

# The Emergence of Single-Game Sports Betting in Canada

John T. Holden

Canadians, like their neighbors to the south, have been betting on the outcomes of sporting events for many years. Until recently, those wagering on the outcome of a single game have done so either socially, illegally, or in a vast grey market. While many Canadians have had access to parlay-style wagering since the 1980s, single-game wagering has been out of reach until recently. After more than a decade of trying to pass legislation to amend the Criminal Code of Canada, Parliament was finally able to amend the law in 2021, allowing provinces to begin offering wagering on the outcome of individual sporting events. While nearly all provinces turned to their lottery operators, who had previously offered parlay wagering, Ontario announced prior to the amendment's passage that it intended to open the market to private operators. A little more than six months after first launching single-game sports betting via the province's lottery corporation, the market opened to private operators. The "grand experiment" remains young, and many questions remain to be answered including whether revenues will match that of a provincially operated monopoly. This article explores the evolution of the legalization of single-game sports wagering in Canada and discusses the emerging market.

Keywords: Canada, sports wagering, betting

## Introduction

In 2018, the United States Supreme Court ended a 25-year prohibition that had frozen sports betting as it existed in 1992.<sup>1</sup> In rapid succession, states across America took the newly created opportunity to begin legalizing sports wagering.<sup>2</sup>

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<sup>1</sup> See *Murphy v. NCAA*, 584 U.S. \_\_\_ ; 138 S.Ct. 1461, 1481 (2018) (holding that the Professional and Amateur Sports Protection Act "violates the anticommandeering doctrine.").

<sup>2</sup> Ryan Rodenberg, *United State of Sports Betting: An Updated Map of Where Every State Stands*, ESPN (Apr. 7, 2021), [https://www.espn.com/chalk/story/\\_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization](https://www.espn.com/chalk/story/_/id/19740480/the-united-states-sports-betting-where-all-50-states-stand-legalization).

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While many states across America legalized sports betting at their earliest opportunity, across the northern border many Canadians wondered if they would also get to be part of the expansion.<sup>3</sup> In a glimpse of how intertwined Canada and the United States truly are, in 2011 and 2012, sports organizations simultaneously sought to derail legalized sports wagering. The quintet of prominent U.S. sports leagues—comprised of the National Collegiate Athletic Association (NCAA), National Basketball Association (NBA), National Football League (NFL), National Hockey League (NHL), and Major League Baseball (MLB)—attacked the state of New Jersey’s efforts to legalize sports wagering. Simultaneously, representatives from many of those same leagues sought to derail a proposal that would have allowed single-game sports wagering across Canada.<sup>4</sup>

New Jersey ultimately prevailed, after approximately six years of litigation, in 2018,<sup>5</sup> which left Canada on the outside looking in until June 2021.<sup>6</sup> Following years of legislative efforts to amend the Criminal Code of Canada to permit single-game sports wagering, the House of Commons and then the Senate approved a private member’s bill, which received royal assent in June 2021,<sup>7</sup> which allowed the change to become law.<sup>8</sup> While Canada had allowed parlay-wagering via provincial lottery operators,<sup>9</sup> single-game wagering was prohibited.<sup>10</sup> Like

<sup>3</sup> See Scott Stinson, *Single-Game Sports Betting Could Be Both a Blessing and a Curse for Canada*, TORONTO SUN (Apr. 19, 2021), <https://torontosun.com/sports/other-sports/single-sports-betting-could-be-both-a-blessing-and-a-curse-for-canada> (noting that Canada was moving in the same direction as the United States to allow single-game wagering).

<sup>4</sup> John T. Holden, *North American Sports Leagues and Gambling Policy: A Comparative Analysis*, 14 INT’L SPORTS L.J. 242, 242–43 (2014).

<sup>5</sup> See John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 WIS. L. REV. 907, 929–32 (2020) (describing the litigation, which ultimately resulted in the decision *Murphy v. NCAA*).

<sup>6</sup> Pete Evans, *Canada Legalizes Single-Game Sports Betting, Opening Up Billion-Dollar Market*, CBC (Aug. 12, 2021), <https://www.cbc.ca/news/business/canada-sports-betting-1.6138865>.

<sup>7</sup> Royal assent is the process by which a bill passed by both houses of Parliament becomes law when it is signed by the Governor General (or one of the Governor General’s deputies), the Queen’s representative in Canada. See *Royal Assent*, SEN. CANADA, <https://sencanada.ca/en/about/procedural-references/notes/n6> (last visited July 8, 2022).

<sup>8</sup> Evans *supra* note 6.

<sup>9</sup> A parlay bet requires the bettor to successfully predict a combination of several wagers; as the need to accurately predict multiple outcomes increases the difficulty of the bet, parlay wagers typically pay out a significantly higher rate when the bettor correctly predicts each leg. Mo Nuwwarah, *What Is A Parlay Bet?*, LINES (Apr. 5, 2022), <https://www.thelines.com/betting/parlay/>.

<sup>10</sup> Blair Driedger, *The Law of Sports Gambling in Canada*, CANADIAN BAR ASS’N BAR TALK (Dec. 2015), <https://www.cbabc.org/BarTalk/Articles/2015/December/Features/The-Law-of-Sports-Gambling-in-Canada#:~:text=Single%2Dgame%20bets%2C%20primari-ly%20placed,the%20Criminal%20Code%20in%201892>.



America's sports gambling prohibition,<sup>11</sup> Canada's prohibition did not stop single-game wagering from occurring; instead, it helped fuel a robust grey market served by a number of prominent sports betting brands from around the world.<sup>12</sup> The grey market's reported immense size helped convince parliamentarians of the need to pass legislation to amend the Criminal Code, as the money in the grey market went untaxed.<sup>13</sup>

After years of introduced legislation that seemed to gain little traction, single-game betting finally launched in August 2021.<sup>14</sup> All provinces launched sports betting through provincial lotteries, including Ontario. Ontario, however, had been preparing to allow private companies into the marketplace for sports betting and iGaming since at least 2019.<sup>15</sup> The decision to bifurcate the market was not without controversy, and some even questioned the legality of the choice.<sup>16</sup> On April 4, 2022, however, Ontario became the first Canadian jurisdiction to allow licensed private gaming operators to begin taking sports wagers.<sup>17</sup> The launch of single-game wagering is still new, but there appears to be an early enthusiasm, though there are also a number of questions that have emerged.<sup>18</sup>

<sup>11</sup> See, generally, John T. Holden & Marc Edelman, *Regulating Vice: What the US Marijuana Industry Can Learn from State Governance of Sports Gambling*, 2021 U. ILL. L. REV. 1051, 1063 (2021) (describing the nature of America's sports betting prohibition).

