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# Window of Opportunity? Internet Gambling in Canada

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Dans cet article, nous analysons l'état actuel et l'avenir possible du jeu sur Internet au Canada. Grâce au concept de « créneaux de possibilités » (« *policy windows* ») de Kingdon, tel que l'a peaufiné Howlett (1998), nous examinons les conjonctures qui pourraient permettre que le jeu sur Internet devienne une priorité en matière de politiques publiques canadiennes. Nous concluons que cela ne pourrait se faire grâce aux voies habituelles, et nous croyons que le phénomène ne retiendra visiblement l'attention des décideurs politiques que s'il est associé à un autre problème lié à Internet, ou encore à une crise qui aurait pour conséquence d'amplifier les problèmes politiques ou économiques dus au flou qui caractérise le statut actuel du jeu sur Internet.

**Mots clés :** jeu en ligne, jeu, créneaux de possibilités (« *policy windows* »), jeu sur Internet, établissement des priorités

This article investigates the current condition and possible future of Internet gambling in Canada. We apply Howlett's (1998) refinement of Kingdon's "policy windows" theory to examine four windows of opportunity through which Internet gambling might be placed on the Canadian policy agenda. We conclude that Internet gambling is unlikely to reach the agenda through a routine means; instead, the issue might be recognized by policy-makers through alternative routes such as connection to another Internet-related issue or to a crisis that would intensify the political or economic problems related to the current murky status of online gambling.

**Keywords:** online gambling, gambling, policy windows, Internet gambling, agenda setting

In this article we apply Michael Howlett's 1998 refinement of Kingdon's famous "policy windows" theory to analyze the current and possible future status of Internet gambling policy in Canada. Specifically, we apply Howlett's typology of four distinct types of policy windows to determine the likelihood of Internet gambling's making it onto the agenda at either the national or provincial levels. Application of Howlett's typology not only affords us a systematic means of examining the status of Internet gambling in Canada but also allows us to assess his refinement, of which there has been some criticism (Soroka 1999). First, however, we review

the state of Internet gambling globally, and Canada's current policies. Then we outline Howlett's typology and apply it to existing conditions to predict what might happen to put Internet gambling on the agenda in the future.

## INTERNET GAMBLING: THE WORLD AND CANADA

Globally, online gambling is now at least a US\$15.5 billion a year market (James 2006). There are approximately 2,000 online gambling sites in operation

around the world. Researchers differ on the specific number of sites in each locale but agree that Costa Rica, Antigua and Barbuda, and the Kahnawake Mohawk Territory in Quebec are the top three locations for sites (Ranade, Bailey, and Harvey 2006; Williams and Wood 2007). Some estimates suggest that US residents spend more money on online gambling than any other public, supplying more than half of all revenues, while increasing their activity at a rate of more than 20 percent per year (Stewart 2006, 1-2). Other research suggests, however, that Americans are the second-largest group of online gamblers, behind those from the Asia-Pacific region, and that the US is second to Asia in terms of total contribution to the online gambling market (Ranade, Bailey, and Harvey 2006).

A relatively small number of Canadians gamble online. One survey of Ontario adults suggested 5.3 percent had gambled on the Internet in the past year, while other national research suggests a much lower figure—less than 1 percent (MacKay 2004, 7). Williams and Wood (2007) suggest that about 1.5 percent of Canadians gamble online.<sup>1</sup> In any event, Canadians do gamble online, and while some do so legally through province-sponsored sites, others do so through sites that exist in unclear legal terrain.

Before 1969, the Criminal Code of Canada banned all forms of gambling other than charity lotteries, lotteries at fairs, and parimutuel betting on horse races (Seelig and Seelig 1996). In 1969 the Code was amended to allow the federal and provincial governments to hold lotteries, but in 1985 the federal government left gambling entirely to the provinces in exchange for a payment of \$100 million (Seelig and Seelig 1996). Every province now has a lottery, and there are close to 50 casinos in Canada.

