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GAMING LEGALNEWS

AUDITOR GENERAL CALLS OLG'S MODERNIZATION PLAN "OVERLY AMBITIOUS" AND "OVERLY OPTIMISTIC"

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

On April 28, 2014, the office of the Auditor General of Ontario released a special report criticizing the Ontario Lottery and Gaming Corporation's Modernization Plan as "overly ambitious" and "overly optimistic."

The Modernization Plan was released to the public in March 2012 and projected significant additional financial gains (\$4.6 billion in net profit to Ontario), capital investment (\$3 billion in private-sector capital investment), and employment gains (2,300 gaming jobs and 4,000 new jobs in the hospitality, entertainment, and retail sectors) to the Ontario gaming industry. According to the Modernization Plan, these gains would be achieved by March 31, 2018.

OLG's planned changes included:

- reconfiguring the casino landscape to become more customer focused (improve access to gaming);
- expanding private-sector delivery of lotteries and gaming;
- cancelling the slots at racetracks program;
- expanding the sale of lottery tickets;
- enhancing responsible gambling programming; and
- continuing the implementation of Internet gaming.

In April 2013, the Legislature's Standing Committee on Public Accounts passed a motion requesting that the Auditor General of Ontario review certain actions of the Ontario Lottery and Gaming Corporation related to the Modernization Plan.

The Auditor General, following an investigation into OLG's Modernization Plan, made the following highly critical observations:

1. *The Modernization Plan had an overly ambitious timeline.*

The Modernization Plan included a number of changes that needed to occur within eighteen months of the release of the Modernization Plan in order to achieve net profit projections, including obtaining municipal approvals and the downsizing, restructuring, and privatization of OLG.

2. *The Modernization Plan depended on and assumed municipal stakeholder agreement.*

The Modernization plan assumed stakeholder agreement from municipalities with respect to the construction of casinos. However, Toronto and Ottawa, two major metropolitan areas, rejected OLG's proposals. This significantly lowered OLG's net profit projections.

3. *The Modernization Plan's financial projections were overly optimistic.*

As of March 2014, OLG had lowered its original \$4.6 billion projection to \$2.4 billion. The Auditor General estimates the actual revenue projection could be as low as \$1.84 billion.

4. *The Modernization Plan's job and private sector capital investment projections were overstated.*

The Auditor General concluded that it is more likely that there will be a net loss of provincial gaming jobs instead of a net gain in jobs.

The Auditor General also estimated that private-sector capital investment will be around \$938 million, which is 71% lower than what was initially projected.

5. *The cancellation of the Slots at Racetracks Program was considered in the Modernization Plan but was unexpected by the horse-racing industry.*

The OLG was aware that the cancellation of the Slots at Racetracks Program would have a significant impact on Ontario's horse-racing industry. Prior to the cancellation of the Slots at Racetracks Program, the horse-racing industry was not given any indication that the program would be cancelled. Further, upon cancellation, there was no plan to provide transition and support funding for the industry despite the government's knowledge that certain racetracks would no longer be viable once the Slots at Racetracks Program was cancelled.

6. *Some stakeholders have been disproportionately impacted by the cancellation of the Slots at Racetracks Program.*

On the positive side, the Auditor General found that "procurement processes to date have been fair, open, and transparent," "the revised municipal hosting fee is consistent from one municipality to the next, with no secret 'one-off' deals," and "the province and OLG took steps prior to the release of the Modernization Plan to prevent and mitigate problem gambling and continue to do so."

While OLG's Modernization Plan may have been overly optimistic, potential issues with the implementation of the Modernization Plan were exacerbated by the mid-term resignation of former Ontario premier Dalton McGuinty and the selection of his replacement, current premier Kathleen Wynne.

Wynne's vision for OLG differed from McGuinty's. Within a few months of Wynne becoming premier, Wynne announced she would be reviewing "all the issues" around OLG's Modernization Plan. Shortly thereafter, OLG's Chair, Paul Godfrey (a strong advocate of a downtown Toronto casino) was fired, and OLG's entire board of directors resigned. Wynne also ensured that there would be no special hosting deal for Toronto if a Toronto casino was built. This eliminated any chance of a Toronto casino being built in the foreseeable future.

The future of OLG's Modernization Plan is unclear. However, some positive steps have been made, as OLG will be launching Internet gaming this year and appears to be going ahead with a number of requests for proposals relating to the operation of various land-based gaming sites.

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INTERNET GAMING: HAS THE TRAIN LEFT THE STATION?

by Dennis J. Whittlesey

While he is in the process of negotiating a new gaming compact with the Seminole Tribe, Florida Governor Rick Scott has jumped into the contentious debate on whether Internet gaming should be legal. In this, the Governor has lined up with casino mogul Sheldon Adelson in outright opposition to a component of the gaming industry that has wide support and already is being legalized within several states.

The emergence of the Governor in this debate comes at a time when he is working to develop expanded gaming for the Seminoles, as well as preside over a major review and potential overhaul of his state's gaming industry by the State Legislature. That the Governor does not envision state adoption of iGaming is clearly evidenced by his April 22 letter to the Chairmen and Ranking Members of the House and Senate Judiciary Committees on Capitol Hill urging legislation that would reverse a Department of Justice ruling that the Federal Wire Act does not prohibit intrastate Internet gaming. This ruling reversed official federal policy on the subject, and several states are now allowing Internet gaming within their borders.

