Chapter 7

Bet on It: The Taxation of Online Gaming

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A. INTRODUCTION

Internet use by Canadians has grown dramatically over the past several years. According to Statistics Canada, from 1999 to 2003 the number of households with at least one individual regularly using the internet at home nearly doubled from 28.7 percent to 54.5 percent, and by 2005 had reached 61 percent. The average speed of internet connections is also improving. Also, according to Statistics Canada, about 45 percent of Canadian households were connected using broadband connections in 2005. Continued rapid growth in the use of the internet by Canadian households is widely expected. At the same time, following the amendments made to the Criminal Code by Parliament in 1985, the social acceptability of gambling has increased and the variety of gambling options made available by provincial governments has proliferated.

In a combination of these underlying trends, Canadians are discovering that in order to gamble, it is no longer necessary to travel to traditional destinations such as Las Vegas or Atlantic City; to provincially operated

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2 Ibid. Of the 61 percent of households with internet access, 50 percent connect using cable and 44 percent connect using a telephone line. Of the 44 percent using a telephone line, 59 percent use DSL or other, faster, non-dialup technology.
casinos in Niagara Falls, Montreal, Windsor (and elsewhere); or even to the corner store to buy a lottery ticket. The thrill of a spin of the roulette wheel, the subtle psychological dimensions of a game of Texas Hold'em, and the strategic challenge of blackjack, are available twenty-four hours a day, seven days a week, through literally hundreds of online gambling sites eager to offer would-be gamblers the opportunity to play at any moment.

Although the legality of online gambling is threatened or is clearly proscribed in many jurisdictions, most significantly in the United States, this has not stopped several of the largest online gambling sites, such as PartyPoker.com, 888.com, and Paradise Poker from becoming publicly traded (some through holding companies) on the London Stock Exchange (LSE). Given the considerable valuations placed on these companies by the market, online gambling as a viable business is obviously considered by many investors to be a good bet. Although the market capitalization of PartyGaming Plc alone (which operates the most active online poker site, PartyPoker.com) was £6.29 billion as of 31 October 2005; two years later, it has fallen to approximately £1.1 billion. Significantly, for a time its valuation had resulted in PartyGaming Plc being made a member of the FTSE 100 Index, though in light of the recent turn in the United States against online gambling and the associated tumble in the company's shares, it has now been moved to the FTSE 250 Index.

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4 Gambling Online Magazine has reported that eCommerce and Online Gaming Regulation and Assurance (eCOGRA) has approved a total of 66 online casinos. According to Gambling Online Magazine, the online casinos that have gained the "Play it Safe" seal from eCommerce and Online Gaming Regulation and Assurance (eCOGRA), have all passed probity, fairness and efficiency inspections and have been awarded the seal by the board of directors of the standards authority. All the online casinos underwent extensive testing and inspection by independent professional teams from a top international business services and auditing group to ensure compliance with the standards and requirements of the organisation concerning operational efficiency, fair and responsible gambling and player protection.


6 888.com is operated by 888 Holdings Plc, which is based in Gibraltar and is traded on the LSE.

7 Paradise Poker is operated by Sportingbet Plc, a British company listed on the LSE.

8 Online: www.londonstockexchange.com/en-gb/pricesnews/prices/system/detailedprices.htm?i=FRTY.

9 Membership in the FTSE 100 Index and FTSE 250 Index is reserved for the 100 and 250 largest companies traded on the LSE, respectively. For a list of the FTSE 250 Index companies, see online: http://en.wikipedia.org/wiki/FTSE_250_index.
In our view, despite the aggressive actions taken by the federal government in the United States to try to curb online gambling, governments would be remiss not to consider its popular appeal and thus its likely staying power and growth potential. In this paper, we discuss the growth of online gambling from a Canadian perspective, with an eye to options facing the federal and provincial governments.

To this end, the paper proceeds as follows. Section B outlines and evaluates the approach taken to the taxation of gambling gains in Canada, explaining that the income tax has traditionally not taxed gains from gambling on the basis that gambling gains are not “income from a source.” We analyze the arguments surrounding the taxation of gambling gains using the traditional tax policy criteria of equity, efficiency, and administrability, concluding in the process that the status quo of provincial governments raising revenues from gambling indirectly by being both regulator and operator has been satisfactory until recently. Section C discusses the changing legal, social, and technological contexts surrounding gambling in Canada, which are starting to disrupt the stability and acceptability of the status quo. An important observation of Section C is that since the federal government has ceded much of its claim to regulate gambling to the provinces through the provisions of the Criminal Code, the capacity to respond to these changing circumstances is vested to a large extent in the provinces. Section D discusses the implications of the changing legal, social, and technological contexts for government regulation and taxation of gambling activity in Canada from both the federal and the provincial perspectives. The regulatory approach of the U.K. is found to be the most promising for further follow-up work as the Gambling Commission develops its regulations. Section E concludes the paper.

B. GAMBLING AND INCOME TAXATION IN CANADA

Traditionally, there has been a distinction made in Anglo-Canadian income tax jurisprudence between gambling gains associated with casual wagering, and gambling gains that arise from an organized activity undertaken with a view to a profit. Gains arising from the former have typically not been subjected to income tax, on the basis that a casual gambler’s motivation was primarily one of entertainment and, hence, that casual gambling gains were not income “from a source.” Gains arising from organized gambling activities, on the other hand, have been made subject to income tax on the basis that the gains arise from the business of gambling and therefore constitute business income.
The story of the taxation of some gambling gains and not others therefore turns on the reliance of the *Income Tax Act* (ITA) on the source concept of income. Pursuant to the aptly named source concept, unless mandated for inclusion in income under a specific provision, economic gains have to be derived from a “source” of income in order to be brought under the taxable ambit of ITA. Section 3 of the ITA operationalizes the source concept:

The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property ... [Emphasis added.]