It is not clear whether the Criminal Code of Canada bans Internet gambling. The Criminal Code makes it illegal to run or to be found in a betting house but does not state whether a virtual betting

house falls under the ban. The Criminal Code permits the provinces to allow myriad forms of gambling, including “lottery schemes.” Section 207 defines lottery schemes to include those operated on or through a computer. The Atlantic provinces as well as British Columbia have taken advantage of Section 207 to offer online gambling, although participants must be residents of the province and within its borders at the time of purchase in order to buy tickets legally.<sup>2</sup> Also, the Kahnawake Mohawk Nation in Quebec has been hosting online gaming sites since 1999, a topic to which we will return later. Because the legal status of online gambling is unclear and it is not on the policy agenda at the national or provincial levels, Terri L. MacKay of the Addictions Foundation of Manitoba claims that this issue, in Canada, “waits in legal purgatory” (MacKay 2004).

It is possible that online gambling’s stay in purgatory will be solved in the courts, which opponents of the so-called judicialization of politics in Canada would decry. Bazowski (2004, 204) suggests that the problem of the judicialization of politics arises because “conflicts which are at root political are increasingly being transformed into legal issues to be resolved through a categorical judicial language and in an impenetrable institutional setting.” It is in the mounting conflict between First Nations’ gaming-related businesses and the federal Justice Ministry where we believe the courts might most likely be called upon to clarify the status of Internet gambling in Canada.

## POLICY WINDOWS IN CANADA: HOWLETT’S TYPOLOGY

Michael Howlett (1998) developed a typology of four different kinds of policy windows, which are broadly defined as agenda-setting opportunities, or chances for an issue to move onto the formal national agenda. Utilizing Kingdon’s argument that policy innovation is more likely when the problem,

policy, and political “streams” flow together, Howlett systematized four distinct confluences or types of windows of opportunity.

- *Routine political windows* coincide with institutionalized political events such as elections, the throne speech, or budget proposals. These events signal predictable changes in government or in government priorities that allow different issues to achieve agenda status. The platforms and preferences of the federal and provincial parties may offer clues as to the likelihood of a routine policy window opening for Internet gambling to reach the agenda.
- *Discretionary political windows* occur when “the behaviour of individual political actors leads to less predictable window openings” (Howlett 1998, 500). Howlett concludes that discretionary policy windows occur less often than routine windows. Actions by politicians, governments, gambling outfits, and other governments ought to be examined here.
- *Spillover problem windows* open when related issues are connected with an already open window. Opponents of Internet gambling might make use of this opportunity by linking gambling with other controversial uses of the Internet that have achieved agenda status, such as child pornography, identity theft, and fraud. Even less controversial uses of the Internet that attract huge numbers of young users, such as gaming, might be linked with gambling to help the issue achieve agenda status. The potential effects of the televised poker boom fall under this category as well.
- *Random problem windows* open because of “random events or crises” (Howlett 1998, 500). How likely is a true “crisis” to occur in regard to Internet gambling in Canada? Could a flood of addicted Internet gamblers overwhelm the mental health system, or cause financial woes to a

sufficient number of families that the federal government perceives it as a crisis? Could the arrests of Canadian businessmen involved in Internet gambling test US–Canada relations and provoke a crisis? Could the gambling industry in Canada, or some important element of it, suffer sufficient financial losses because of online gambling that it amounts to a crisis?

In the following pages we apply Howlett’s typology to the state of Internet gambling in Canada and attempt to locate scenarios where online gambling could make it onto the agenda. While Howlett did not create the categories explicitly for this purpose, they appear to be an especially useful tool for determining the likelihood that an issue will achieve agenda status. Moreover, such an application should allow us to assess the validity of Howlett’s categories as well as some of the criticisms of his typology.

## ROUTINE POLICY WINDOWS

Since 2004 Canada has been governed by successive Liberal and Conservative minority governments. The Martin government did not introduce any legislation to alter the status of Internet gambling in the Criminal Code of Canada, and neither has the Harper government. Online gambling is not mentioned in the platforms of either the Conservative Party of Canada or the Liberal Party of Canada. Nor have the federal NDP (New Democratic Party) or the Bloc Québécois made altering the status of Internet gambling an important element of their platforms. In short, Internet gambling is not on the national agenda in Canada, and it will not likely get there based on the current party platforms.<sup>3</sup>

In the main, online gambling is not on the agenda of provincial parties in Canada either. While the legal status of online gambling is a matter for the Criminal Code and therefore the exclusive domain of the federal government, provinces are permitted to run their own online gambling operations, regulate

the advertising of other operations, and prosecute those who violate the law. So the provinces have much to say about the position of online gambling in Canada.

