminal proceeds to disguise their illegal origin as to allow criminal to enjoy these profits.¹⁴⁰ Accordingly, because online gaming poses a risk for money laundering, the growth of offshore online gaming in Canada therefore poses a grave concern—the direct encouragement of organized crime.¹⁴¹

C. Methods of Money Laundering Through Online Gaming

With the growth of online gaming and the money laundering risks on these platforms in mind, it is then necessary to understand the mechanisms by which criminals actually launder money through online gaming platforms.

Online gaming “makes . . . money laundering an easy endeavor[.]”¹⁴² Criminals are constantly evolving their techniques and strategies to launder money to align with the evolution of new technology. The rapid technological development of online gaming makes it an ideal “vehicle for money laundering.”¹⁴³ The most common and most pertinent methods of money laundering in online games are the use of: (1) Pseudo-anonymous online payments, (2) depositing and withdrawing from a betting account, (3) betting with a counterpart, and (4) player-to-player in-game transfer.

1. *Pseudo Anonymous Online Payment Systems*

Pseudo-anonymous online payment methods such as prepaid cards and cryptocurrency are often used to launder money through online games.

The first step in this process is to transfer a small amount of money from a legal bank account into an online gaming account. This is a necessary preliminary step in order to satisfy the operators’ identification requirement. Most gaming operators, even illegal offshore ones, require verification of identity as a preliminary step to register for an account.¹⁴⁴ The next step is then to deposit illicit funds into an online gaming player account through a payment method. Generally, when depositing funds, money launderers will use pseudo-

¹⁴⁰ FATF, *What is Money Laundering*, <https://www.fatf-gafi.org/faq/moneylaundering/> (last visited Jan 11, 2023).

¹⁴¹ Sprehichet, *supra* note 126, at 142.

¹⁴² *Id.* (citing Unlawful Internet Gambling Funding Prohibition Act and the Internet Gambling Licensing and Regulation Commission Act: Hearing on H.R. 21 and H.R. 1223 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 108th Cong., 1st. Sess., 6 (2003) (Statement of James A. Leach)).

¹⁴³ *Id.* at 143 (citing Internet Gambling Prohibition Act of 2006: Hearing on H.R. 4777 Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary, 109th Cong., 2d. Sess., 7 (2006) (Statement of Bob Goodlatte)).

¹⁴⁴ Fiedler, *supra* note 120, at 87.

anonymous undetectable payment methods such as stolen cards, prepaid cards, and cryptocurrencies. Finally, these funds are then paid out and withdrawn as legal tax free gaming winnings.¹⁴⁵ When asked about the origin of these funds, it can be said that they are gaming earnings.

a. Prepaid cards

Since the hallmark of successful money laundering is anonymity, the anonymous nature of prepaid cards and cryptocurrency make them advantageous tools for money laundering. Pseudo-anonymous currency like prepaid cards and cryptocurrency can be very effective devices for money laundering because they provide an “instrument to anonymously move funds associated with all types of illicit activity without fear of documentation, identification, tracking or seizure.”¹⁴⁶

Prepaid cards are payment cards that “can be loaded with funds and used by the cardholder to make cash withdrawals or purchase goods or services. Like traditional debit and credit cards, prepaid cards can be used for just about anything.”¹⁴⁷ The salient feature of these cards is that there is no “need for the customer to be linked to a financial institution or credit score.”¹⁴⁸ In other words, they offer a level of anonymity that traditional debit and credit cards do not. Consequently, these cards pose a large risk for money laundering.¹⁴⁹ Prepaid cards allow criminals to confidently launder their money without fear of identification. FINTRAC notes that “the wide variety of funding options available to a prepaid card holder means that the [illicit] origin of funds is difficult to trace.”¹⁵⁰

¹⁴⁵ Gaming winnings in Canada are not taxable under the Income Tax Act unless the gambling amounts to a business matter that was a source of income. *See Stewart v. Canada*, [2002] 2 S.C.R. 645 (Can.); *Cohen v. The Queen*, [2011] C.T.C. 262 (Can.).

¹⁴⁶ *Prepaid Cards in Canada: An Anti-Money Laundering Perspective (Part 1)*, MNP, (May 19, 2020), <https://www.mnp.ca/en/insights/directory/prepaid-cards-in-canada-an-anti-money-laundering-perspective-part-1#> [hereinafter MNP].

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Prepaid cards are a big business. Analysts suggest that by 2027, the global prepaid cards market could garner upwards of \$5.51 trillion in revenue. Because of this, these cards are widely accessible for money launderers. *Prepaid Card Industry Outlook to 2027 – Closed Loop Prepaid Cards Led the Market in Terms of Revenue in 2019*, CISION PR NEWSWIRE, (July 21, 2022) <https://www.prnewswire.com/news-releases/prepaid-card-industry-outlook-to-2027---closed-loop-prepaid-cards-led-the-market-in-terms-of-revenue-in-2019-301097323.html>.