Paragraph 3(a) of the ITA explicitly identifies four sources of income: (i) income from an office; (ii) income from employment; (iii) income from a business; and (iv) income from property. It also provides explicitly that a taxpayer's income includes all income “from a source inside or outside Canada.” Capital gains are sometimes considered a fifth “source” of income (although the propriety of characterizing capital gains as a source of income

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10 R.S.C. 1985 (5th Supp.), c. 1 [ITA].
11 Certain types of gain are specifically identified in the ITA as taxable, though it would not be obvious that they constitute “income from a source.” For example, Subdivision D of Division B of Part I of the ITA makes special provision for “other sources of income,” which includes (among others) pension benefits; support payments; social assistance payments; scholarships, bursaries, and fellowships; retiring allowances; and workers compensation payments. See ss. 56–59 of the ITA. Note that subs. 56(1) begins, “Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,” which clearly signals that the specific inclusions mandated by s. 56 are in addition to—and not in substitution for—those sources of income that are identified under s. 3.
12 Although the explicit text of s. 3(6) suggests that the listed sources do not preclude others, courts have been reluctant to add new sources. This contrasts sharply with the income tax in the United States. According to § 61 of the *Internal Revenue Code*, 26 USC § 61 (1986), “gross income means all income from whatever source derived.” This definition has been interpreted very broadly and has not been limited to gains from traditional sources of income. In *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1959), Chief Justice Warren stated at 430–31 that:

> Respondents contend that punitive damages, characterized as “windfalls” flowing from the culpable conduct of third parties, are not within the scope of the section. But Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature. And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted.
The concept of income traces its origins to the distinction made between capital and income in the law of trusts. The distinction was developed in order to identify with more specificity the precise interests of income beneficiaries and capital beneficiaries. The idea was that the income beneficiary was entitled to the yield from the productive assets held in trust, and that the source itself constituted the productive assets and, hence, the scope of the claim of the capital beneficiaries. Adam Smith made a similar distinction in the Wealth of Nations in 1776:

> Whoever desires his revenue from a fund which is his own, must draw it either from his labour, from his stock, or from his land. All taxes, and all the revenue which is founded upon them, all salaries, pensions, and annuities of every kind, are ultimately derived from some one or other of those three original sources of revenue, and are paid either immediately or mediately from the wages of labour, the profits of stock, or the rent of land.

In the 1920 case of Eisner v. Macomber, decided by the United States Supreme Court, Pitney J. drew a similar distinction between capital as the source and income as the output: "the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied by springs, the latter as the outlet stream." The idea of a source of income is both coherent and long standing. The primary question, however, is whether its fine distinctions between casual gambling and organized gambling should be relevant to determining the tax treatment of gambling gains.

Despite its broad and inclusive wording, paragraph 3(a) of the ITA has long been interpreted in a fashion inspired by the approach of the English

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14 For a discussion of whether capital gains are properly construed as a fifth source of income, or whether they are more appropriately considered as income arising from the disposition of property that in itself would constitute a source of income, see D.G. Duff, Canadian Income Tax Law (Toronto: Emond Montgomery, 2005) at 40–43. Pragmatically the distinction is of little moment. Paragraph 3(a) of the ITA makes clear that taxable capital gains are to be included in a taxpayer's income for the year.
16 See Smith, above note 13 at 46.
17 252 U.S. 189 (1920).
18 Ibid at 206.
courts to the interpretation of the United Kingdom “schedular” income tax.\textsuperscript{19} The discrete and separate schedules of early United Kingdom tax legislation, such as \textit{Addingtons Act} (1803),\textsuperscript{20} were originally intended to ensure that no single official would know any person’s total income.\textsuperscript{21} Whatever was not specifically included within the ambit of one of these schedules was not taxable.\textsuperscript{22} In Canada, the strict approach of the English courts to fiscal legislation was applied early and often.\textsuperscript{23} As a consequence, the interpretation and application of paragraph 3(a) has been far more restrictive than the language of the \textit{ITA} arguably provides. As James Rendall puts it, “although obviously invited to do so, the courts have been remarkably unimaginative in recognizing sources other than the four which are named in the Act.”\textsuperscript{24} Canadian courts—most prominently the Supreme Court of Canada in the \textit{Fries}\textsuperscript{25} and \textit{Schwartz}\textsuperscript{26} decisions from the 1990s—have been reluctant to identify sources of income apart from the four sources named in paragraph 3(a).\textsuperscript{27}

The most important Canadian case to hold explicitly that casual gambling gains are not taxable is \textit{Morden},\textsuperscript{28} a 1962 decision of the Exchequer Court. Morden was a hotel proprietor in Sarnia who had earned substantial amounts from playing cards and betting on horse races and sporting events in the tax years from 1949 to 1953. The Minister had reassessed Morden, arguing that he should have included in his taxable income his wagering winnings from those taxation years. Cameron J. stated that Morden’s gambling activities up until 1948 “were so extensively organized and occupied so much of his time and attention that, had they continued throughout the years in question, any net gain therefrom might possibly have been income

\textsuperscript{19} The income tax in the UK preceded our \textit{Income War Tax Act}, S.C. 1917, c. 28, by more than a century.
\textsuperscript{20} 1803 (43 Geo. III), c. 122.
\textsuperscript{22} \textit{Ibid.}
\textsuperscript{24} J. Rendall “Defining the Tax Base” in B.G. Hensen, V. Krishna, & J.A. Rendall, eds., \textit{Canadian Taxation} (Toronto: Richard De Boo, 1984) at 60.
\textsuperscript{27} An earlier decision by the Supreme Court of Canada in \textit{Curran v. Canada (Minister of National Revenue)}, [1959] S.C.R. 850 [Curran], suggested that the Court’s attitude to the source concept in s. 3 would be more flexible. However, given the more recent decisions in \textit{Fries} and \textit{Schwartz} it appears the Court has boxed in the reasoning in \textit{Curran}.
\textsuperscript{28} \textit{Canada (Minister of National Revenue) v. Morden}, [1962] Ex. C.R. 29 [Morden].
Nevertheless, making reference to a number of the relevant English authorities, Cameron J. held that for "all the taxation years in question, his gambling activities were only occasional and amounted to nothing more than indulging in a hobby or recreation, and that therefore his net income therefrom was not taxable." Cameron J. stated in closing that "while his bets were high at times and his gains substantial, I can find no evidence that his operations amounted to a calling or the carrying on of a business. Gambling was in his blood and it provided him with the excitement which he craved. It was his hobby."

Following Morden, it has been generally accepted in Canadian income tax jurisprudence that gambling gains will not constitute income from a source if the gains result from casual betting that is more akin to a hobby than to a business. It will only be cases in which a taxpayer is conducting a business of gambling by, for example, acting as a bookmaker, that the gains will be susceptible to income tax.