<sup>12</sup> See, e.g., Pat Evans, *Bet365 Making Ontario Sports Betting Switch from Gray Market*, LEGAL SPORTS REP. (Mar. 16, 2022), <https://www.legalsportsreport.com/66443/bet365-making-switch-ontario-sports-betting-gray-market/> (describing the efforts of former gray market operators to enter Ontario's newly regulated market).

<sup>13</sup> See Submission by Rogers Communications Inc. to the House of Commons Standing Committee on Justice and Human Rights, Bill C-218: An Act to Amend the Criminal Code (sports betting), CANADIAN COMMONS (Mar. 2021), available at: <https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11167370/br-external/RogersCommunicationsInc-e.pdf> (noting that Canadians were placing billions of dollars in wagers with "grey market" operators).

<sup>14</sup> Jeff Lagerquist, *Legal Single-Sports Betting Canada Starts on August 27*, YAHOO (Aug. 12, 2021), <https://www.yahoo.com/video/single-sports-betting-in-canada-starts-on-aug-27-173140099.html>.

<sup>15</sup> Sandra Mergulhao, *Online Gambling Firms Expect Ontario to Lift Key Operator Ban*, BLOOMBERG (Nov. 2, 2020), <https://www.bloomberg.com/news/articles/2020-11-02/online-gambling-firms-expect-ontario-to-lift-key-operator-ban#xj4y7vzkg>.

<sup>16</sup> See John Holden, *Opinion: Will Ontario Sports Betting Gamble Pay Off?*, LEGAL SPORTS REP. (Mar. 29, 2022), <https://www.legalsportsreport.com/66831/opinion-will-ontario-sports-betting-gamble-pay-off/> (noting that Ontario's own Auditor General questioned the legality of the privatized market).

<sup>17</sup> Jeff Lagerquist, *Ontario to Open Private Sports Betting Market on April 4*, YAHOO (Jan. 28, 2022), <https://www.yahoo.com/lifestyle/ontario-to-open-private-sports-betting-market-on-april-4-184412404.html>.

<sup>18</sup> See Cameron MacDonald & Galen Flaherty, *Online Sports Betting Legalized: How iGaming Works and Its Impact on Canada's Bettors and Businesses*, LEXPERT (May 6, 2022), <https://www.lexpert.ca/legal-insights/online-sports-betting-legalized-how-igaming-works-and-its-impact-on-canadas-bettors-and-businesses/365758> (describing the nature of the Canadian sports betting market).



While a great deal has been written about the legalization of sports betting in the United States, decidedly less has been written in academic journals about the emergence of legalized sports wagering in Canada.<sup>19</sup> This article proceeds in three substantive parts. Part I briefly discusses the evolution of legalized gambling and the subsequent push for single-game sports betting in Canada. Part II describes the introduction and passage of Bill C-218, which received royal assent in June 2021. Finally, Part III examines and analyzes the nascent market.

## Part I. Gaming Regulation in Canada

Canada's modern history with gambling largely began in 1985.<sup>20</sup> Initially, the federal government followed previous efforts from 1969 to decentralize control over most gambling activities, and shift responsibilities to the provinces, allowing them to make decisions on regulation and licensing, provided the activities were permitted under the Canadian Criminal Code.<sup>21</sup> While the power to regulate "lotteries,ingos, and other games of chance," was dispatched to the provinces for licensing, those activities remained otherwise prohibited without provincial consent.<sup>22</sup> Historically, much like the United States, which had long disapproved of gambling<sup>23</sup> yet still used lotteries as a meaningful financing mechanism, British colonists also traditionally used lotteries to raise revenue.<sup>24</sup> Following World War II, lotteries remained prohibited, although there was growing pressure from some provinces, most notably Quebec, which drafted legislation to allow a lottery to fund hospitals and universities.<sup>25</sup> This push from some of the provinces eventually resulted in landmark changes to the Criminal Code in 1969, which set in motion modern gaming regulation in Canada.<sup>26</sup>

<sup>19</sup> There are a handful of academic or quasi-academic articles touching on single-game wagering. See, e.g., Melanie Hartmann, et al., *Single-Event Sports Betting in Canada: Potential Impacts*, GAMBLING RSCH. EXCH. ONTARIO (2016); see also Jack Tadman, *The UIGEA, Canada and the "New" Fantasy Sports*, 16 GAMING L. REV. & ECON. 91, 97 (2012) (noting the reluctance of Canadian authorities to attempt to pursue companies serving Canadians from outside of Canada).

<sup>20</sup> COLIN S. CAMPBELL, TIMOTHY F. HARTNAGEL & GARY J. SMITH, THE LEGALIZATION OF GAMBLING IN CANADA, "WHAT IS A CRIME?" 1 (2005), available at: [https://publications.gc.ca/collections/collec-tion\\_2008/lcc-cdc/JL2-64-2005E.pdf](https://publications.gc.ca/collections/collec-tion_2008/lcc-cdc/JL2-64-2005E.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> YALE D. BELANGER, GAMBLING WITH THE FUTURE: THE EVOLUTION OF ABORIGINAL GAMING IN CANADA 41 (2006).

<sup>23</sup> See John T. Holden & Marc Edelman, *A Short Treatise on Sports Gambling and the Law: How America Regulates Its Most Lucrative Vice*, 2020 WIS. L. REV. 907, 910-911 (2020) (describing the use of lotteries in the United States).

<sup>24</sup> Belanger, *supra* note 22, at 43.

