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THE END OF THE GAMING MORATORIUM IN ONTARIO

by Michael D. Lipton, Q.C. and Kevin J. Weber

In February 2004, the Ontario Government asked the Ontario Lottery and Gaming Corporation (the "OLG") to conduct a thorough market analysis of the Ontario gaming industry to assist the Government in deciding on a long-term competitive and sustainable strategy for the industry.

The Government released its comprehensive gaming strategy in January 2005 (the "2005 Strategy"), building upon the in-depth assessment carried out by the OLG. The 2005 Strategy expressed concerns for both the long run sustainability of the Ontario gaming industry, and the social responsibility to operate gaming in a manner consistent with the public interest. In executing the 2005 Strategy, the OLG was directed to enforce a moratorium on a number of subjects, including:

- The introduction of video lottery terminals (VLTs) in neighbourhood bars and restaurants
- The expansion of charitable gaming by permitting the use of slot machines and other electronic gaming in bingo halls
- The further expansion of slot machines and other gaming facilities at racetracks
- The establishment of additional commercial or charity casinos
- Provincial involvement in Internet gaming ("iGaming")

As readers of this newsletter will know, on August 10, 2010, the Government announced that it was instructing the OLG to begin an 18-month consultation and implementation process, with the goal of launching a provincially-conducted iGaming operation in 2012. With the announcement that one aspect of the moratorium established by the 2005 Strategy was coming to an end, many observers wondered if any other growth opportunities that had been held in abeyance by the moratorium might emerge.

On May 10, 2011, the answer came, as the Minister of Infrastructure and former Mayor of Ottawa, Bob Chiarelli, stated that the Province had struck "an agreement in principle" with the City of Ottawa over what he called an "extremely well-received" request to introduce table games to expand the gaming facilities available at the Rideau

Carleton Raceway in that city. Subject to the approval of the Alcohol and Gaming Commission of Ontario, this expansion would indicate the end of another aspect of the moratorium.

The Government has not explicitly stated that the moratorium put in place by the 2005 Strategy has come to an end. However, it is clear that the Government is now open to requests and suggestions in the gaming field that would have been “non-starters” just a year ago due to the existence of the moratorium. Commercial and charitable entities that have new ideas to present concerning the future evolution of gaming in the Province should not await a formal notice that the moratorium has ended. Rather, they should immediately seek to make contact with the Government to gauge how receptive they are to further movement away from the present status quo, whether in the area of VLTs, the expansion of electronic gaming in charitable venues, the expansion of gaming options at racetracks, or the establishment of new land-based casinos.

THE PLANNED RELEASE OF THE SOCIO-ECONOMIC IMPACT STUDY OF GAMBLING IN NOVA SCOTIA

by Michael D. Lipton, Q.C. and Kevin J. Weber

In 2007, the Government of Nova Scotia commissioned a study on the socio-economic impact of gaming in the province. The study was intended to establish a baseline analysis of the social and economic impacts attributable to gaming in Nova Scotia and to present an analytical, factual, and objective snapshot of those impacts.

The draft report resulting from this study, called “The Socio-Economic Impact Study of Gambling in Nova Scotia” (the “Report”) was delivered to the Government in June 2009. However, in a widely criticized move, that same Government rejected the findings, conclusions, and recommendations of the Report, without releasing its contents to the public. The Government accused the firm hired to produce the Report of using faulty research methods and flawed statistics, and of focusing too narrowly on the well-being impacts of a relatively few number of Nova Scotia’s problem gamblers and on video lottery terminals (“VLTs”).

Since that time, there has been a change in the party in power in the Nova Scotia Government. On May 6, 2011, the Government announced that after eighteen months, the Report would at last be released to the public. Given the initial reaction of the Government in 2009, it is likely that the Report will be highly critical of the Government’s role in gaming, with particular emphasis on problem gambling issues and the hazards posed by VLTs.

Of greater interest will be what side the Government takes in the ensuing public debate over gaming in Nova Scotia. The current Government can quite reasonably assign blame for the acts and omissions criticized by the Report to the previous Government. As a result, it does not need to defend the previous Government’s handling of problem gambling and VLT issues. The Government could use the

release of the Report to justify steps it may have already been planning to take in relation to problem gambling and VLTs.

In this connection, it should be noted that the present Government has already by its actions appeared decidedly skeptical of gaming expansion, and perhaps of state-sponsored gaming in general. Most recently, it stood apart from the list of provincial governments moving to conduct their own Internet gaming (“iGaming”) operations. In October 2010, a mere two months after the Finance Minister of Nova Scotia suggested the Government should conduct iGaming in order to protect problem gamblers from unregulated, offshore sites, the Government announced that state-conducted iGaming would not be part of the future of Nova Scotia. The Premier of Nova Scotia, Darrell Dexter, announced the turnabout by stating, “We don’t think it’s consistent with our goal to try to reduce the harm that is done by gaming.”

By stressing “the harm that is done by gaming” in the context of provincially-regulated gaming, the Premier has hinted that his Government may well be the foremost skeptic of current gaming regulation efforts among the provincial governments of Canada. How the Government chooses to react to the release of the Report may tell us more about the future of gaming and gaming regulation in that province. Indeed, the decision to release the Report may be intended to serve as part of the Government’s strategy to refocus the goals of gaming regulation in Nova Scotia.

In the writers’ opinion, companies that design and manufacture tools that aid in lessening negative social impacts of gaming, such as responsible gaming software providers, may find that they have new and greater business opportunities in Nova Scotia than anywhere else in Canada.