In 1994 the House of Commons Standing Committee on Finance proposed overturning this case law by providing for the inclusion of gambling gains in taxable income. The proposal would have included lottery winnings as well. At the time, the Standing Committee on Finance estimated that doing so would generate at least $200 million dollars a year in additional tax revenue. However, given the rapid growth in lottery and casino play since 1994 and the likely conservative nature of this figure, a more current estimate might be considerably higher.

In the 2003 Tax Expenditure Report, the Department of Finance estimated that subjecting gambling winnings to income tax would reap the federal government over $6 billion dollars in revenue. This figure

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29 Ibid. at 32.
30 Among the cases considered by Cameron J. were the following: *Down v. Campson* (1937), 21 T.C. 60 (professional golfer who made private bets and thereby earned significant amounts of money over a period of ten years; not taxable); *Jones v. Federal Commissioner of Taxation* (1932), 2 A.T.D. 16 (taxpayer's only attraction to gambling was fun and sport of it; no system; not taxable); *In Re Lula Indra Sin* (1940), 8 I.T.R. 187 (in these cases is whether the gambling is of a commercial character or whether it is primarily for entertainment); *Partridge v. Mallandain* (1886), 18 Q.B.D. 276 (bookmakers are taxable on their income from accepting wagers); and *Graham v. Green* (1935), 9 T.C. 309 (taxpayers who bet with bookmakers are generally not taxable since their activities will not generally amount to a trade).
31 *Morden*, above note 28 at 32.
32 Ibid. at 35.
33 Canada, Parliament, Standing Committee on Finance, "Confronting Canada's Deficit Crisis" in Minutes of Proceedings and Evidence of the Standing Committee on Finance, No. 97 (5 December 1994) at 32-33 [Standing Committee on Finance].
should be interpreted with caution, however, as it is subject to a number of
caveats. For example, it assumes all gambling winnings would be treated as
taxable income without provision for the deductibility of gambling losses.

This would probably not be politically feasible, since gambling losses are
necessarily incurred to generate gambling gains. Moreover, if there would
be a minimum threshold below which gambling winnings were not taxed,
as is likely for administrative purposes, then the expected revenue would be
substantially lower. In addition, the estimate does not take into account the
possibility that the taxation of gambling winnings might result in a change
in behaviour by gamblers as well as by casinos and lottery providers.

The case made for taxing gambling gains essentially mirrors the case
for a comprehensive tax base promoted by the Carter Commission, a position first popularized in the writings of Robert Haig and Henry Simons, and later taken up by others, such as William Andrews. The case for a comprehensive tax base that includes net gambling gains can be evaluated according to conventional tax policy criteria of (i) vertical and horizontal

Vertical equity requires individuals with a greater ability to pay to con-
tribute more to financing public expenditures than those with a lesser
ability to pay. Those lucky enough to be the recipients of large gambling
gains (e.g. lottery jackpot winners) generally experience economic gains
that dwarf those of the vast majority of Canadians who earn income in
more conventional ways, such as through employment or business activities. These individuals correspondingly have a greater ability to pay income
tax. However, winners of large gambling gains will tend to pay the same
amount of income tax as taxpayers with the same level of non-gambling (i.e.

35 Carter Commission, above note 15.
36 According to Henry Simons, the appropriate definition of personal income is as follows:
"Personal income may be defined as the algebraic sum of (1) the market value of rights exer-
cised in consumption and (2) the change in value of the store of property rights between the
beginning and the end of the period in question." See Henry C. Simons, Personal Income
Taxation: The Definition of Income as a Problem of Fiscal Policy (Chicago: University of Chi-
ca go Press, 1938) at 7. The Haig-Simons formula can be stated less formally, but more sim-
ply, as "spending plus saving." See Robert M. Haig, "The Concept of Income - Economic
and Legal Aspects" in Robert M. Haig, ed., The Federal Income Tax (New York: Columbia
University Press, 1924). For a treatment of the problems associated with conceptualizing in-
come under the Haig-Simons definition, see Boris I. Bittker, "A 'Comprehensive Tax Base'
37 See, for example, W. D. Andrews, "Personal Deductions in an Ideal Income Tax" (1972) 86
Harv. L. Rev. 309. The idea was well put by Henry Simons' statement of principle that, "Any
exemption of receipts by kind is clearly incompatible with the essential rationale of income
taxes." See H.C. Simons, Personal Income Taxation (Chicago: University of Chicago Press,
1938) at 170.
taxable) income due to the non-taxation of gambling gains.\textsuperscript{38} This suggests, of course, that not taxing gambling gains is a violation of the precepts of vertical equity.

Horizontal equity is the principle that individuals with equal ability to pay should pay the same amount of tax. If two individuals have equal ability to pay through different means, one through gambling gains and one through business income, then because gambling gains are not taxed, the individual earning income from business will pay more tax. This violates horizontal equity. Given the \textit{prima facie} violation of both vertical and horizontal equity by the non-taxation of gambling gains, it seems there is nothing repugnant from an equity perspective about including such gains in the income tax base.

Economic efficiency demands that a tax raise the desired level of revenue with a minimal effect on taxpayer behaviour. To the extent that including lottery and gambling gains in the income tax base will adversely affect lottery participation and gambling, it might not be a desirable tax. Since lottery playing and gambling activity might be expected to decline as a result of taxing gambling gains, any increase in the revenues of the federal government might be offset, at least in part, by a decline in provincial government revenues from offering these gambling opportunities.\textsuperscript{39} To assess the economic efficiency of imposing income tax on gambling gains, therefore, a central empirical question is the extent to which taxing winnings would affect gambling behaviour.