¹⁵⁰ MNP, *supra* note 146. FINTRAC notes that these prepaid cards are a concern. “On June 1, 2021, substantial amendments to the regulations issued under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) came into force.” One amendment was the addition of reporting obligations for financial institutions that issue prepaid cards. *See* Elizabeth Sale & Haley Adams,

b. Cryptocurrency

Cryptocurrency is a new and evolving form of “digital money that cannot be touched and is controlled by the currency’s own system.”¹⁵¹ The pseudo-anonymous nature of cryptocurrency makes it an extremely attractive means of money laundering for criminals. It has been suggested that more than one quarter of all users of bitcoin, the most popular form of cryptocurrency, are involved in illegal activity.¹⁵² Many online gaming platforms permit the use of cryptocurrencies. More than 127 online sportsbooks and 284 online casinos accept bitcoin, and more than 780 online gaming websites accept another form of cryptocurrency.¹⁵³

The pseudo-anonymous nature of cryptocurrency means that personal data is generally not transferred across transactions.¹⁵⁴ Most transactions are tied to “wallets” rather than actual individuals—providing a layer of anonymity.¹⁵⁵ Thus, criminals can easily later withdraw these funds and conceal their illicit origins. When using cryptocurrency to launder money through online games, criminals will purchase cryptocurrency with their illicit funds on an unregulated cryptocurrency exchange move these cryptocurrencies into a cryptocurrency “wallet” and then use that “wallet” to deposit illicit funds in the form of cryptocurrency into an online gaming account.¹⁵⁶ Once these funds are in the online gaming account, they can later be withdrawn and claimed as online gaming funds.

2. Depositing and Withdrawing From a Betting Account

Another simple yet very effective strategy used to launder money through online games is by depositing a large amount of money in a betting account, placing a small handful of minor bets and then withdrawing the

FINTRAC Gets Flexible with New Anti-Money Laundering Requirements, OSLER (July 7, 2021), <https://www.osler.com/en/resources/regulations/2021/fintrac-gets-flexible-with-new-anti-money-laundering-requirements>.

¹⁵¹ Kody Sprinkle, *The Displacement Effect: Criminals Using Virtual Environments to Conduct Financial Crimes*, UTICA COLL. PROQUEST 1, 2 (May 2021).

¹⁵² Sean Foley et al., *Sex, Drugs, and Bitcoin: How Much Illegal Activity Is Financed Through Cryptocurrencies?*, 32 REV. FIN. STUD. 1798, 1800 (2019).

¹⁵³ ASIAN RACING FED’N COUNCIL ON ANTI-ILLEGAL BETTING & RELATED FIN. CRIME, *supra* note 123, at 2.

¹⁵⁴ See Sprinkle, *supra* note 151, at 15.

¹⁵⁵ *Id.*

¹⁵⁶ See *infra* Appendix #3 for a visual representation of money laundering via cryptocurrency.

remainder of the money.¹⁵⁷ Placing a number of initial small bets ensures the money appears to be used for gambling purposes and does not warrant any reporting from the officer or raise any red flags.

Some money launderers are smart and patient enough to modify this approach to further reduce red flags and traceability. One modification is to break the withdrawals down into separate, smaller amounts.¹⁵⁸ With this approach, the money launderer will withdraw small amounts from the gambling account over a long period of time. Another modification is to set up multiple betting accounts simultaneously.¹⁵⁹ Following this is approach, a single money launderer will set up dozens of betting accounts before placing a few small bets on each account and then withdrawing the money from each account on separate days.¹⁶⁰ Both of these modifications make detection very hard for operators because each withdrawal is well below an amount required to be reported.

3. *Betting With a Counterpart*

A third method that criminals may use to launder money through online gaming is to transfer their illicit funds to a counterpart through betting illicit funds with a counterpart. In this method, a money launderer will collude with a counterpart. One player places their money in an online game “where they can work hand in glove” with the second colluding player.¹⁶¹ The first player will deliberately lose the game and the colluding player will claim the money as legal gaming earnings.¹⁶² The federal government has recognized this as a risk indicator of money laundering. The Canadian Department of Justice states that an indicator of money laundering is situations where “acquaintances bet against each other in even-money games and it appears that they are intentionally losing to one of the parties[.]”¹⁶³

4. *Player to Player In Game Transfers*

¹⁵⁷ Brooke Keaton, *How Money Laundering Really Works & Why It's a Problem in the Gambling Industry*, CASINO.ORG (Nov. 25, 2021), <https://www.casino.org/blog/how-money-laundering-really-works/>.

¹⁵⁸ *Id.*

¹⁵⁹ Keaton, *supra* note 157; *Casino Money Laundering Red Flags*, ALESSA, (Dec. 1, 2020), <https://alessa.com/blog/casino-money-laundering-red-flag-indicators/>.

¹⁶⁰ *Id.*

¹⁶¹ Noortje Boere, *Online Gambling as a Money Laundering Method*, AMLC.EU, (Jan. 8, 2021, 4:47 PM), <https://www.amlc.eu/online-gambling-as-a-money-laundering-method/>.

¹⁶² Keaton, *supra* note 157.

¹⁶³ FINTRAC, *Money Laundering and Terrorist Financing Indicators—Casinos*, GOV'T OF CAN., (last updated Nov. 19, 2021), https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/casinos_mltf-en.