Governor Scott's letter warned that iGaming will allow the "invasion" of gaming into "the homes of every American family, and be piped into our dens, our living rooms, our workplaces, and even our kids' bedrooms and dorm rooms," and called for Congressional "clarification" of the Wire Act to prohibit all iGaming within the United States. Copies of the letter were sent to the Senate and House leadership of both political parties.

While there is other public opposition to Internet gaming, development of this segment of the industry continues. Internet gaming is available throughout Europe and has been authorized in New Jersey, Delaware, and Nevada. Authorizing legislation is currently being considered in a number of other states. In a recent assessment, GamblingCompliance.com estimates that 10 states may legalize online wagering this year.

It is not surprising that the Indian gaming industry wants to pursue iGaming given its successful development of land-based casinos. To this point, the growth of tribal gaming has far surpassed anything envisioned when the Indian Gaming Regulatory Act became law in 1988. At this time, recognized tribes operate 450 casinos in 28 states,

and they generate in excess of \$28 billion annually. The scope of Indian gaming compares favorably to commercial gaming, which generates some \$34 billion. Forty-four states have state lotteries, and they generate revenues of more than \$17 billion. Rightly or wrongly, tribes feel that they already have the casino management experience and available funds to pursue and operate iGaming.

In short, many tribes are actively exploring online options, although it appears that the most sophisticated effort is being made by the politically powerful California tribal gaming industry. Although there have been setbacks in this effort due to the early departure of several powerful members of the state legislature, the matter is being actively debated in Sacramento, and pressure is building to enact legislation before the 2014 session is over. Effectively, this means by the end of August.

At least two California tribes – Santa Ysabel and Alturas – are indicating that they are prepared to begin online gaming immediately rather than await legislation. Both are proposing gaming websites that would take wagers from off-reservation players, claiming that they already have the legal authority to do so. Alturas has entered into a partnership with Great Luck, LLC and seems poised to commence operations and contest any legal challenges that arise. The only obstacle remaining to the Alturas project is lack of a firm to process wagers. Another element that tribes are discussing would sidestep the question of whether off-reservation players could play by using on-reservation “proxy” players.

While the states are moving forward, there is activity on the federal level in the form of a bill that would ban interstate iGaming. Known as the “Restoration of America’s Wire Act,” the legislation has generated gaming industry efforts to block it. However, the powerful billionaire gaming mogul Sheldon Adelson is strongly supporting the bill and has persuaded a number of prominent members of Congress to join his cause. This legislation does present a serious threat to iGaming and should be of concern to the iGaming industry and the states that have enacted intrastate iGaming laws or will do so this year. Governor Scott’s April 22 letter should serve as something of a clarion call to all entities and parties with a stake in iGaming.

The growing interest in, and state legislation allowing, intrastate iGaming is gaining momentum, and tribes are now actively seeking to participate. While the iGaming “train” has left the station in several states, the fact remains that the iGaming industry needs to be ever vigilant to efforts such as the “Restoration of America’s Wire Act” bill or the train could be slowed or stopped.

DETROIT CASINOS’ APRIL REVENUES DECREASE FROM SAME MONTH LAST YEAR: MICHIGAN GAMING CONTROL BOARD RELEASES APRIL 2014 REVENUE DATA

by Ryan M. Shannon

The Michigan Gaming Control Board (“MGCB”) released the revenue and wagering tax data for April 2014 for the three Detroit, Michigan, commercial casinos. The three Detroit commercial casinos posted a collective 6.5% decrease in gaming revenues compared to the same month in 2013. Aggregate gross gaming revenue for the Detroit

commercial casinos in April also decreased by 10.1% compared to March, continuing a trend of decrease between March and April in prior years.

MGM Grand Detroit posted decreased gaming revenue results for April 2014 as compared to the same month in 2013, with gaming revenue decreasing by 4.1%. MGM Grand Detroit continued to maintain the largest market share among the three Detroit commercial casinos and had total gaming revenue in April 2014 of approximately \$47 million. MotorCity Casino had monthly gaming revenue exceeding \$38.2 million, with revenues decreasing by 3.8% in April 2014 compared to April 2013. Greektown Casino had monthly gaming revenue of nearly \$27.1 million, showing a 13.6% decrease in revenues for April 2014 compared to the same month in 2013.

The revenue data released by the MGCB also includes the total wagering tax payments made by the casinos to the State of Michigan. The gaming revenue and wagering tax payments for MGM Grand Detroit, MotorCity Casino, and Greektown Casino for April 2014 were:

Casino	Gaming Revenue	State Wagering Tax Payments
MGM Grand Detroit	\$46,974,038.53	\$3,804,897.12
MotorCity Casino	\$38,240,494.81	\$3,097,480.08
Greektown Casino	\$27,058,910.49	\$2,191,771.75
Totals	\$112,273,443.83	\$9,094,148.95

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