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Mississaugas of Scugog Island First Nation

Submission to the Standing Committee on Justice and Human Rights
Bill C-218: *An Act to Amend the Criminal Code (Sports Betting)*

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Recommendations

1. In compliance with the Crown's constitutional duty to consult, Parliament must offer a fulsome and meaningful consultation to Indigenous governments prior to enacting legislation to legalize sports bookmaking.
2. The legalization of aspects of bookmaking will impact existing arrangements and agreements between provincial and Indigenous governments. Parliament must pause and be satisfied that provincial and Indigenous governments have consulted and have resolved all concerns, in particular all concerns of Indigenous governments, respecting the existing arrangements and agreements occasioned by the grant of broad bookmaking powers to the provinces prior to the completion of the federal legislative process.
3. Decriminalization legislation should require all bookmaking to be operated by and tied to licensed, land-based casinos in order to ensure that appropriate harm reduction, age verification, and money handling processes are completed in-person.

Introduction

As Parliament considers decriminalizing aspects of bookmaking, the Crown must first satisfy its constitutional duty to consult Indigenous peoples and governments. These consultations need to be meaningful and address the impacts of the proposed legislation on Indigenous governments throughout the country. A public invitation to provide comments and input does not meet the requirements of this constitutional duty. Despite the federal government's assurance in November 2020 that there will be federal constitutional consultations with Indigenous peoples and governments impacted by these amendments, no such consultations have occurred or been organized.

After the 1985 agreement between the provinces and the federal government respecting gambling, the provinces commenced organizing and regulating gambling within their respective provinces. Indigenous governments were not included in the 1985 agreement, and as the provinces organized and regulated gambling, numerous Indigenous governments asserted that protected aboriginal and treaty rights related to these activities were being infringed by the provinces. Over time, numerous arrangements and agreements were made between Indigenous governments and the provinces respecting gambling connected to the assertion of protected rights. Some of these agreements have resulted in forms of revenue share agreements with land-based casinos being built in Indigenous communities.

The Mississaugas of Scugog Island First Nation (MSIFN) is one of the Indigenous governments that asserted its aboriginal and treaty rights. It is located in the Greater

Toronto Area (GTA), near Port Perry, in Ontario. MSIFN built, conducted, and managed the Great Blue Heron Casino in its territory, in accordance with its own *Gaming Code* approved by Ontario and in accordance with a 1993 agreement with the province.

In 2016, connected to Ontario's Casino Modernization Plan in the GTA, MSIFN and Ontario signed a historic suite of agreements whereby Ontario took over MSIFN's interests in GBH for a stipulated period on the proviso, among other significant things, that certain payments be made to MSIFN. Throughout MSIFN's arrangements with Ontario respecting gaming, all gaming proceeds acquired by MSIFN were, and continue to be required to be, used to finance the social and economic self-reliance and infrastructure development of MSIFN. Presently, for example, MSIFN is under a boil water advisory, and gaming proceeds are being used for water and sewer systems currently under construction.

The broad grant of sports and other bookmaking powers to the provinces in the proposed amendments here were not contemplated by the parties when numerous Indigenous gaming agreements were made after the 1985 grant of gambling powers to the provinces, and certainly were not contemplated by the parties when MSIFN signed the 1993 agreement and the historic gaming agreements in 2016. After the 1985 grant of gambling powers to the provinces without consultation with Indigenous governments, difficulties and litigation followed. The wrongs, connected to the lack of consultation and exclusion from the amendments, committed in 1985 should not be repeated. There must be federal and provincial consultations with Indigenous governments before the broad bookmaking powers in the proposed amendments to the *Criminal Code* are granted to the provinces.

Indigenous governments and provinces will need to integrate into their arrangements and agreements the grant of these broad powers to the provinces. Indigenous governments will need to be satisfied that their gaming agreements will not be undermined by provincial powers not contemplated by the parties at the time the existing gaming agreements were signed. Otherwise, numerous failure to consult claims will be instituted and litigation will again follow. Before broad bookmaking powers are granted to the provinces, to the exclusion of Indigenous governments, the federal government must, in accordance with its constitutional duty, consult with Indigenous governments impacted by the broad grant of those powers. In particular, the federal government must see to it that before this broad grant is made to the provinces, that the provinces also have sorted out with Indigenous governments integration of those powers into the respective provincial regimes to the satisfaction of impacted Indigenous governments.