A final method that criminals can use to launder money through online games is by using online gaming for the actual payment of illicit goods themselves.¹⁶⁴ In this method, unlike the previous methods, the funds are not illicit until they enter the gambling website. Under this approach, both a buyer and seller of an illicit good, service, trade, etc both sign up for an online gaming account on one of the many platforms that offer player-to-player in game transfers. After both players register for accounts, money can be transferred between the buyer and the seller and the buyer can claim the money as gaming earnings.¹⁶⁵ In a sense, this method enables the online gaming account to “more or less function like a bank account.”¹⁶⁶ It is notable that this method can only be used on platforms that allow player-to-player transfer. Most regulated online gaming platforms do not permit this feature.

V. LEGISLATIVE GAPS AND RECOMMENDATIONS

In this paper, I have analyzed the legal safeguards and risks pertaining to money laundering in online gaming. In response, I propose that the concerns of money laundering in online gaming stem from two central legislative gaps. First, current AML regulation is not adequately adhered to. Second, offshore online gaming operators are a preferred method of money laundering, and they are not adequately addressed by Canadian law.

‘Closing’ these two gaps is a critical tool in the fight against money laundering in online gaming. This is the purpose of the recommendations I propose below.

A. Lack of Adherence to Existing AML Laws

On paper, Canada’s current AML regime is one of the most robust in the world. However, Canada is not doing enough to ensure adherence and enforcement of this regime. Under this lack of adherence and enforcement, online gaming operators can quickly become vessels for money laundering.

The combination of the PCMLTFA and the *Criminal Code* is a comprehensive set of laws which are well equipped to combat money laundering in all contexts, including online gaming.¹⁶⁷ This comprehensive regime is largely what *should* safeguard legal online gaming operators from risks of money laundering. The PCMLTFA’s reporting requirements allow authorities to

¹⁶⁴ See *infra* Appendix #4 for a visual representation of money laundering through player-to-player transfers.

¹⁶⁵ Boere, *supra* note 161.

¹⁶⁶ *Id.*

¹⁶⁷ FINTRAC, *Public Notice of Administrative Monetary Penalties*, GOV’T OF CAN., <https://www.fintrac-canafe.gc.ca/pen/4-eng> (last updated Oct. 6, 2022).

investigate potential instances of money laundering in online gaming, and the *Criminal Code* prohibition on money laundering deters persons from engaging in the crime in the first place. However, these safeguards are a mere facade if they are not enforced and adhered to. Currently, there exists a lack of adherence to existing AML laws. This can be broken down into two concerns. First, reporting entities are not adhering to their requirements under the PCMLTFA. Second, the crime of money laundering itself is rarely successfully prosecuted.

With respect to the first concern, the problem is simple: entities are not strictly compliant with their requirements under the PCMLTFA, and FINTRAC does not impose penalties which are strict enough to incentivize this necessary compliance. This non-compliance can be seen by the fact that FINTRAC handed out eight separate financial penalties for non-compliance since November 2020 alone. For a compliance requirement that is essential to combatting organized crime, this is far too many instances of non-compliance. Reporting entities are evidently not taking their requirements seriously enough. The BCLC scandal is a central example of this: millions of dollars were laundered through BC casinos because of a lack of adherence to reporting requirements under the PCMLTFA. The root of the issue is that the penalties for this non-compliance are lackluster and do not do enough to motivate compliance. The penalties for non-compliance with the PCMLTFA range from \$1 to \$500,000 CAD per violation.¹⁶⁸ As discussed, in Canada, the online gaming operators subject to the PCMLTFA are provincial government regulatory bodies. These entities bring in millions of dollars of revenue and a \$500,000 maximum fine is not a substantial penalty in the context of these millions of dollars.¹⁶⁹ The Financial Action Task Force, an international AML body, recognizes this concern, ranking Canada's financial sanctions as merely "moderate."¹⁷⁰ I recommend that FINTRAC imposes more severe penalties for non-compliance. Enforcing higher financial penalties should motivate entities to comply with their requirements under the PCMLTFA.

With respect to the second concern, the lack of successful prosecution for money laundering offences is a substantial issue in the fight against money laundering in online gaming. Successful prosecution of the crime is needed to deter criminals from engaging in the crime in the first place. If money laundering

¹⁶⁸ Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations, SOR/2007-292, § 5 (Can.); FINTRAC, *Administrative Monetary Penalties Policy*, GOV'T. OF CAN., <https://www.fintrac-canafe.gc.ca/pen/2-eng> (last updated Aug. 26, 2019). See *infra* Appendix #5 for the full list of penalties.

¹⁶⁹ For example, in 2019-2020, the Alcohol and Gaming Commission of Ontario made \$37.34 million in revenue. See *Operating Budget 2019–2020 Fiscal Year Revenue and Expenditures*, ALCOHOL & GAMING COMM'N OF ONT., <https://www.agco.ca/general/annual-report-2019-2020/operating-budget-2019-2020-fiscal-year-revenue-and-expenditures> (last updated Sept. 30, 2020).