<sup>25</sup> *Id.* at 48-49.

<sup>26</sup> *Id.* at 50.



In 1967, led by Justice Minister Pierre Trudeau, a massive overhaul to the Criminal Code was proposed, including the allowance of “lotteries,” a term intended to encompass not only random-number drawing-type lotteries but also games of chance and games of mixed skill and chance.<sup>27</sup> The legislation did not gain any traction until the following Justice Minister, John Turner, reintroduced similar legislation with a provision granting each region more autonomy over whether to permit lotteries in order to account for regional preferences.<sup>28</sup> The bill became law in May 1969, and by 1975, all provinces west of Quebec had lotteries.<sup>29</sup> The federal government even launched a federal lottery, Lotto-Canada, to help pay for the 1976 Olympics in Montreal.<sup>30</sup> In 1980, the Liberal Government announced intentions to expand the allowable gambling offerings, including the potential to allow sports pools.<sup>31</sup> The 1969 amendments to the Criminal Code resulted in a jurisdictional conflict over the lotteries, which was exacerbated by the new government in 1980, which sought to reinvigorate the federal lottery, which was viewed as being potentially detrimental to the provincial alternatives.<sup>32</sup> The federal government even briefly operated sports pools, but shut the product down in 1984 after only 19 weeks.<sup>33</sup>

In 1985, the federal government proposed a compromise to the provinces. In exchange for \$100 million, the government would amend the Criminal Code to allow the provinces the exclusive right to conduct lotteries and other games of chance.<sup>34</sup> The amendments to the Criminal Code raced through the parliamentary process and received royal assent on Dec. 20, 1985.<sup>35</sup> The 1985 amendments allowed sports pools, but not single-game wagering.<sup>36</sup> Four years after the 1985 amendments, the first commercial casino opened in Winnipeg; a casino in Montreal followed in 1993.<sup>37</sup> In 2020, Canadians wagered a reported \$19.3 billion on gambling games, generating \$2.66 billion in revenue.<sup>38</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 51.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Campbell, Hartnagel & Smith, *supra* note 20, at 16.

<sup>33</sup> Garry J. Smith, *Sports Betting in Canada*, 7 INT’L SPORTS L.J. 106, 106 (2008).

<sup>34</sup> Campbell, Hartnagel & Smith *supra* note 20, at 17. The \$100 million was to be used to partially finance the 1988 Calgary Olympics. *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Joel Levy, *The History of Casinos in Canada*, TORONTO GUARDIAN (Sep. 14, 2021), <https://torontoguardian.com/2021/09/the-history-of-casinos-in-canada/>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*



Despite provinces having parlay-style sports betting with some slight variations depending on the location, a portion of Canadians still longed for regulated gambling similar to what was taking place at the time in Nevada.<sup>39</sup> Like those outside of Nevada during the U.S. sports betting prohibition, Canadians who wanted to wager on single games mostly found a way to do so.<sup>40</sup> The Criminal Code's silence on internet wagering, and reluctance on the part of Canadian authorities to go after offshore operators under an uncertain theory of criminal law, resulted in a robust online grey market reportedly growing to a handle<sup>41</sup> of \$14 billion in 2021.<sup>42</sup> Also existing in a disputed place adjacent to the Criminal Code,<sup>43</sup> was First Nations' operated gaming facilities on their own land.<sup>44</sup> The Kahnawake First Nation reserve, near Montreal, ran, perhaps, the most prominent gaming operation in Canada.<sup>45</sup> The Kahnawake gaming app, Sports Interaction, was one of the most prominent apps serving Canadians prior to the legalization of single-game sports wagering.<sup>46</sup> Despite several disputes over the ability of the Kahnawake to operate gaming, the federal and provincial governments have done little to stop the operations or rebut the Nation's claims that the operations take place on sovereign land.<sup>47</sup>

The contemporary push to amend the Criminal Code to allow single-game wagering and establish a regulated market began in earnest in 2011 when Joe

<sup>39</sup> Holden, *North American Sports Leagues*, supra note 4, at 243.

<sup>40</sup> See Sam McQuillan, *Canada's Complex Sports Betting History & New Launch, Explained*, ACTION NETWORK (Apr. 3, 2022), <https://www.actionnetwork.com/legal-online-sports-betting/canada-complex-sports-betting-situation-explained> (describing the prominent grey market for sports betting, which serviced the Canadian market).

<sup>41</sup> Handle refers to the total amount of money being wagered, as opposed to gross gaming revenue, which accounts for the bookmaker paying out wagers that the sportsbook lost. Handle includes all wagers, winners, losers, and pushes. See Chalk Staff, *Betting Glossary of Terms*, ESPN (Sep. 4, 2014), [https://www.espn.com/chalk/story/\\_/id/11457015/betting-glossary-common-betting-terms](https://www.espn.com/chalk/story/_/id/11457015/betting-glossary-common-betting-terms).

<sup>42</sup> Greg Warren, *Industry Leaders Discuss Ontario's 'Kickass Model' for Regulated Sports Betting*, SPORTSHANDLE (Feb. 14, 2022), <https://sportshandle.com/ontario-regulation-sports-betting-canada/>.

<sup>43</sup> The Kahnawake Mohawks have asserted that they are sovereign and therefore negotiate on a government-to-government basis with both the federal government and provincial governments. Frank Catania, *Internet Gaming Regulation: The Kahnawake Experience*, 5 CHAPMAN L. REV. 209, 211–12 (2002).

<sup>44</sup> Ryan M. Rodenberg & John T. Holden, *A Sure Thing? Online Gaming and Canada*, 3 PACE INTELL. PROP., SPORTS & ENT. FORUM 98, 106–09 (2013).

<sup>45</sup> *Id.* at 108.

<sup>46</sup> Daniel J. Rowe, *Kahnawake Leads the Fight to Stop Canadian Online Sports Betting Bill*, CTV NEWS (June 7, 2021), <https://montreal.ctvnews.ca/kahnawake-leads-the-fight-to-stop-canadian-online-sports-betting-bill-1.5459977>.