Economists have traditionally had difficulty providing convincing theoretical explanations for why people gamble. The standard theory for consumer choice in the presence of uncertainty is the expected utility theory. The theory assumes that individuals are risk averse and have diminishing marginal utility of wealth.\textsuperscript{40} It suggests that consumers would be disinterested in fair wagering (e.g., a one-to-one wager on flipping "heads" with a fair coin). Of course, to the extent that there is a house advantage (as there always is), most organized gambling involves gambles that put the player in a prospectively losing position. In spite of the house advantage, however, people do gamble, and often heavily. One explanation for the prevalence of gambling is that it is a form of entertainment; gamblers are willing to pay a price for the fun of gambling. Other theories have also been advanced.

\begin{itemize}
  \item \textsuperscript{38} In future tax years, however, they will pay tax on any property income their winnings earn for them, such as interest or dividends.
  \item \textsuperscript{39} This may explain, in part, the resistance of provinces to federal plans to tax lottery and gambling winnings.
  \item \textsuperscript{40} E J. McCaffery, "Why People Play Lotteries and Why it Matters" (1994) Wis. L. Rev. 71 at 75–76.
\end{itemize}
One of these theories, supported by considerable empirical evidence, is that the vast majority of individuals do not process small probabilities well. Daniel Kahneman and Amos Tversky have demonstrated that people assess probabilities non-linearly, with low probability events tending to be qualitatively classified as either possible or impossible. Whether a low probability event will tend to be over- or under-weighted will usually depend on the relationship between the person and the event. If the event is important and beneficial to the person (e.g. winning a lottery or the World Series of Poker), the literature suggests they will tend to overestimate the probability of the event occurring by classifying it as unlikely, but possible. If it is processed as something that is impossible, of course, the probability will be underestimated. Colin Camerer and Howard Kunreuther have remarked that, "people may overestimate the chances of winning a lottery because of the excitement of winning and underestimate the chances of having houses destroyed in an earthquake because of its horror." There is some evidence that these findings apply in the lottery context. In one study, the authors found that increasing the size of the jackpot increased lottery play, even when the probability of winning decreased. Empirically it seems that the size of a jackpot is more important to players than the probability of winning.

While gamblers may not, in general, accurately comprehend the odds of winning, they nonetheless use various heuristics to assist in comprehending the probability of winning. One such mental shortcut is the availability heuristic, pursuant to which the perceived probability of an event occurring is based on how easily that event can be imagined. In one study researchers found that people believed that the likelihood of death from widely reported disasters, such as fires or homicides, was greater than the likelihood of death from diabetes and breast cancer. In fact, the two diseases take twice as many lives as the two more dramatic events. The availability heuristic explains the "winning ticket sold here" signs posted at lottery retailers; the

44 Ibid at 571.
public advertisements with pictures of lottery winners; and advertising campaigns, such as the Ontario Lottery and Gaming Corporation’s “just imagine the freedom” campaign, promoting Lotto 6/49.

Gamblers frequently also exhibit an optimism bias; they may simply believe that they are luckier than average and, therefore, that the conventional probabilities do not apply to them in the same way as they do to others. Of course, skill plays a role in determining outcomes in some forms of gambling, such as blackjack, poker, horse racing, and sports betting. On the other hand, for many forms of gambling, the probabilities of winning are wholly independent of a player’s skill. Nevertheless, many players believe that their probability of, for example, choosing a winning number in a lottery, can be improved by applying skill, effort, and even research (witness the various books promising systems to select winning lottery numbers).47

There are several other explanations of gambling that assume gamblers accurately perceive, process, and understand the odds facing them, but choose to gamble anyway. One theory posits that since some items may only be purchased in discrete units, such as expensive cars, houses, and vacations, saving a few extra dollars a week will do little to improve one’s lot, but a gamble, even an unfair one, will provide individuals with the opportunity to improve their consumption profile.48 While gambling may not be a great means of obtaining the desired consumption, it may be a better option than simply forgoing the consumption entirely. To make this argument more compelling, it is often matched with the plausible assumption of an imperfect capital market, which makes it difficult or impossible for some groups to borrow to finance consumption.49

A complementary explanation holds that many gamblers may not have access to alternative forms of savings. Alternative investments may not be available to certain income groups (due to minimum deposit requirements, or high fees on small bank accounts).50 In this sense, lotteries may assume the functions of a stock market for the ill informed. Another barrier to traditional savings methods may be that savings will often be considered in determining entitlement to social assistance programs.51

These theories give us mixed signals about the likely behavioural response of gamblers to the taxation of gambling gains. If gamblers are insensitive to the probability of winning, but responsive to the value of

47 Cook & Clotfelter “The Peculiar Scale,” above note 45 at 638; but see also McCaffery, above note 40 at 88–89.
48 McCaffery, ibid at 99–100.
49 Ibid.
50 Ibid. at 107–8.
51 Ibid. at 108–9.
payouts, then taxing gambling gains will affect behaviour, but perhaps not consistently for all types of gambling. Gambling opportunities with long odds and high payouts (e.g. lotteries) might not respond as significantly as casino games with lower odds and higher payouts. If, however, the tax is imagined to be one on net gambling gains, then the effective tax rate would be substantially reduced. If every gambler realized his or her expected value, the tax base would be zero, since losses would exceed gains for all players. For this reason, an income tax on gambling gains would almost certainly have to be on net gains. If only gross winnings were taxed without providing relief for gambling losses, the tax would not be an income tax, but rather a transaction tax on gambling activity.\footnote{B.J.W. Raby & W.L. Raby, "Offsetting Gambling Gains With Losses Not Always Possible" in 90 Tax Notes 1515 at 1515.} Indeed, in the United States gambling losses are deductible, but only against gambling winnings.\footnote{Ibid.} If net gambling gains were subject to tax, then even if gamblers were acutely responsive to changes in the payout of their gamble, allowing gamblers to deduct losses against winnings would considerably reduce the perceived tax rate, which suggests that an income tax on net gambling gains would not be objectionable from the standpoint of economic efficiency, since it would tend to have considerably reduced effects on the behaviour of gamblers.

From the perspective of administrative efficiency, one frequently expressed concern about imposing an income tax on net gambling winnings is the difficulty associated with monitoring gambling activity and winnings and losses. Although new developments in player tracking systems may soon change this, to date the experience in the United States has been unsatisfactory. Reported gross gambling winnings and losses appear to be dramatically lower than they should be given the size of the gambling industry in the United States.\footnote{David Campbell & Michael Parisi, "Individual Income Tax Returns 2001," online: www.irs.gov/pub/irs-soi/01indtr.pdf at 30 and 41.}

The problem of tracking winnings may have historical roots. For many years, gambling itself was strictly prohibited and gambling contracts were not legally enforceable.\footnote{Stephen A. Zorn, "The Federal Tax Treatment of Gambling: Fairness or Obsolete Moralism" (1995) 49 Tax Lawyer 1 at 20.} Two obvious responses to address the monitoring and reporting problems include (i) requiring gambling establishments to withhold taxes from a taxpayer’s gambling winnings; and (ii) requiring gambling establishments to disclose information to tax authorities regarding gambling winnings.
The Internal Revenue Service (IRS) uses both methods to some extent. A 28 percent withholding rate is applied to the payment of gambling winnings of more than $5,000 from a state lottery, or a sweepstakes, and of other gambling winnings of more than $5,000 where the winnings amount to three-hundred times the wager or more. No withholdings are required for winnings from slot machines, keno, or bingo, except for winnings on these games by foreigners.6 Gaming establishments are required to report the taxpayer’s name and taxpayer identification number when they pay out gambling winnings of more than $600 for any winnings that are subject to the withholding tax, gambling winnings in excess of $1,200 for bingo and slot machines, and winnings in excess of $1,500 for keno.7