¹⁷⁰ FIN. ACTION TASK FORCE, *ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES – CANADA, MUTUAL EVALUATION REPORT 10* (2016).

offences are not successfully prosecuted, criminals will continue to launder proceeds of crime through all channels, including through online gaming. No matter how strict online gaming operators adhere to reporting requirements, if criminals are not disincentivized to engage in the crime in the first place, money laundering through online gaming will continue to prevail. Accordingly, this paper recommends an attempted increase in the successful prosecution of money laundering charges. Doing so is the only way that criminals will think twice about engaging in money laundering.

The increase in penalties for non-compliance with the PCMLTFA, as well as the increase in successful criminal prosecution of money laundering charges are both instrumental to the continued battle against money laundering in online gaming. It is only when laws are enforced that they can provide the protection they were enacted to provide.

B. Offshore Online Gaming Operators as a Preferred Method of Money Laundering

As I have examined, offshore online gaming operators remain a large player in the Canadian online gaming market and pose a large risk for money laundering. These operators are not clearly subject to either AML regulation under the PCMLTFA or criminal prosecution under the *Criminal Code*, and they contain many features conducive to money laundering such as the use of cryptocurrency and player-to-player transfer. Thus, reducing and eliminating Canadian's reliance on offshore online gaming operators is the single most impactful action that can be taken to reduce money laundering through online gaming, and consequently combat organized crime. This is because deterring Canadian's reliance on these offshore platforms will cause a financial cost to these platforms and thus either incentivize offshore operators to stop offering their services to Canadians, or ultimately lead them to bankruptcy.

This paper recommends three means of combating offshore online gaming operators: (1) subject these operators to AML regulation, (2) subject these operators to criminal prosecution, and (3) amend the *Criminal Code* to allow the federal government to legalize and regulate online gaming across the country.

1. *Offshore Online Gaming Operators Not Subject to AML Regulation*

First, offshore operators are not subject to AML regulation because they are not listed as a reporting entity under Section 5 of the PCMLTFA.¹⁷¹ Section 5.1, which lists online gaming operators as reporting entities, expressly refers to only those operators which are operated by the government of a province.¹⁷²

¹⁷¹ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17, § 5 (Can.).

¹⁷² *Id.* at § 5.1, § 5(k.1).

Thus, by virtue of this provision, the PCMLTFA does not subject offshore online gaming operators to Canadian AML regulation. As noted in Part I of this paper, there is a possibility that offshore online gaming operators may be captured by the recent amendments to the PCMLTFA, which subject ‘foreign money service businesses’ to all the AML requirements of the PCMLTFA. However, this application is not clear, and there is a good argument that offshore online gaming operators are not money service businesses. Ultimately, operators of offshore gaming platforms likely have no requirement to comply with Canadian AML law and this is a cause for concern.

The reporting requirements in the PCMLTFA are in place with the objectives of detecting and deterring the laundering of illicit funds and facilitating the investigation and prosecution of money laundering crimes.¹⁷³ Consequently, the exclusion of offshore online gaming operators as a reporting entity under the PCMLTFA means these objectives are undermined. Considering that offshore online gaming is growing at a rapid pace and accounts for a large percentage of total Canadian online gaming, if these operators are not subject to AML regulation, the PCMLTFA will be ineffective and Canada will be unsuccessful at deterring organized crime.

The lack of regulatory oversight applicable to offshore online gaming operators is a significant concern. In response, this paper recommends that offshore online gaming operators be directly listed as a distinct reporting entity in Section 5 of the PCMLTFA, and as such be subject to reporting requirements under the PCMLTFA.¹⁷⁴ The language of the PCMLTFA should leave no guessing as to whether these operators are reporting entities. This paper recommends that the PCMLTFA be amended to describe the following as a reporting entity:

The operator of a ‘lottery scheme’ as defined by Part IV of the Criminal Code, notwithstanding whether the operator contravening Section 207 of the Criminal Code, or whether the operator has a place of business in Canada.

Opponents of this recommendation may argue that FINTRAC has no jurisdiction to subject a foreign entity to Canadian regulation. However, this argument holds little weight. Other sections of the PCMLTFA already apply to entities outside of Canada. For example, Section 5(h.1) lists various foreign money services businesses as reporting entities.¹⁷⁵ Considering that a principle of statutory interpretation is to read the provisions of an act in harmony it seems clear that the PCMLTFA can and should subject offshore online gaming

¹⁷³ FINTRAC, *Guideline 7A: Submitting Large Cash Transaction Reports to FINTRAC Electronically*, GOV’T OF CAN., <https://fintrac-canafe.canada.ca/guidance-directives/transaction-operation/Guide7A/lctr-eng#s1> (last updated Feb. 10, 2022).

¹⁷⁴ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17, § 5 (Can.).

¹⁷⁵ *Id.* at § 5(h.1).

operators to reporting requirements.¹⁷⁶ Even if FINTRAC encounters jurisdictional trouble requiring all offshore operators to adhere to these regulations, having some offshore operators adhere to Canadian regulation is preferable to having none: which is how the law stands today. Progress is preferable to perfection.