<sup>47</sup> *Id.*



Comartin, a New Democratic Party (NDP) member of parliament (MP) from the Windsor-Tecumseh riding, introduced Bill C-290 that repealed the ban on single-game wagering.<sup>48</sup> The Comartin bill made quick progress through the House of Commons before it stalled out.<sup>49</sup> In 2014, a new champion for single-game sports betting in Canada emerged—Brian Masse, the NDP MP from the Windsor West riding.<sup>50</sup> At the time, Masse pointed to the United States, noting that Canada risked being behind the curve if the country did not look to the words of NBA Commissioner Adam Silver about the need to regulate sports betting so that it can be monitored.<sup>51</sup> The irony is that the NBA opposed Bill C-290 back in 2012,<sup>52</sup> and prior to that, even negotiated as a condition for awarding the city of Toronto the Raptors franchise that Ontario could not even offer parlay wagering on NBA games.<sup>53</sup> The 2014 legislation ultimately died without becoming law.<sup>54</sup> But Masse was undeterred, and reintroduced the legislation in 2016 with a slightly revised scope. Unlike the earlier iterations, which used different language, the 2016 version allowed provinces to offer betting on “any race or fight, or on a single sports event or athletic contest.”<sup>55</sup> The House of Commons, however, defeated the 2016 effort.<sup>56</sup>

<sup>48</sup> Holden, *North American Sports Leagues*, *supra* note 4, at 243.

<sup>49</sup> *Id.*

<sup>50</sup> CTV Windsor, *Masse Frustrated with Delay of Single Game Sports Betting*, CTV (Nov. 14, 2014), <https://windsor.ctvnews.ca/masse-frustrated-with-delay-of-single-sports-betting-bill-1.2117003?cache=yes%3FautoPlay%3Dtrue%3FclipId%3D89530>.

<sup>51</sup> *Id.*; see also Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES (Nov. 13, 2014), <https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html> (proposing that a federal framework for sports betting should be adopted that allows states the ability to legalize wagering on professional sports, subject to certain safeguards).

<sup>52</sup> Bill C-290, R.S. c. C-46, 41st Parl.: Hearing Before the Senate Committee on Legal and Constitutional Affairs (2011–2012) (submissions of the National Basketball Association). It is worth noting that the submission was made by NBA commissioner David Stern, and the op-ed was written by his successor, Adam Silver.

<sup>53</sup> See Archives, *Why Gambling Almost Kept the NBA Out of Canada*, CBC (June 10, 2019), <https://www.cbc.ca/archives/why-gambling-almost-kept-the-nba-out-of-canada-1.5162994> (noting that in exchange for giving up wagering on NBA games, the NBA gave Toronto the franchise that would become the Raptors and \$1.5 million for cancer research, \$2 million for tourism in the province of Ontario, and \$5 million to a charitable foundation).

<sup>54</sup> News, *MP Brian Masse Resurrects Sports Betting Bill in House of Commons*, CBC (Feb. 17, 2016), <https://www.cbc.ca/news/canada/windsor/brian-masse-sports-betting-house-of-commons-1.3451383>.

<sup>55</sup> *Id.*

<sup>56</sup> Adelle Loiselle, *Single Event Sports Betting Bill Dies*, WINDSOR TODAY (Sep. 22, 2016), <https://blackburnnews.com/windsor/windsor-news/2016/09/22/single-event-sports-betting-bill-dies/>.



In 2020, Masse made another effort to get legislation passed to allow Canadians the ability to wager on single events.<sup>57</sup> As a result of parliamentary procedure, Masse transferred his bill to MP Kevin Waugh, a former sports journalist and member of the Conservative Party of Canada from the Saskatoon-Grasswood riding.<sup>58</sup> The combination of NDP and Conservative support for the bill was viewed as a sign that the private member's bill, which typically faces long odds of passing, may have a better shot than most pieces of legislation.<sup>59</sup> The legislation would amend the:

Criminal Code to make it lawful for the government of a province, or a person or entity licensed by the Lieutenant Governor in Council of that province, to conduct and manage a lottery scheme in the province that involves betting on a race or fight or on a single sports event or athletic contest.<sup>60</sup>

Bill C-218's introduction eventually changed the fundamental nature of sports betting in Canada.<sup>61</sup> When the legislation finally passed in November 2021, more than 10 years had passed since Joe Comartin first introduced similar legislation on Sept. 28, 2011,<sup>62</sup> and more than three full years after the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act allowing states across the country to legalize sports betting.<sup>63</sup>

## Part II. Getting Sports Betting Across the Goal Line

After years of effort to pass legislation, the day that many Canadian sports bettors had been waiting for finally occurred on June 22, 2021, when the Senate voted 57–20, with five abstentions, in favor of amending the Criminal Code to allow

<sup>57</sup> Staff Windsor, *Masse Tries Again to Get Sports Betting Bill Passed*, CTV NEWS (Feb. 25, 2020), <https://windsor.ctvnews.ca/masse-tries-again-to-get-sports-betting-bill-passed-1.4826827?cache=yes%3FclipId%3D89530%3Fot%3DAjaxLayout%3FautoPlay%3Dtrue>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Ted Menmuir, *Masse Pushes for Third Canadian Single Sports Betting Bill*, SBC NEWS (Feb. 26, 2020), <https://sbcnews.co.uk/retail/2020/02/26/masse-pushes-for-third-canadian-single-sports-betting-bill/>.

<sup>61</sup> Ryan Butler, *Canada Single-Game Sports Betting Bill Passes Parliament*, ACTION NETWORK (Nov. 15, 2021), <https://www.actionnetwork.com/legal-online-sports-betting/canada-single-game-sports-betting-bill-passes-parliament>.

<sup>62</sup> Holden, *North America Sports Leagues*, *supra* note 4, at 243.

<sup>63</sup> See John T. Holden, *Regulating Sports Wagering*, 105 IOWA L. REV. 575, 587 (2020) (describing the landscape in the United States following the decision in *Murphy v. NCAA*).



wagering on single games.<sup>64</sup> The legislation received royal assent roughly a week later, giving the legislation the final stamp of approval necessary.<sup>65</sup> The final step required the government to choose the date that the legislation took effect, which became Aug. 27, 2021.<sup>66</sup> This section of the article discusses the path to passage that Bill C-218 took and the arrival of sports betting in Canada.