A problem, however, is that the thresholds for both reporting and withholding gambling winnings are high enough that there is no record produced and no income tax withheld for a significant proportion of gambling winnings. Some evidence suggests that sophisticated gambling operators set the bulk of the payouts such that most winnings will be under the reporting threshold. One possible response would be to reduce the thresholds at which gambling winnings are reported and withheld. However, this approach would come with additional, potentially significant, transaction costs. It might be prohibitively expensive for gambling providers to collect information on taxpayers for every win, regardless of the size, much less to withhold a share of the winnings.

An added (though probably relatively small) problem with withholding a share of the winnings is that it would have the effect of reducing the liquidity of gamblers. With imperfect capital markets, absent withholding, gamblers could presumably gamble longer, betting more. Withholding would thus reduce gambling turnover. Even absent liquidity constraints and with perfect capital markets, withholding a share of all gambling winning may alter a gambler’s behaviour. Individuals distinguish between “won” money or “house money” and their “own” money, and they may be more willing to gamble with money they have “won” than money from another source.8

Even if one concludes that it is desirable, as an abstract policy matter, for the equity and efficiency reasons canvassed above, to tax net gambling winnings, and even if the administrative considerations can be satisfactorily ad-

7 Ibid. at 80.
9 See R.H. Thaler, “Mental Accounting Matters” in Advances in Behavioral Economics, above note 46, 75 at 52.
dressed, the political feasibility of net gambling taxation is another question altogether. Indeed, on prior occasions when the suggestion has been floated, the response in the media and among political opposition parties has been overwhelmingly negative. Peter Hogg and his co-authors speculate that the opposition of the provinces that operate lotteries and casinos was decisive with the failed 1994 proposal of the House of Commons Standing Committee on Finance to tax lottery and casino winnings greater than $500 (with losses deductible against winnings). Of course, the taxation of gambling winnings might have some adverse effects on total gambling activity in provincially-operated or sanctioned facilities, but the effects on federal governmental gambling revenue would presumably be positive, since the federal government’s take from gambling activities is not currently significant. And any decline in total gambling and lottery-playing revenue from reduced play would, to some extent, be offset by increased federal and provincial income tax revenue, which would depend on the precise design of the tax imposed on gambling gains. This is consistent with opposition by the provinces to the proposal of the House of Commons Standing Committee on Finance, since even though the overall government take would probably remain the same or increase, the federal government’s fiscal position would benefit to some extent at the expense of the provinces. Of course, the provinces might be appeased with increased transfer payments from the federal government, just as the provinces agreed to make annual payments to the federal government when it abandoned the lottery business. Still, given the nature of inter-governmental relations in Canada, in the absence of some form of compromise, provincial opposition would be a significant political hurdle to any attempt to introduce income taxes on lottery and gambling winnings.

In the absence of other considerations, such as the rapidly changing technological context, and despite the equity and efficiency arguments in favour of including net gambling gains in the income tax base, ultimately the status quo against the taxation of casual gambling gains should probably prevail. As the primary provider of gambling opportunities, the provincial governments have already grappled with and solved many of the equity, efficiency, and administrative problems associated with not including net gambling gains in the income tax base. As the regulators and providers of gambling facilities in Canada, the provinces have imposed what can be


61 See especially the dissenting opinion of the Bloc Québécois members of the Standing Committee on Finance in the Standing Committee on Finance, above note 33 at 93.

62 Vaillancourt & Roy, below note 67 at 7.
viewed, more or less, as an excise tax on various forms of gambling. However, as is explained in the next section, advancing information technology and the advent of online gambling is now starting to undermine the position of provincial governments and the case for not including net gambling gains in the income tax base; the *status quo* has been acceptable in part because of the extent the provinces implicitly tax gambling activities through their role as providers and regulators.

C. THE CHANGING LEGAL, SOCIAL AND TECHNOLOGICAL CONTEXT

Gambling debts were not generally enforceable at common law on the basis that wagering contracts violated public policy. To some extent, the public policy position had two rationales: (i) a perceived need to protect the courts—a public resource—from the costs of adjudicating civil suits brought by disappointed wagerers and (ii) the idea that gambling itself was morally corrupting.

The ultimate aim, with regard to the second underlying rationale, was to subdue gambling activity if not in frequency, then at least in magnitude. The reasoning was that if individuals knew *ex ante* that wagering contracts would be enforceable in honour only and not at law, then they would be less likely to enter into them for fear of becoming a victim of opportunistic behaviour. The idea that gambling is *per se* morally wrong is presumably the reason it was historically prohibited by the criminal law, first in the various gambling offences established by Parliament in 1886 and 1888, and later upon codification in the *Criminal Code*.

Today it remains the case that private gambling debts are not enforceable in some provinces, although public policy has presumably moved away from the idea that gambling itself is morally corrupting. This is demonstrated by two observations. First, debts arising from legal gambling have been found to be enforceable, with some mixed experience, in the courts. Second, provincial governments are now heavily involved in promoting lotteries and gambling.

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64 For example, s. 47.1 of Ontario’s *Gaming Control Act*, S.O. 1992, c. 24, provides that “No person may use civil proceedings to recover money owing to the person resulting from the participating in or betting on a lottery scheme within the meaning of section 207 of the *Criminal Code* (Canada) conducted in Ontario unless the lottery scheme is authorized under subsection 207(1) of the Code.”
65 Legal gambling includes gambling sanctioned by a province or foreign gambling legally conducted in the foreign jurisdiction.
Provisions establishing the gambling offences in 1886 and 1888 were incorporated into the Criminal Code in 1892. It was not until 1969 that the prohibition was partially rescinded as federal and provincial governments were able to conduct lotteries and charitable organizations operated lottery schemes under licence. The 1970s saw provincial governments, led by Québec, seize the opportunity opened by reforms to introduce various provincial lotteries, as well as a short-lived federal lottery. In 1985, the federal government abandoned the idea of a lottery operated by the federal government in exchange for payments from the provinces. These payments now amount to approximately $64 million annually. The Criminal Code was amended to delegate to provinces exclusive authority to manage and conduct lotteries, and also games using computers, video devices, and slot machines. Betting on horse races via telephone was also permitted for the first time. In 1998, the Criminal Code’s prohibition against dice games was removed.