2. *Offshore Online Gaming Operators Not Subject to Criminal Prohibition*

Additionally, online gaming operators are not subject to criminal prosecution despite operating contrary to Section 207 of the *Criminal Code*.¹⁷⁷

Throughout, this paper has referred to offshore online gaming operators as illegal. This paper refers to these operators as illegal by virtue of Section 207 of the *Criminal Code*, which does not list foreign operators as an exception to the general prohibition on gaming operators.¹⁷⁸ However, there is ambiguity as to whether these offshore online gaming operators are within the scope of Canadian criminal law and thus subject to Canadian *Criminal Code* prohibitions. There has never been an offshore online gaming operator without a physical presence in Canada prosecuted under Canadian criminal law. However, there have been a small number of cases prosecuting offshore entities *with a physical presence in Canada*. For example, in *R. v. Starnet Communications International Inc.*, an offshore gaming operator that held an office in Canada was subject to criminal liability for the illegal operation of a gaming entity.¹⁷⁹ Starnet Communications Inc. was headquartered in Delaware, but kept servers in Vancouver through which consumers could download software for online games.¹⁸⁰ The software would route the gambler's connection through its servers in Vancouver to other systems in Antigua.¹⁸¹ The company was charged under Section 202(1)(b) of the *Criminal Code*¹⁸² for keeping a device used for gambling.¹⁸³ Once convicted, Starnet was fined \$100,000 USD and forced to forfeit \$3.925 million USD in profits.¹⁸⁴

The key distinguishing factor with the *Starnet* case though is that Starnet had a physical presence in Canada. An offshore online gaming operator entity without a physical presence in Canada has never been prosecuted in Canada.

I recommend that Canadian Courts take a serious look at prosecuting

¹⁷⁶ ELMER A. DRIEDGER, CONSTRUCTION OF STATUTES 87 (Butterworth & Co., 2nd ed. 1983).

¹⁷⁷ Criminal Code, RSC 1985, c C-46, § 207.

¹⁷⁸ *Id.*

¹⁷⁹ *R. v. Starnet Commc'ns Int'l Inc.* (2001), Carswell BC 3525, para. 3 (Can. B.C.P.C.).

¹⁸⁰ *Id.* at 2.

¹⁸¹ *Id.* at para. 15.

¹⁸² Criminal Code, R.S.C. 1985, c C-46, § 202(1)(b).

¹⁸³ "The device" refers to the computers and computer networks located at their Vancouver offices. *See Starnet*, Carswell BC 3525 at 2.

¹⁸⁴ *Id.* at para. 40.

these offshore operators. Prosecution of these operators would require a Canadian Court to show it has jurisdiction over the issue. In *Libman v. The Queen*, The Supreme Court of Canada expressed that the legal test for determining whether a Canadian Court has jurisdiction over an issue is whether there is a “real and substantial link between an offense and this country.”¹⁸⁵ Some lawyers believe that this test can be met in the case of offshore online gaming operators. Michael Lipton, partner and gaming lawyer at Dickinson Wright LLP in Toronto, says that offshore online gaming operators do have enough of a real and substantial link to Canada.¹⁸⁶ Lipton says that this link exists by virtue of the fact that these entities “advertise here and enter into contracts to accept bets from Canadians”.¹⁸⁷ If Lipton’s view is correct, offshore online gaming operators would be operating contrary to Part VII of the *Criminal Code* and, as such, subject to criminal prohibitions. I recommend that Courts follow Lipton’s view and attempt the prosecution of offshore online gaming operators. These operators are a key risk for money laundering and criminal prohibition against them would go a long way to combat money laundering.

3. *Federal and Provincial Governments Are Not Adequately Deterring Canadians Reliance on Offshore Online Gaming Websites*

Offshore online gaming operators continue to attract millions of Canadian consumers. These operators facilitate money laundering; thus, deterring Canadians from reliance on these platforms is a critical aspect of combating money laundering in online gaming. Offshore operators are attractive to Canadian consumers in large part because these operators offer more expansive online gaming options than exist in Canadian provinces. As discussed in Part II(B) of this paper, these offshore operators provide exhilarating features such as the ability to game with cryptocurrency, and the use of player-to-player transfer, that legal provincial operators do not provide. What’s more, there are hundreds of offshore operators that each provide their own unique set of games and features, whereas there is only a single legal gaming operator in each province that offers online gaming¹⁸⁸. The corollary is that Canadian consumers are attracted to offshore online gaming platforms over provincially regulated online gaming platforms. The provincial and federal governments do not have sufficient gaming frameworks and preventative legislation in place to adequately deter Canadians from relying on offshore online gaming platforms that facilitate money laundering.

This paper recommends that both the federal and provincial government take action to deter Canadians' reliance on offshore online gaming platforms.

¹⁸⁵ *Libman v. The Queen*, [1985] 2 S.C.R. 178, para. 74 (Can.).

¹⁸⁶ Rubin, *supra* note 80, at 3.

¹⁸⁷ *Id.*

¹⁸⁸ *See infra* Appendix #1.