In the United States of America (America), like in Canada, bookmaking is illegal. In 2018, the United States Supreme Court struck down federal legislation barring States

from legalizing bookmaking, and following this ruling States have begun to permit sports bookmaking. For example, in Nevada where Las Vegas is located, sports bookmaking is now legal, however, there are regulations governing the activity. There, persons can wager in sports bookmaking while present in Nevada, either in-person at a land-based casino or remotely, only after they have registered in-person with a land-based casino operator in Nevada with proof of qualifying age and where all payments funding their bookmaking account are made in-person at the casino. In America, where bookmaking is legally permitted, the bookmaking is generally tied and connected to a land-based casino because there are stipulated in-person requirements regarding age and the handling of money. It should be no different in Canada.

Likewise, Canada's approach to legalizing sports bookmaking must balance consumer demand with the government's duty to prevent undue harms from improperly conducted gaming. The responsible management of gaming operations is critical to meeting society's expectations for safe and regulated gambling. Rigorous provincial regulatory frameworks have led to the successful integration of casinos into communities across Canada. Future sports bookmaking procedures must be implemented in a similar way which preserves community trust and meets the public interest.

As a casino owner and regulator, MSIFN recognizes the importance of regulatory oversight in the socially responsible management of gaming activities. We strongly believe that all gaming activities must be conducted in a way which protects the well-being of participants and preserves community trust. As the federal government seeks to decriminalize sports bookmaking, we strongly urge the Committee to recognize the need for social and regulatory safeguards within the legislation.

Addressing Relationships and Obligations

The decriminalization of sports bookmaking will directly affect Indigenous governments and communities. The Crown has a duty to consult Indigenous peoples who may be impacted by its conduct, as required by Section 35 of the *Constitution Act*. Given that no consultations have occurred to date by the federal government or by the provincial governments, Parliament must provide time for the federal and provincial governments to conduct meaningful constitutional consultations with Indigenous governments before implementing the proposed grant of broad provincial powers, and excluding Indigenous governments from the grant and implementation of such powers.

Furthermore, the proposed legislation will have material impacts on existing arrangements and agreements between numerous Indigenous and provincial governments. For example, in Ontario, numerous Indigenous governments have signed long-term agreements with the province pertaining to gaming activities. The

decriminalization of sports bookmaking changes the underlying context upon which these arrangements and agreements were formed. The honour of the Crown requires that before the proposed amendments are made that the Crown is satisfied that the affairs between Indigenous governments and the provinces have been realigned to account for the grant of the additional powers to the provinces.

It is, therefore, critical that Parliament delay further action on Bill C-218 to provide additional opportunities for the study of such agreements, and the implications of this legislation. Affected parties have the right to understand and review the effects of decriminalization on their agreements. Parliament's review of the Bill should be paused to provide a suitable opportunity for Indigenous governments and provincial governments alike to address the impacts of the broad grant of provincial powers respecting bookmaking in the proposed legislation, including the impact of this grant of provincial powers on the assertion of protected constitutional rights which have been made by Indigenous governments regarding those powers.

Protecting Community Safety and Well-Being

The successful implementation of any gaming operation requires substantial oversight to mitigate the health and social impacts of gambling. Currently, gaming regulators across Canada require casino owners and operators to provide a myriad of services to address problem gambling, age verification, and the handling of funds. As part of their responsibilities, casino staff are expected to recognize and prevent problem gambling behaviour, money laundering, underage gambling, and many other matters.

It is our strong belief that the government's decriminalization of sports bookmaking must be contingent on the provision of harm-reduction services. Having owned and operated a gaming facility for decades, MSIFN recognizes the important role which trained casino staff have in limiting problem gambling. As such, sports bookmaking should be conducted and operated in licensed, land-based gaming facilities by trained employees. This option, which the federal government can set as a condition within its legislation, offers a standardized means of addressing problem gambling.