Bill C-218 was first read in the House of Commons on Feb. 25, 2020,<sup>67</sup> and the House reinstated it in the second session of the 43rd parliament on Sept. 23, 2020.<sup>68</sup> The bill did not receive a second reading until Feb. 17, 2021, just eight days short of a year after its first reading.<sup>69</sup> The momentum around the single-game wagering legislation differed in the final effort, with little opposition left standing in the House of Commons it seemed like a “done deal.”<sup>70</sup> With passage seeming inevitable in early 2021, attention quickly turned to what the marketplace might look like across the country. Ontario, in particular, made waves previously when it announced the intent to move forward with a competitive market, as opposed to a provincial monopoly operated by the Ontario Lottery and Gaming Commission (OLGC), which is how parlay-style wagering was offered via the ProLine brand.<sup>71</sup>

At first, things appeared to be on the fast track for approval in Parliament. There was, however, some skepticism about how Ontario planned to launch a competitive market, and the impact of the relationship between the OLGC and the Alcohol and Gaming Commission of Ontario (AGCO), as there was a potential conflict of interest if the AGCO moved beyond the role of the mere regulator

<sup>64</sup> Staff, *Canada Set to Legalize Single-Game Sports Betting*, SCORE (June 22, 2021), <https://www.thescore.com/nhl/news/2182004>.

<sup>65</sup> Geoff Zochodne, *Canada's Single-Game Sports Betting Bill Receives Royal Assent, Becomes Law*, COVERS (June 30, 2021), <https://www.covers.com/industry/canada-sports-betting-royal-assent-2021>.

<sup>66</sup> Nick Chappell, *Ontario Sports Betting – Legal Status and Where to Play*, SPORTSHANDLE (June 27, 2022), <https://sportshandle.com/ontario/#:~:text=Date%20of%20implementation&text=While%20Prime%20Minister%20Justin%20Trudeau,in%20Canada%20on%20August%2027>.

<sup>67</sup> Act to amend the Criminal Code, C-218 43rd Parl., 1st Sess. (sports betting), available at: <https://www.parl.ca/LegisInfo/en/bill/43-1/c-218> (last visited July 12, 2022).

<sup>68</sup> Act to amend the Criminal Code, C-218 43rd Parl., 2d Sess. (sports betting), available at: <https://www.parl.ca/LegisInfo/en/bill/43-1/c-218> (last visited July 12, 2022).

<sup>69</sup> *Id.*

<sup>70</sup> John Holden, *Analysis: What To Expect From Legal Single-Game Sports Betting In Canada*, LEGAL SPORTS REP. (Dec. 7, 2020), <https://www.legalsportsreport.com/46157/what-to-expect-sports-betting-in-canada/>.

<sup>71</sup> John Holden, *Analysis: What New Ontario Auditor General Report Means For Canada Sports Betting*, LEGAL SPORTS REP. (Jan. 5, 2021), <https://www.legalsportsreport.com/46332/canada-sports-betting-ontario-ag-report/>.



to manager and operator.<sup>72</sup> In February 2021, Bill C-218 sailed through its second reading in the House of Commons by a vote of 303–15.<sup>73</sup> The passage of the bill through its second reading sent the bill to the Justice Committee for a series of hearings.<sup>74</sup> As Bill C-218, the private member’s bill, sailed through the legislative process, a member of the Liberal Party, who held power, introduced a second bill that reached the same result, legalized single-game sports wagering.<sup>75</sup> Bill C-13, as the competing bill was numbered, never moved past the second reading.<sup>76</sup>

The first hearings held by the House of Commons Standing Committee on Justice and Human Rights received both oral and written testimony with much of the reception positive, though critics expressed minor concerns about consumer protections. Critics primarily expressed concern about whether the change to Section 207 (4)(b) of the Criminal Code allowed fixed odds wagering on horse racing, which was viewed as potentially disastrous for the industry.<sup>77</sup> Roughly a week later, the House of Commons committee held a second set of hearings that contained largely supportive testimony, but heard opposition from the Mohawk Council of Kahnawake, which proposed an amendment to Section 207 (1) that provided “for an Indigenous governing body to conduct and manage a lottery scheme pursuant to the terms of an agreement with the government of Canada.”<sup>78</sup> In the period between the two hearings, numerous submissions were made publicly available, including one from the NFL, which supported passage of the bill, but requested that official league data be mandated.<sup>79</sup>

The momentum behind the initiatives led to tremendous excitement, driven in part by projections that, in a favorable scenario, sports betting in Canada could have a handle of more than \$25 billion, which would generate upwards of \$400

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<sup>72</sup> *Id.*

<sup>73</sup> John Holden, *Analysis: It’s Power Play Time For Canada Sports Betting Hopes This Week*, LEGAL SPORTS REP. (Feb. 17, 2021), <https://www.legalsportsreport.com/48291/canada-sports-betting-hopes-big-week/>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Act to Amend the Criminal Code, C-13, 43rd Parl., 2d Sess. (single-event sport betting), available at: <https://www.parl.ca/LegisInfo/en/bill/43-2/C-13?view=progress>.

<sup>77</sup> John Holden, *Path for Canada Sports Betting Could Become Clear at Hearing Next Week*, LEGAL SPORTS REP. (Mar. 19, 2021), <https://www.legalsportsreport.com/49433/holden-canada-sports-betting-march-2021/>.

<sup>78</sup> John Holden, *Opinion: Another Week, Another Canada Sports Betting Hearing in The Books*, LEGAL SPORTS REP. (Apr. 6, 2021), <https://www.legalsportsreport.com/49963/opinion-canada-sports-betting-hearing-march-2021/>.