First, concerning the federal government, this paper proposes that the federal government follows the United States¹⁸⁹ and prohibits financial institutions from processing all payments from offshore online gaming operators.¹⁹⁰ Canadian parliament possesses the power to legislate on financial institutions by virtue of Section 91(15) and 91(16) of the *Constitution Act 1867*.¹⁹¹ This approach would “cut off the flow of revenue to unlawful Internet gambling businesses”¹⁹² themselves, which would in turn deter Canadians from relying on offshore websites. Canadians would not be inclined to rely on offshore online gaming platforms if they were not able to access their winnings.

In the United States, this approach has been successful at deterring reliance on offshore online gaming operators. In 2006, the United States introduced the Unlawful Internet Gambling Enforcement Act, which prohibited the acceptance of any bank instrument for offshore online gaming.¹⁹³ The central purpose of the act is to aid in “combating offshore Internet gambling sites that illegally extend their services to U.S. residents via the Internet[.]”¹⁹⁴ This paper recommends that Canada follow suit. This is a relatively simple approach, but it would drastically reduce Canadians' reliance on offshore online gaming platforms that facilitate money laundering.

Of course, it is inevitable that certain offshore operators may discover ways around this legislation. In the U.S. for example, an offshore Internet poker operator “arranged for the money received from U.S. gamblers to be disguised as payments to hundreds of non-existent online merchants purporting to sell merchandise such as jewelry and golf balls,” thereby “tricking”¹⁹⁵ U.S. financial institutions into processing their payments.¹⁹⁶ However, a small handful of operators continuing to attract Canadian consumers is preferable to the existing hundreds of operators that do so. If the vast majority of offshore operators are

¹⁸⁹ Unlawful Internet Gambling and Prohibition and Enforcement Act, 31 U.S.C. §§ 5361–5367 (2006) (prohibits the acceptance of any bank instrument for unlawful Internet gambling).

¹⁹⁰ There is another potential argument that the federal government may be better equipped to regulate online gaming and that § 207 of the Criminal Code could be amended to provide the federal government the control over online gaming. See Wilenius, *supra* note 7, at 8. A similar amendment was proposed in 1996 by Dennis Mills. See Bill C-353, *An Act to Amend the Criminal Code (Internet Lotteries)*, 2nd Sess., 35th Parl., 1997. However, this likely would be found unconstitutional. See *Constitution Act, 1867*, 30 & 31 Vict., c 3 at § 92 (U.K.), *reprinted in* R.S.C. 1985, app II, no 5 (Can.) (allowing provinces to regulate gaming that is not criminally prohibited by the federal government).

¹⁹¹ *Constitution Act, 1867*, 30 & 31 Vict., c 3 at § 91 (U.K.), *reprinted in* R.S.C. 1985, app II, no 5 (Can.).

¹⁹² CONG. RSCH. SERV., RS22749, UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT (UIGEA) AND ITS IMPLEMENTING REGULATIONS (2012).

¹⁹³ H.R. 4411, 109th Cong. (2006) (unenacted).

¹⁹⁴ H.R. REP. NO. 108-51, pt.1, at 2 (2003).

¹⁹⁵ *Id.*

¹⁹⁶ CONG. RSCH. SERV., RS22749 at 10.

unable to provide monetary winnings to Canadian consumers, these consumers they will be deterred from relying on these platforms, and instead turn to provincially regulated online gaming platforms in Canada which are more sufficiently protected from money laundering risks.

Second, provincial governments must also do their part to deter reliance on offshore gaming websites. When it comes to deterring reliance on offshore online gaming operators, the actions of the provincial government in revising their online gaming platforms are of paramount importance. Because provincial governments have jurisdiction to actually regulate and control the operation of online gaming in the provinces, their actions are what will actually “move the needle.” No matter how difficult the federal government makes it for Canadians to rely on offshore platforms, if the provincial regulated platforms are seen as insufficient, Canadians will continue to find ways to rely on offshore platforms.¹⁹⁷ This paper recommends that all provincial governments revise and expand their existing legal online gaming frameworks to provide for expansive and exciting, yet legal and regulated online gaming platforms- platforms that Canadians would be inclined to rely on in place of offshore platforms that facilitate money laundering. These “expansive” provincial frameworks should include the following three features:

- *1-Regulated Online Gaming Offered By Private Operators:* To compete with offshore operators, these provincial gaming frameworks must offer a wide variety of gaming options. To accomplish this, the provincial governments should implement a similar framework to Ontario in which private operators will be permitted to register with the provincial regulator and provide regulated online gaming. This will ensure that Canadians have access to hundreds if not thousands of regulated online gaming platforms in their home province. Importantly, as discussed above, provincial operators will have to make it clear how they are “conducting and managing” the private operators as per the *Criminal Code* requirement.
- *2- The Ability to Use Cryptocurrency & Other Attractive Features in Online Gaming:* New and expansive provincial frameworks should include specific features that attract Canadians to offshore platforms, particularly the use of cryptocurrency. As discussed in Part II(B) of this paper, numerous offshore operators provide consumers with the exciting ability to game with cryptocurrency. To compete with these operators, and deter Canadians' reliance on these operators, provincial government operators should provide this feature within their regulated gaming frameworks.