Since the 1985 amendment of the Criminal Code, legal gambling in Canada has expanded dramatically. In 2002 to 2003, revenues from provincial government-operated gambling exceeded $12 billion. The average Canadian adult expended $481 on legal gambling. This ranged from $318 in Prince Edward Island to $641 in Alberta. The four most populous provinces (Ontario, Québec, Alberta, and British Columbia) each generated more than $1 billion from gambling in 2002 to 2003. Ontario alone raised $4.9 billion. Part of the growth of legal gambling has been a result of changing attitudes towards gambling in Canada.

It is unclear precisely why attitudes towards gambling have shifted. Gambling was regarded as a vice in the nineteenth century, but throughout most of the twentieth century it was considered by many (if not most) Canadians to be a legitimate form of entertainment, with particular waves of support for gambling in the 1920s and 1950s. Some have speculated that the change is based in part on the increased involvement of charitable organizations in providing gambling activities. On the whole, Canadian public opinion regarding gambling has been, and remains, supportive but somewhat am-

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69 Legalization of Gambling in Canada, above note 63 at 14.
70 Ibid.
71 Ibid, at 20.
bivalent. Most of the public opinion has been supportive of the legalization of gambling in the abstract, with some concern about related social ills such as compulsive gambling, which is associated with certain gambling options (e.g., VLTs).\textsuperscript{73}

On the technological front, the internet has made possible entirely new vistas of gambling experiences that are just beginning to be exploited. Online gambling began in 1995 with Internet Casinos Inc.\textsuperscript{74} and as of 2006 had grown into a US$15 billion-a-year industry worldwide.\textsuperscript{75} North American players have historically been dominant, but growth is expected to be driven by players from outside North America in light of recent developments in the United States, most importantly, the Unlawful Internet Gambling Enforcement Act of 2006.\textsuperscript{76} Players from around the world have an estimated 1,200 sites to choose from, with new games, concepts, and other variations being introduced all the time. The online casino sector continues to grow even as it is becoming more and more competitive. Anecdotally, Cryptologic experienced better than 31 percent annualized growth in revenues from 2002 to 2006.\textsuperscript{77} Overall online gambling revenues are projected to top US$1.8 billion by 2008.\textsuperscript{78}

Undoubtedly, the fastest growing segment in the history of internet gambling has been online poker.\textsuperscript{79} The game's popularity has increased dramatically both online and off-line, thanks in part to unprecedented television exposure on major North American networks such as ESPN.\textsuperscript{80} Coverage of the World Series of Poker, the World Poker Tour, and even a variety of versions of Celebrity Poker has brought the game to the forefront of popular culture. Accordingly, the popularity of online poker sites has exploded.\textsuperscript{81} Cryptologic reported 26 percent growth in its poker fees in 2006 over the previous year, and its growth is outpacing the firm's general rev-

\textsuperscript{73} Ibid at 30-32.
\textsuperscript{74} Online: www.gamblingmagazine.com/articles/03/03-02.htm.
\textsuperscript{75} According to PartyGaming, Global Betting and Gaming Consultants has projected that online gambling grew from a $12.4 billion industry in 2005 to $13.2 billion in 2006: online: www.partygaming.com/about_us/global_online.html.
\textsuperscript{76} Ibid.
\textsuperscript{78} "A Blue Chip Investment?" The Economist (27 June 2005), online: www.economist.com/\allowbreak agenda/displayStory.cfm?story_id=4131302.
\textsuperscript{79} Cryptologic 2006 Annual Report, above note 77 at 15.
\textsuperscript{81} Ibid.
In the first quarter of 2005, PartyGaming Plc had revenues of US$222 million, which was 93 percent higher than the first quarter of 2004, and it had a profit of US$128 million, an 81 percent increase.\(^8\) Approximately 92 percent of the company’s revenues are derived from PartyPoker.com.\(^4\) In the month of May, 2005, PokerPulse.com estimates that 1.8 million people played for real money on the web, a 50 percent increase over May, 2004.\(^5\)

Off-track horse race wagering is a less heralded sector of online gambling, but it, too, is growing. Current websites include online wagering, simulcast viewing, and in-depth, up-to-the-minute information on horse racing. Customers can receive interactive, real-time audio/video broadcasts, access to a comprehensive database of handicapping information, and the ability to wager on a wide selection of horse races around the world. Online racing website “www.youbet.com” experienced a 54 percent revenue increase in 2006 from the previous year, to more than US $136.7 million.\(^6\)

Despite the rapid growth in the online gambling industry, its revenues remain at approximately 5 percent of total global gambling revenue. That finding suggests the possibility of even more substantial industry growth in the future,\(^7\) especially as the rest of the world catches up with North America. According to recent projections, online gambling revenue worldwide will reach $24 billion in 2010.\(^8\) If the projections hold up, the growth will mostly be realized in Europe and Asia rather than in North America, given the strong moves the United States has made to curb online gambling.\(^9\)

In the longer run, technological developments will, at least in theory, make gambling accessible to basically everyone at anytime, anywhere. The technological developments will test the capacity of governments to respond sensitively and effectively in combating problem gambling, continuing to raise reasonable revenues, and allowing those who seek to wager for entertainment purposes to do so safely and conveniently. The central challenge facing governments at this point is framing regulatory and tax measures to respond to current and future gambling technology.

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\(^{82}\) Cryptologic 2006 Annual Report, above note 77 at 31.
\(^{83}\) Above note 78.
\(^{84}\) Ibid.
\(^{85}\) Ibid.
\(^{86}\) Youbet.com Inc. 2006 Annual Report at F-9, online: www.sec.gov/Archives/edgar/data/814035/000116310070000293/c702771o0k.htm#124.
\(^{87}\) Cryptologic 2006 Annual Report, above note 77.
\(^{89}\) Ibid.
As it stands, the current Criminal Code provisions make participation in online gambling legally ambiguous in Canada. However, despite the lack of hard numbers, there is little doubt that many tens of thousands, perhaps millions, of Canadians have already participated in online gambling. In terms of enforcement priorities, of course, the Criminal Code provisions, and those charged with their enforcement, are understandably concentrating their efforts at combating those who are operating clearly prohibited gambling facilities.