<sup>79</sup> *Id.* Official league data is data that originates from the sports leagues and is distributed by one of the league’s partners. See John T. Holden & Mike Schuster, *The Sham of Integrity Fees in Sports Betting*, 16 NYU J. L. & BUS. 31, 35–36 (2019).



million in tax revenue.<sup>80</sup> After passage in the House of Commons, the bill stalled in the Senate, to the point that MP Kevin Waugh projected that the legislation's odds of passing were down to a coin flip.<sup>81</sup> By May, time was the greatest enemy of passage for Bill C-218 as the Senate was expected to leave for a break at the end of June and not be back before a federal election, which would leave all unpassed legislation in the past.<sup>82</sup> Just as hope appeared to be fading, however, the Senate kicked up a gear, gave the bill a second reading, and sent it to the Senate Committee on Banking, Trade, and Commerce.<sup>83</sup> The Senate Committee on Banking, Trade, and Commerce held three hearings before sending the legislation back for a third reading.<sup>84</sup> On June 22, 2021, the Senate gave Bill C-218 a third reading, after which, by a vote of 57–20 with five abstentions, the legislation passed.<sup>85</sup> As the wait was on for Prime Minister Justin Trudeau's Liberal government to choose an effective date for the changes, provinces began their preparations.<sup>86</sup>

Seven provincial lotteries were ready to launch with sports betting products as soon as the effective date, Aug. 27, 2021, arrived.<sup>87</sup> The remaining provinces and territories followed suit later in the year with the exception of Nova Scotia, which did not begin accepting single-game sports wagers until February 2022.<sup>88</sup>

<sup>80</sup> Eric Ramsey, *Legal Sports Betting in Canada: A Preliminary Analysis of the Prospects for Single-Game Wagering*, PLAY CANADA (Aug. 2021), available at: <https://www.playcanada.com/wp-content/uploads/2021/08/Canada-White-Paper-FINAL.pdf>.

<sup>81</sup> John Holden, *Bump In the Road Ahead For Legal Sports Betting in Canada?*, LEGAL SPORTS REP. (May 24, 2021), <https://www.legalsportsreport.com/52109/bump-in-the-road-sports-betting-in-canada/>.

<sup>82</sup> *Id.*

<sup>83</sup> John Holden, *Room for Hope with Canada Sports Betting Bill in the Senate*, LEGAL SPORTS REP. (June 2, 2021), <https://www.legalsportsreport.com/52459/room-for-hope-canada-sports-betting-senate/>.

<sup>84</sup> John Holden, *Opinion: How Prepared is Canada for Legal Sports Betting?*, LEGAL SPORTS REP. (June 16, 2021), <https://www.legalsportsreport.com/52748/how-prepared-is-canada-legal-sports-betting/>.

<sup>85</sup> Canadian Press, *Single-Event Sport Gambling to Become Legal in Canada as Bill C-218 Passes in Senate*, CBC (June 22, 2021), <https://www.cbc.ca/sports/single-event-sport-gambling-to-become-legal-as-bill-c218-passes-in-senate-1.6075816>.

<sup>86</sup> *Legal Online Sports Betting in Canada in 2022*, COVERS (July 4, 2022), <https://www.covers.com/betting/canada/legal-sports-betting#:~:text=sports%20bet%20offerings.-,Provinces%20where%20single%20game%20sports%20betting%20is%20legal,right%20out%20of%20the%20gate>.

<sup>87</sup> *See id.* (noting British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Prince Edward Island, and Quebec all launched immediately).

<sup>88</sup> *Id.*



As the provinces rolled out single-game wagering for the first time, many turned their attention to Ontario’s planned rollout of a competitive commercial market.<sup>89</sup> Ontario’s plan, however, was not without its skeptics and critics.<sup>90</sup> Several First Nations groups were among the most powerful voices, who argued that the government had failed to meet its constitutional obligations to meaningfully engage with “Indigenous governments prior to enacting legislation to legalize sports bookmaking.”<sup>91</sup> The privatization of the sports betting and iGaming markets in Ontario also faced questions about whether it was legal for the province to license private operators.<sup>92</sup> The Criminal Code requires a provincial government to “conduct and manage” gaming in the province. In a review of the planned regulatory model, the province of Ontario’s Auditor General stated:

The province asserts that iGaming Ontario will maintain core “conduct and manage” functions with respect to Internet gaming, including: revenue reconciliation; financial forecasting; data insights; market and technology facilitation; promoting public awareness of benefits of the legal market; and anti-money laundering programs. The majority of these functions may well influence the operations and decisions of private operators. However, these functions do not, in substance, appear to conduct or manage the operations and decisions of private operators.<sup>93</sup>

Despite the questions about the regulatory scheme, and objections of some First Nations groups, Ontario’s privatized market for sports wagering launched on April 4, 2022.<sup>94</sup> The launch of the market has not been without questions, which are discussed in the following section.

<sup>89</sup> Greg Warren, *Everything You Need to Know About the Launch of Ontario’s Regulated iGaming Market*, U.S. BETS (Apr. 3, 2022), <https://www.usbets.com/ontario-igaming-market-launch-sports/>.

<sup>90</sup> John Machesan, *Ontario First Nation to Launch Legal Challenge Against Government’s iGaming Scheme*, CITY NEWS (Jan. 29, 2022), <https://toronto.citynews.ca/2022/01/29/ontario-first-nation-to-launch-legal-challenge-against-governments-igaming-scheme/>.

<sup>91</sup> John Holden, *Opinion: Ontario’s Private Gaming Landscape Faces First Nation Challenge, Likely One of Many*, PLAY CANADA (June 30, 2022), <https://www.playcanada.com/news/opinion-ontarios-private-gaming-faces-early-challenge-sports-betting-casinos/>.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*; see also *Internet Gaming in Ontario*, OFF. OF AUDITOR GEN. OF ONTARIO (Dec. 2021), [https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR\\_igaming\\_en21.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR_igaming_en21.pdf).

<sup>94</sup> Conor Porter, *Ontario Market Open Its Doors to iGaming and Online Sports Betting*, SBC AMERICAS (Apr. 4, 2022), <https://sbcamericas.com/2022/04/04/ontario-market-opens-its-doors-to-igaming-and-online-sports-betting/>.