¹⁹⁷ See generally Constitution Act, 1867, 30 & 31 Vict., c 3 at § 91 (U.K.), reprinted in R.S.C. 1985, app II, no 5 (Can.).

Although, as noted earlier, cryptocurrency poses a risk for money laundering, it is better suited that this risk is contained in the provincially regulated market, than in the offshore market. If, as this paper recommends above, the existing AML laws are adequately adhered to, the use of cryptocurrency in regulated online gaming will not pose a substantial risk for money laundering because all high-risk and suspicious transactions will be reported in accordance with the PCMLTFA. This will provide law enforcement the ability to observe and catch money launderers in online gaming.

- *3-Continued Marketing Efforts:* Lastly, provincial governments must direct continued marketing efforts, and marketing finances, towards promoting these expansive new online gaming options. If the provincial governments invest the time and money in promoting these new frameworks, and the increased protection from money laundering on these platforms as opposed to offshore platforms, Canadian consumers will be more inclined to rely on these provincially regulated platforms.

If both the federal and provincial governments take the above recommended action, Canadian consumers will be deterred from relying on offshore online gaming platforms. This deterrence will in turn lead to the deterioration of the offshore online gaming platforms which pose the most substantial risk for money laundering.

VI. CONCLUSION

Both regulated and offshore online gaming are rapidly growing in popularity amongst Canadians. The convenience, ease, and excitement of online gaming make it an attractive way for Canadian consumers to pass time and potentially earn extra income. However, online gaming websites are an ideal platform for laundering the proceeds of crime. Organized crime cannot exist without a means of laundering the proceeds of crime. Thus, if online gaming continues to facilitate money laundering, so too will it continue to encourage organized crime.

To detect and deter organized crime in Canada, swift action must be taken to curb the risks of money laundering in online gaming. This paper has proposed a two-fold approach to combating money laundering in online gaming. First, adherence to existing AML laws must be improved. Second, Canadians must be deterred from relying on offshore online gaming platforms that facilitate money laundering.

If applied diligently, this two-fold approach could successfully help combat money laundering in Canadian online gaming. If Canadian lawmakers

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do not act quickly, the Canadian online gaming market will almost certainly become a breeding ground for organized crime.

Appendix #1: THE REGULATION OF ONLINE GAMING BY PROVINCE

PROVINCE / TERRITORY	GAMING REGULATOR	ONLINE GAMING CURRENTLY OFFERED IN THE PROVINCE?
Alberta	Alberta Gaming, Liquor and Cannabis Commission	Yes. Online gaming is offered through <i>Play Alberta</i> - the only regulated online gambling site in the province.
British Columbia	Gaming Policy and Enforcement Branch of the Ministry of Finance	Yes. Online gaming is offered through <i>PlayNow</i> - the only regulated online gambling site in the province.
Manitoba	Liquor, Gaming and Cannabis Authority of Manitoba	<p>Yes. Online gaming is offered through <i>PlayNow</i>- the only regulated online gambling site in the province.</p> <p><i>*The Playnow.com website is owned, operated and regulated by the Crown corporation, BCLC, of British Columbia. However, residents of Manitoba are permitted to access the same Playnow.com website thanks to a 2012 player-sharing agreement between BCLC and Manitoba regulators at LGCA.</i></p>

Saskatchewan	<p>a): Saskatchewan Liquor and Gaming Authority (“SLGA”).</p> <p>b): Indigenous Gaming Regulators (“IGR”) (<i>This regulator specifically licenses and regulates on-reserve charitable gaming activities of the First Nations that have designated IGR as their regulator through Band Council Resolutions</i>)</p>	<p>Not currently available.</p> <p>However, discussions are underway between the province and the Federation of Sovereign Indigenous Nations (FSIN) to form a combined regulated online gaming website in the near future.</p>
Quebec	Loto Quebec	Yes. Regulated online gaming is offered through <i>Loto Quebec’s</i> Website.
Ontario	a): Alcohol and Gaming Commission of Ontario	<p>Yes. Regulated online gaming is currently offered through <i>the Ontario Lottery and Gaming commission (OLG)</i> Website. Under the <i>Gaming Control Act, 1992</i>, the AGCO regulates these games conducted by the OLG.</p> <p>In the coming months, when Ontario’s Igaming market launches, online gaming will be widely available through any registered operator.</p>
New Brunswick	a): Gaming, Liquor and Security Licensing Branch of the Department of Justice and Public Safety	Yes. Regulated online gaming is offered through the <i>Atlantic Lottery Corporation’s</i> Website