D. CHOICES FACING CANADIAN GOVERNMENTS

There are several responses open to Canadian governments to deal with the changing legal, social, and technological contexts of online gambling. It might be assumed that any significant response would need to be done through Parliament, since the major legal constraints are a function of what is permitted by the Criminal Code and the ITA. To some extent this is correct, since the income tax base is controlled by the provisions of the ITA, and the Criminal Code contains severe restrictions on legally permissible gambling activities. However, even if both the Criminal Code and the ITA remained unchanged, paragraph 207(1)(a) of the Criminal Code almost certainly allows provinces to act collectively to gain the advantages associated with economies of scale inherent in providing online gambling activities.

If the concern is primarily about preserving government revenues associated with gambling, which it probably is, there are two major choices. First is the introduction of taxation of net gambling gains under the ITA. This first issue is within the exclusive purview of the federal government by virtue of the Tax Collection Agreements, with the exception of Québec, which does not have a Tax Collection Agreement with the federal government. Second is the regulation of online gambling.

With respect to the first major choice, the analysis of section B of this paper suggests that, from an equity and efficiency perspective, net gambling gains should be taxed. The major sticking points are political and administrative in nature. The revenue interests of the federal government seem to militate in favour of including net gambling gains in the income

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91 In 1999 it was estimated that 0.5 percent of Canadians had used online gambling sites. R. Kelley, P. Todosichuk, & J. Azmi, Gambling @ Home: Internet Gambling in Canada, online: www.gamblingresearch.org/download.sv/Gambling@Home.pdf?docid=1510 (Canada West Foundation). If this estimate is correct, it suggests that in 1999 approximately 150,000 Canadians had already used such services. In the subsequent six years this figure would have grown significantly.
tax base. Resistance to the idea of taxing net gambling gains in the past has come from the public and the provinces. If the provinces, as regulators and providers of gambling facilities in Canada, are able to safeguard sufficiently their indirect ability to raise revenues through gambling opportunities, then there is little reason to press for including net gambling gains in the income tax base. However, if provinces begin to find that they are losing play and revenues to operators of online gambling sites, there will be a strong (though not determinative) administrative and policy case to be made for including net gambling gains in the income tax base. It is unclear at what stage this might occur, but it is conceivable that at some point the provinces might be inclined to forge an agreement with Parliament whereby net gambling gains would be subject to income tax on the basis that provincial revenues have been so eroded that there would not be a significant shift in gambling revenues away from the provinces.

As for the second major choice, maintaining the current Criminal Code provisions with nothing more, would essentially mean that online gambling that is not managed and conducted by the provinces is prohibited in Canada. The current text of paragraph 207(1)(a) allows for interprovincial cooperation in the provision of lottery schemes. The definition of lottery scheme in subsection 207(4) does not contemplate online gambling. Of course, any ambiguity could be dispelled by a Parliamentary amendment to the Criminal Code to dispositively address online gambling, even if only “for greater certainty” in the application existing provisions to technology that was not contemplated at the time the provisions were drafted. Of course, in dispelling any ambiguity, Parliament might also choose to expressly prohibit all online gambling. However, this would be undesirable for a number of reasons. Perhaps most importantly, it would probably be ineffective beyond preventing provinces from providing, managing, or conducting online gambling, unless serious enforcement measures were pursued. In the United States, the National Gaming Impact Study Commission, which was struck by President Clinton in 1996 and reported on 18 June 1999, recognized the difficulties associated with prohibiting online gambling, but it recommended that the American federal government develop enforcement strategies targeting “Internet service providers, credit card providers, money transfer agencies, makers of wireless communications systems, and others who intentionally or unintentionally facilitate Internet gambling transactions.” While similar measures might be effective in reducing online gambling...

92 Arthur “Bugs” Baer is said to have remarked, “Betting is pretty much like liquor: you can make it illegal, but you cannot make it unpopular.”
93 Online: http://govinfo.library.unt.edu/ngisc/reports/ngisc-frr.pdf at 5.
gambling in Canada, it is unlikely that the cost of the measures would be justified by the preservation of provincial gambling revenues.

Given that the prohibition of online gambling by the federal government may well be ineffective and counter-productive, it is natural to consider the power of Parliament to itself regulate online gambling. An exhaustive consideration of the scope of the federal government’s constitutional powers under section 91 of the Constitution Act, 1867 and their relationship to online gambling, is beyond the scope of this paper. Nevertheless, it prima facie appears, given the relatively broad ambit of the criminal law, that Parliament is constitutionally competent to engage in at least some regulation—beyond what is currently indirectly done through the Criminal Code—of online gambling. It is unclear, however, how finely grained the regulation of online gambling could be under the criminal law power. A prohibition would clearly be within Parliament’s power; an exhaustive and detailed regulatory scheme involving a federal agency to oversee online gambling might not be. In any event, given the federal government’s long-time withdrawal from gambling concerns, it appears that a regulatory response, if any, will originate with the provinces.

Provincial governments might join collectively to pursue their interests with two main strategies. First, the provinces might regulate and license third-party online gambling operators. Second, the provinces might become operators of online gambling sites on their own, either alone or collectively, in a way that satisfies the current wording of the Criminal Code. There are several advantages to the first strategy of regulation and licensing. For example, there would be no need to invest in the infrastructure, branding, or marketing of online gambling services. In addition, provincial governments would begin to participate in the revenues generated by online gambling sites instead of being entirely cannibalized by them. The provincial governments would not have to pick any “winners” and would be able to let the market determine the most attractive online gambling destinations. The regulatory approach would also lessen any “illegal” stigma that is currently associated with online gambling, and it would allow the government to monitor problem gambling behaviour in tandem with the providers. Being able to regulate online gambling operators would also help to increase player confidence in the sites, possibly leading to higher volumes of play and greater revenues and, therefore, greater licensing fees.