## Part III. Taking Stock of the Canadian Sports Betting Market

The August 2021 rollout of single-game sports betting across much of Canada was a monumental day for sports bettors. Yet, bettors across the country were limited to offerings from the same lottery operators who had offered parlay-style wagering, with some implementing promotions for bettors who signed up for an account prior to launch.<sup>95</sup> In the first week of legal single-game sports betting, the OLGC reported more than \$1 million wagered, whereas British Columbia reported a little more than 1,200 accounts registered for the province's gaming site.<sup>96</sup> With nationwide single-game sports wagering now launched, many have been focused on Ontario's grand experiment with a competitive commercial market, one that welcomed and integrated former grey market operators who were willing to submit to regulation.<sup>97</sup>

In a somewhat surprising twist, despite questions about the legality of Ontario's regulatory scheme for private market operators raised by the province's auditor general back in December 2021, and rumored legal challenges from First Nations groups, Ontario's market launched without any known legal challenge.<sup>98</sup> The launch itself was not without problems. Numerous reports existed of bettors not being able to verify their identities, and for some, their location, which allows a third-party company to validate that a bettor is in a permitted location.<sup>99</sup> There were also some concerns about the robustness of responsible gambling checks.<sup>100</sup> Private operators also widely view Ontario as serving as a test market for the

<sup>95</sup> See, e.g., Bob Duff, *Proline Ontario Online Launch Sign Single-Game Betting Imminent*, BOOKIES (July 30, 2021), <https://bookies.com/nhl/picks/proline-ontario-online-launch-sign-single-game-betting-imminent> (noting that Proline+, Ontario's single game sports betting product offered through the OLGC, would put a \$50 (Canadian dollars) bonus into the digit wallets of the first 25,000 registrants).

<sup>96</sup> Matt Rybaltowski, *Ontario Clears \$1M in Handle in First Week of Legal Single-Event Betting in Canada*, SPORTSHANDLE (Sep. 2, 2021), <https://sportshandle.com/ontario-clears-1m-handle/>.

<sup>97</sup> Dave Schwab, *Early Market Leaders in Ontario's Sports Betting Industry*, VEGAS INSIDER (May 6, 2022), <https://www.vegasin.com/sportsbooks/sports-betting-news/early-market-leaders-ontarios-sports-betting-industry/>.

<sup>98</sup> See Philip Conneller, *First Nation Vows to Derail Ontario Online Gaming, Sports Betting Market*, CASINO (Feb 1, 2022), <https://www.casino.org/news/first-nation-vows-to-derail-ontario-online-gaming-sports-betting-market/> (noting the Mississaugas of Scugog Island First Nation announced they would sue in an effort to block the launch of the private market).

<sup>99</sup> Geoff Zochodne, *Ontario Sports Betting: Despite Growing Pains, Province's iGaming Market Off to Fast Start*, TORONTO SUN (Apr. 6, 2022), <https://torontosun.com/sports/sports-betting/ontario-sports-betting-despite-growing-pains-provinces-igaming-market-off-to-fast-start>.

<sup>100</sup> *Id.*



rest of Canada, though some other provinces—most vocally Quebec—have announced that they have no plans to abandon their monopolies.<sup>101</sup>

One of the immediate questions about the Ontario market is whether the province’s advertising restrictions would prevent the inundation of advertising seen in the United States.<sup>102</sup> Ontario’s standards state: “Advertising and marketing materials that communicate gambling inducements, bonuses and credits are prohibited, except on an operator’s gaming site and through direct advertising and marketing, after receiving active player consent.”<sup>103</sup> The requirement that bettors need to visit each operator’s individual site, or app, to learn about promotions is a departure from what is allowed in U.S. markets.<sup>104</sup> While the restrictions do not prohibit television advertising, companies cannot use television ads to convey promotions.<sup>105</sup> The advertising guidelines have seen immediate results, in the form of fines within the first month for operators BetMGM and PointsBet,<sup>106</sup> and the AGCO also levied a fine against DraftKings of \$100,000 in June 2022 for violating the advertising standards.<sup>107</sup> The restrictions are likely well intended to protect those with problem gambling tendencies, although there are questions about whether the market is best served by the arduous process of needing to visit upwards of a dozen different sites, or apps, to determine the best value.<sup>108</sup> The current iteration of the advertising guidelines arguably hurts small operators the

<sup>101</sup> Steve Petrella, *Quebec Sports Betting*, ACTION NETWORK (Mar. 25, 2022), <https://www.action-network.com/online-sports-betting/quebec>.

<sup>102</sup> See Joe Hernandez, *Sports Betting Ads Are Everywhere. Some Worry Gamblers Will Pay A Steep Price*, NPR (June 18, 2022), <https://www.npr.org/2022/06/18/1104952410/sports-betting-ads-sports-gambling> (describing the ubiquity of sports betting advertisements in the United States).

<sup>103</sup> *Marketing and Advertising, Registrar’s Standards for Internet Gaming*, ALCOHOL & GAMING COMM’N OF ONTARIO, <https://www.agco.ca/marketing-and-advertising#:~:text=2.05%20Advertising%20and%20marketing%20materials,after%20receiving%20active%20player%20consent> (last visited July 14, 2022).

<sup>104</sup> Matt Rybaltowski, *Ontario Tackles Key Issues On Ads, Integrity In Final Sports Betting Regulations*, SPORTSHANDLE (Sep. 17, 2021), <https://sportshandle.com/ontario-agco-final-standards-sports-betting/>.

<sup>105</sup> *Id.*

<sup>106</sup> Pat Evans, *Ontario Sports Betting Fines Levied on BetMGM, PointsBet*, LEGAL SPORTS REP. (May 4, 2022), <https://www.legalsportsreport.com/69410/betmgm-pointsbet-ontario-sports-betting-fines/>.