	<p>b): Atlantic Lottery Corporation (<i>This regulator was established to regulate gaming on behalf of all Atlantic Canadians. The Shareholders of the Atlantic Lottery Corporation are the 4 Atlantic provinces' gaming regulators</i>)</p>	
Prince Edward Island	<p>a): Prince Edward Island Lotteries Commission</p> <p>b): Consumer, Corporate and Insurance Division of the Department of Justice and Public Safety (<i>This regulator specifically regulates bingo, raffles, casino nights, and charitable gaming</i>)</p> <p>c): Atlantic Lottery Corporation (<i>This regulator was established to regulate gaming on behalf of all Atlantic Canadians. The Shareholders of the Atlantic Lottery Corporation are the 4 Atlantic provinces' gaming regulators</i>)</p>	Yes. Regulated online gaming is offered through the <i>Atlantic Lottery Corporation's</i> Website
Newfoundland and Labrador	<p>a): Consumer Affairs Division of Digital Government and Service NL</p> <p>b): Atlantic Lottery Corporation (<i>This regulator was established to regulate gaming on behalf of all Atlantic Canadians. The Shareholders of the Atlantic Lottery Corporation are the</i></p>	Yes. Regulated online gaming is offered through the <i>Atlantic Lottery Corporation's</i> Website

	<i>4 Atlantic provinces' gaming regulators)</i>	
Nova Scotia	a): Nova Scotia Gaming Corporation b): Atlantic Lottery Corporation (<i>This regulator was established to regulate gaming on behalf of all Atlantic Canadians. The Shareholders of the Atlantic Lottery Corporation are the 4 Atlantic provinces' gaming regulators)</i>	Yes. Regulated online gaming is offered through the <i>Atlantic Lottery Corporation's</i> Website
Yukon	Professional Licensing & Regulatory Affairs Branch of the Department of Community Services	Not yet available.
Nunavut	Department of Health	Not yet available.
Northwest Territories	Department of Municipal and Community Affairs.	Not yet available.

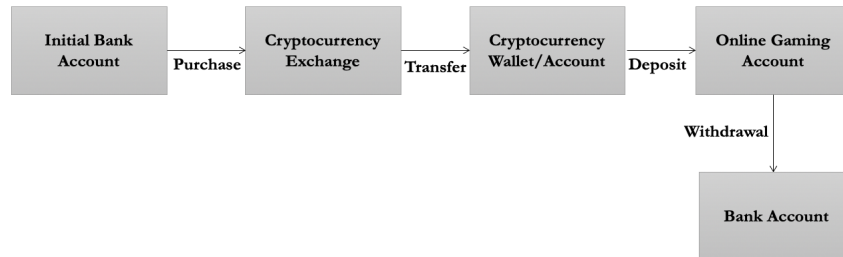
Appendix #2: GAMING STATUTES BY PROVINCE

PROVINCE / TERRITORY	PROVINCIAL GAMING STATUTE
Alberta	Gaming, Liquor and Cannabis Act, RSA 2000, c G-1
British Columbia	Gaming Control Act [SBC 2002] Chapter 14
Manitoba	a): The Liquor, Gaming and Cannabis Control Amendment and Manitoba Liquor and Lotteries Corporation Amendment Act, SM 2020, c 4 b): The Manitoba Liquor and Lotteries Corporation Act, CCSM c L155
Saskatchewan	a. The Alcohol and Gaming Regulation Act, 1997, SS 1997, c A-18.011 b): The Saskatchewan Gaming Corporation Act, SS 1994, c S-18.2
Quebec	a): Act respecting the Société des Loteries du Québec. b): Act respecting Lotteries, Publicity Contests, and Amusement Machines.
Ontario	a): Gaming Control Act, 1992, S.O. 1992, c. 24 b): Ontario Lottery and Gaming Corporation Act, 1999, S.O. 1999, c. 12, Sched. L
New Brunswick	Gaming Control Act, SNB 2008, c G-1.5
Nova Scotia	Gaming Control Act, SNS 1994-95, c 4
Yukon	Lottery Licensing Act, RSY 2002, c 143

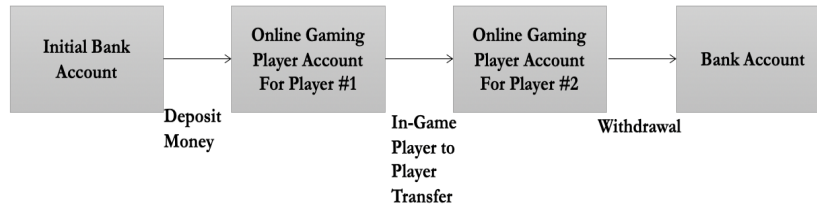
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Northwest Territories	Lotteries Act, RSNWT (Nu) 1988, c L-11
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Appendix #3: MONEY LAUNDERING THROUGH CRYPTOCURRENCY¹⁹⁸



¹⁹⁸ ASIAN RACING FED’N COUNCIL ON ANTI-ILLEGAL BETTING & RELATED FIN. CRIME, *supra* note 123, at 4.

Appendix #4: MONEY LAUNDERING THROUGH PLAYER-TO-PLAYER TRANSFERS¹⁹⁹

¹⁹⁹ Fiedler, *supra* note 120, at 4.

**EXHIBIT #5: PENALTIES FOR NON-COMPLIANCE WITH THE
PCMLTFA²⁰⁰**

Minor violation	\$1 to \$1,000 per violation
Serious violation	\$1 to \$100,000 per violation
Very serious violation	\$1 to \$100,000 per violation for an individual \$1 to \$500,000 per violation for an entity

²⁰⁰ Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations, SOR/2007-292, § 5 (Can.).