The disadvantage of the regulatory strategy would be that the provinces might find traditional gambling volumes falling more quickly than they otherwise would and some significant revenue losses stemming from com-
petition with and cannibalization of the business of provincially-operated casinos and lotteries. In addition, the provinces might not be able to dissuade individuals from using illegitimate online gambling sites. However, to the extent that the terms of dealing offered by licensed sites are not disadvantageous relative to the market, and with at least some enforcement effort to make sure that Canadian financial institutions cooperate with only government-approved sites, it is probably reasonable to expect that most activity would migrate to approved sites.\textsuperscript{91} If it is a regulatory approach that is decided upon, Canadian provincial policymakers will not be forced to forge a solution out of whole cloth. The United Kingdom has already passed legislation updating its gambling laws that allow for online gambling operators to be licensed and taxed in the United Kingdom. And, of course, as experience grows in the United Kingdom, the lessons to be learned will deepen and broaden.

In the United Kingdom the \textit{Gambling Act 2005} (GA) received Royal Assent on 7 April 2005.\textsuperscript{96} The GA updates the previous hodge-podge of gambling legislation, which had last been updated in the 1980s. Among the features of the GA are a number of provisions addressing online gambling, referred to more broadly throughout the legislation as “remote gambling.”\textsuperscript{97} The greatest innovation of the GA is the introduction of the Gambling Commission, which was launched on 1 October 2005,\textsuperscript{98} though it only began governing remote gambling in 2007.\textsuperscript{99} The Gambling Commission is a “unified regulator for gambling in Great Britain” that oversees all regulatory and licensing aspects of gambling, with the exception of spread betting.\textsuperscript{100} The Commission has three main objectives: (i) to protect children and other vulnerable people from being harmed or exploited by gambling; (ii) to prevent links between gambling and crime; and (iii) to ensure that gambling is conducted in a fair and open way.\textsuperscript{101}

The GA requires firms that offer remote gambling activities, such as online gambling, to be licensed. The licensing system is intended to be flex-

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\textsuperscript{95} Sports Select is an example where the government provided its own competing version of what bookmakers were offering. Unfortunately, the government game had a 35 percent house edge, which made it (and continues to make it) weak competition for illegal bookmakers who can offer better odds, credit, and telephone betting services.

\textsuperscript{96} See Department for Culture, Media, and Sport, online: http://wwwiculture.gov.uk.

\textsuperscript{97} See especially the definition of “remote gambling” in s. 4 of the \textit{Gambling Act 2005} (U.K.), 2005, c. 19 [GA]. The full text of the GA is available online: www.opsi.gov.uk/acts/acts2005/20050019.htm.

\textsuperscript{98} Online: www.gamblingcommission.gov.uk/client/index.asp.

\textsuperscript{99} “General FAQs,” online: www.gamblingcommission.gov.uk/client/faqs.asp.


\textsuperscript{101} See ibid.
ible, with considerable discretion to respond to new technological developments residing in the Gambling Commission. Advertising of gambling is controlled by the GA, with one of the central aims being the prevention of advertising by non-licensed providers. The Secretary of State also has the power under the GA to make regulations concerning the content of gambling advertisements. The GA provides for ten different classes of licence, which can be issued and held in both remote and face-to-face versions. There are thus twenty separate types of licences that may be held. Fees are charged annually for the licences; if fees are not paid, licences may be revoked by the Gambling Commission. The Gambling Commission has recently published its licensing conditions and a code of practice, after extensive consultations with interested parties. Canadian policymakers would be wise to take a close look at the result of these consultations if the first alternative of regulating and licensing third parties is the option taken.

The second option open to Canadian provinces would be to compete directly with existing online gambling sites, either alone or collectively, in a manner that results in provinces "managing or conducting" the operation in satisfaction of the dictates of section 207 of the Criminal Code. The regulatory model for this interprovincial cooperation in the provision of online gambling would be the Interprovincial Lottery Corporation (ILC), which operates national lotteries, including Lotto 6/49 and Super 7, on behalf of Canada's five regional lottery corporations. A similar approach in the context of online gambling would exhibit several advantages over the status quo. It would not require the cooperation of the federal government, since no amendment to the Criminal Code would be necessary. In terms of operations, the imprimatur of the ILC would lend the site additional credibility, in that players would have added reason to believe that the games are being operated fairly. Moreover, concerns such as play by minors or compulsive gamblers would be easier to control. Unlike the regulate and license approach, there would be no need to worry about competition or cannibalization, so long as the ILC's site offers terms that are comparable with competing foreign online gambling sites. In fact, the revenues from an ILC site might well exceed the regulatory revenues earned under the first approach, since the ILC will be earning implicit revenues not unlike those currently being earned by the provinces through more conventional gambling and lottery offerings. The disadvantages include the potential cannibalization of revenues earned by the provinces through their current lottery and gaming operations, and potentially unacceptably higher rates.

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102 Ibid.
103 Online: www.welc.com.
of problem gambling, though measures could be taken to help ensure that such problems are minimized.

E. CONCLUSION

Internet use has grown dramatically in Canada in recent years. This trend has joined with the increasing popularity and social legitimacy in Canada of gambling, to produce an environment that is particularly receptive to the growth of online gambling. Online gambling sites compete with gambling options provided by provincial governments. This is problematic. Casual gambling gains are not subject to income tax at the federal or provincial level. This has been acceptable historically because subjecting casual gambling gains to income tax is administratively difficult and provincial governments have been earning considerable and growing revenues in an indirect way by being the regulators and providers of most Canadian gambling opportunities. However, to the extent that Canadians (and tourists from the United States and elsewhere) are now beginning to substitute online gambling with foreign entities for gambling facilities controlled by the provinces, this indirect revenue will be lost. The primary implication of the proliferation of foreign gambling websites is therefore that Canadian provincial governments will be sacrificing gambling revenues.

Canadian policymakers should respond to this challenge by asking and answering two fundamental questions. First, should net gambling gains be made subject to income tax? Second, how should online gambling be regulated? With regard to the first question, so long as an effective response is mounted to the issues raised by the second question, net gambling gains need not be taxed. Given widespread tastes for gambling and the possibilities presented by emerging technologies, prohibition is not likely to be a stable long-term approach. As the early 20th century experiences with the attempted prohibition of alcohol demonstrated, attempts to prohibit online gambling are apt to be costly to enforce and relatively ineffective. Two more promising routes to preserve government revenues from gambling include (i) following the example set by the United Kingdom in fashioning a new regulatory approach for gambling more generally (this would require the cooperation of the federal government); and (ii) within the existing legal framework at the federal level, provinces individually or collectively could operate one or more competing online gambling sites.