<sup>107</sup> Geoff Zochodne, *Ontario Sports Betting Regulator Hits DraftKings with \$100k Fine Over Alleged Ad Infractions*, COVERS (June 30, 2022), <https://www.covers.com/industry/ontario-sports-betting-fine-draftkings-june-2022>

<sup>108</sup> John Holden, *Opinion: Finding Happy Medium in Sports Betting Advertising Regulation*, LEGAL SPORTS REP. (June 10, 2022),



most, as they may lack the budgets to compete with advertising campaigns of the sports gambling behemoths, like DraftKings.<sup>109</sup>

Another early critique of the private market launch in Ontario involves questions about how much revenue private companies have generated.<sup>110</sup> There is tremendous variation in how different states release revenue numbers, but each U.S. jurisdiction with a competitive commercial sports betting market releases data regularly, typically every month.<sup>111</sup> Ontario announced that it would not be reporting revenue numbers until after a provincial election in June 2022; despite this, even a month after the election, the province had still not publicly disclosed the revenue from sports betting or the recently launched iGaming markets.<sup>112</sup> Without the revenue numbers, it is difficult to assess how the market is performing, and which companies are rising to the top, leaving the public to rely on imprecise proxies like app downloads for any quantitative data.<sup>113</sup>

The biggest question mark lingering over the Ontario market experiment is whether or not it will have a significant impact on the grey market.<sup>114</sup> Ontarians had been wagering offshore at grey market sites for years. The province's decision to allow these companies to effectively "come clean" without any repercussions for past behavior if they entered the regulated market was a first of its kind experiment in North America.<sup>115</sup> It is unclear just how much of the reported \$14 billion wagered by Canadians offshore will come back to be taxed annually, but the experiment is certainly bold.<sup>116</sup> A number of the most prominent grey

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<sup>109</sup> *Id.*

<sup>110</sup> John Holden, *Opinion: Ontario Sports Betting Needs Revenue Transparency to Succeed*, LEGAL SPORTS REP. (May 27, 2022), <https://www.legalsportsreport.com/70435/opinion-ontario-sports-betting-revenue-transparency/>.

<sup>111</sup> See, e.g., *Gaming Revenue Information*, NV. GAMING CONTROL BD., <https://gaming.nv.gov/index.aspx?page=149> (last visited July 14, 2022). Cf. *Sports Wagering Revenue*, IOWA RACING & GAMING COMM'N, <https://irgc.iowa.gov/sports-wagering-revenue> (last visited July 14, 2022).

<sup>112</sup> Greg Warren, *Ontario iGaming Revenue Reports Wait Until After Provincial Election*, SPORTSHANDLE (June 1, 2022), <https://sportshandle.com/ontario-igaming-revenue-reports-election/>.

<sup>113</sup> *Id.*

<sup>114</sup> Evan Scrimshaw, *What Will Happen to the Ontario Sports Betting Grey Markets?*, LINES (Apr. 4, 2022), <https://www.thelines.com/ontario-grey-markets-sports-betting-april-4-launch-2022/>.

<sup>115</sup> See Holden Revenue Transparency, *supra* note 110 (describing the allowance of grey market operators into the regulated market as an "olive branch" and "grand experiment.").

<sup>116</sup> Joe O'Connor, *Wanna Bet? Single-Event Sports Wagering Comes to Canada*, FINANCIAL POST (Mar. 3, 2022), <https://financialpost.com/financial-post-magazine/wanna-bet-single-event-sports-wagering-comes-to-canada>.



market operators have entered the Ontario market.<sup>117</sup> Time will tell whether the experiment succeeds, but some have been skeptical of the privatized market's ability to surpass the revenue from a provincial monopoly model.<sup>118</sup>

## Conclusion

Canada took a longer path to legalize single-game sports wagering than much of the United States, but once legal, the rollout was quite rapid.<sup>119</sup> Questions remain, however, about just how much revenue sports betting will generate and whether the federal government has done enough to protect the legal market.<sup>120</sup> Many U.S. states saw dollar signs when they legalized sports betting, yet some have been disappointed with the revenue generated.<sup>121</sup> The Ontario market is really a grand experiment that has not yet been tried in the United States, and the idea of creating a path for offshore operators to come clean would almost certainly draw interest should such an opportunity ever arise in the future.<sup>122</sup> In the interim, there will likely continue to be growing pains as Ontario, and the rest of Canada, master the regulation of a new and high-demand gambling product, but after years of trying to legalize single-game sports wagering it is finally here, and one of the boldest experiments in regulation is underway.

<sup>117</sup> Pat Evans, *Bet365 Making Ontario Sports Betting Switch from Gray Market*, LEGAL SPORTS REP. (Mar. 16, 2022), <https://www.legalsportsreport.com/66443/bet365-making-switch-ontario-sports-betting-gray-market/>.

<sup>118</sup> Christine Dobby, *Great Canadian Gaming Urges Ontario to Let Casinos Take Control of Legal Online Betting*, TORONTO STAR (Jan. 20, 2022), <https://www.thestar.com/business/2022/01/20/great-canadian-gaming-urges-ontario-to-let-casinos-take-control-of-legal-online-betting.html>.

<sup>119</sup> See 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> (describing preparations ahead of royal assent).

<sup>120</sup> For instance, it is not clear that Canadian law directly prohibits match fixing. See John T. Holden & Ryan M. Rodenberg, *Lone-Wolf Match-Fixing, Global Policy Consideration*, 9 INT'L J. SPORT POL'Y & POLITICS 137, 144–45 (2017); see also Declan Hill, *Expanding Sports Betting Without Banning Match-Fixing is A Recipe For Trouble*, GLOBE & MAIL (Dec. 11, 2020), <https://www.theglobeandmail.com/opinion/article-expanding-sports-betting-without-banning-match-fixing-is-a-recipe-for/> (noting Canadian authorities have failed to use existing laws to punish match fixing in the past).

<sup>121</sup> See, e.g., Kendall Baker, *States See Disappointing Tax Revenue From Legal Sports Betting*, AXIOS (Apr. 22, 2019), <https://www.axios.com/2019/04/22/legal-sports-betting-tax-revenue-new-jersey> (noting West Virginia and Rhode Island brought in less revenue than projected).

<sup>122</sup> The Federal Wire Act, 18 U.S.C. § 1084 (1994), remains an obstacle to conducting this type of experiment at the state level in the United States.