Casino employees receive extensive, regulator-approved training which assists in preventing problem gambling in casinos. Staff are trained to recognize signs of trouble gambling and direct patrons to appropriate support systems when necessary. Land-based gaming is one of few service options which can provide effective, in-person harm-reduction assistance. Conversely, alternative gaming methods, namely online betting platforms, are physically unable to provide equally effective safeguards.

The use of land-based gaming to conduct sports bookmaking allows patrons to access the same proven harm-reduction measures currently available in casinos. In Ontario, this includes onsite “PlaySmart Centres,” which offer counselling and gaming education services to patrons experiencing problem gambling. Operated by non-profit third parties, the centres have no financial incentive to offer misleading or improper advice. The efficacy of these services is greater in land-based gaming facilities due to patron awareness in addition to in-person staffing.

Similarly, decriminalization must include safeguards to prevent underage gaming – a concern which is heightened by the nature of sports bookmaking. Sports bookmaking is glamourized by multiple internet-based sports media outlets, and widely advertised during televised sporting events. Due to its simple and accessible wagering nature, online sports bookmaking risks attracting underage participants in a highly uncontrolled environment. By connecting sports bookmaking to in-person attendance at licensed casinos for age verification, as done elsewhere, Parliament will address a real risk of abuse occasioned by the grant of these broad bookmaking powers to the provinces.

Casinos have the existing infrastructure and knowledge required to prevent underage gaming. Additionally, minors are deterred by the legal ramifications associated with attempting to participate in underage gaming in licensed facilities. The age verification measures provided by online platforms, in contrast, are easily circumvented. It is imperative that any decriminalization strategy employs regulatory levers which recognize and address the social impacts of gambling.

Money laundering and casinos have been a concern for some time, and are the subject of the ongoing work at Commission of Inquiry into Money Laundering in British Columbia and the work of gaming regulators throughout the country. Elsewhere, the handling of money in sports bookmaking requires in-person attendance at a licensed casino. It should be no different in Canada, and Parliament should not permit otherwise. Parliament should require that however a wager is made, that the wager is made through an account at a licensed land-based casino and land-based casino operator. Like with age verification and problem gambling, the land-based casino operator will be responsible to address any money laundering and any hallmarks of money laundering that may be connected to the bookmaking account.

Conclusion

If decriminalized and implemented in a proper manner, sports bookmaking will create economic activity and render benefits to communities across Canada. Conversely, the failure to recognize the impacts of this action on intergovernmental relations and community safety will have lasting consequences. For that reason, we ask that the

government offer additional opportunities for Indigenous governments, provincial governments, and regulators to study the impact of the proposed legislation on existing Indigenous arrangements and agreements. Similarly, it is critical that Parliament delay the enacting of the proposed legislation until such time that the federal and provincial governments satisfy their constitutional duty to consult Indigenous peoples and governments.

Moreover, we strongly urge the Committee to consider Parliament's use of its authority to limit sports bookmaking to licensed, land-based casino facilities. The government must offset the harms created by problem and underaged gambling and money laundering by connecting sports bookmaking to licenced land-based casinos which provide effective, well-regulated harm-reduction and prevention services. We thank the Committee for its consideration of our submission. MSIFN would welcome an appearance before the Committee and welcome any questions of the Committee, should an opportunity to appear be provided.

Organization Background

From time immemorial, the Mississaugas of Scugog Island First Nation (MSIFN) have lived on the shores of Lake Scugog, North of what is now Port Perry. Thanks in large part to the success of the Great Blue Heron (GBH) casino, MSIFN is widely considered a model of a successful First Nation government in Canada. In part due to the success of GBH, MSIFN has provided their community with thousands of jobs, and charitable donations to community organizations throughout the region. MSIFN is led by Chief Kelly LaRocca, Councillor Laura Colwell, and Councillor Jamie Coons.