Although gambling is mentioned in a few provincial Conservative party platforms, the online variety is not specified. The Conservatives in British Columbia want to halt the “expansion of gambling and casinos,” which presumably includes gambling done online (BC Conservatives n.d.). The Conservative party in Newfoundland, under the direction of Minister of Finance and President of Treasury Tom Marshall, has reduced the number of video lottery terminals (VLTs) in the province by nearly 200 (Government of Newfoundland and Labrador 2007). The party has yet to extend the focus to online gambling, however.

In Ontario, the Liberal minister of government services, Gerry Phillips, proposed an amendment to the *Consumer Protection and Service Modification Act* that would ban advertising for Internet gambling sites (Campbell 2006), and a modified version of this clause passed in 2006. When asked what prompted the legislation, Phillips referred to studies which suggest that “an increasing number of young people are gambling on the Internet” (Blackwell 2006). Phillips said that the measure is intended to reduce the number of young people gambling online and used strong language about the status of online gambling: “I don’t see us moving to legalize Internet gaming—that’s not an option we’re even considering” (Spicer 2006). Paul de Zara, spokesperson for the Ministry of Government Services, said about the scope of the bill: “For example, the Toronto football team would not be permitted to put Pokerstars.com or any of those pay-to-play websites on the field” (Vallerius 2006).<sup>4</sup>

The Ontario legislation was supported by the horse-racing industry, which claims to be losing tens of millions of dollars to illegal Internet gambling sites. “We’ve identified 130 sites that bet on our races without paying for it,” said David Willmot,

CEO of Woodbine Entertainment Group. “Our wagering in the last three years, which is really when this stuff starting taking off, is down over \$100 million dollars, and we attribute all of that to the online gaming sites” (Vallerius 2006). Willmot added that Woodbine would like to open its own poker, casino, and sportsbook on the Internet but is prevented by Canadian law from doing so. The company is well positioned to open an online sportsbook or casino because it has built a substantial computer infrastructure to take online race bets at its website, HorsePlayer Interactive, launched in 2004.

In the NDP provincial platforms, only British Columbia, New Brunswick, and Prince Edward Island mention gambling of any kind. In British Columbia, the NDP in its “Official Opposition Mid-Term Report” released in May 2007 promises to put an end to “gambling expansion,” “shut down Internet gambling,” and “improve programs that address gambling addiction” (BC New Democrat Official Opposition 2007, 17). If the NDP takes control of British Columbia after the scheduled 2009 elections, then policy change on Internet gambling in that province would become more likely. Unlike the case in many provinces, NDP takeover is a distinct possibility in British Columbia where the party has formed the government on numerous occasions, most recently from 1996 to 2001.

The NDP platforms for New Brunswick and Prince Edward Island also mention gambling, but not the online variety. The 2006 platform in New Brunswick reads: “The NDP is committed to addressing alcohol, drug, tobacco and gambling addictions.” The party promises to “work with gambling addiction advocates and experts to reduce the harm from VLTs in New Brunswick, including banning any new machines from the province and making existing machines less addictive, working toward a future phase-out of VLTs” (New Brunswick NDP 2006, 5). The NDP of Prince Edward Island proposes “an end to government investment in gambling facilities, and the phasing out of VLT

machines in our province” (PEI New Democrats n.d.). The NDP has never formed government in New Brunswick or Prince Edward Island.

The NDP platform in Alberta does not address gambling, but the provincial NDP opposition leader, Brian Mason, has publicly denounced gambling in all forms. Mason said in a news release in February 2007 that the government of Alberta needs to “kick the habit and break their dependence on gambling revenue.” He asked, “How much more money does the government want from Albertans? Albertans need increased support for gambling problems and addictions, not more casinos and online gambling” (Alberta NDP 2007). The NDP has never formed and likely will never form the government in conservative Alberta, however.

Interestingly, the Green Party is perhaps the most anti-gambling of any major party at both the federal and provincial levels. The national party’s 2006 election platform supports the “transfer [of] federal tax points to sustain specific social services such as health care on strict provincial guarantees that these funds will be allocated to such services and that such funds will be used to reduce the dependency provincial governments have developed to revenue from gambling” (Green Party of Canada 2006, 32). Nationally, the Green Party has yet to win a single seat in parliament, however.

In Saskatchewan, the Green Party vows to “oppose government-sponsored gambling as socially destructive and as a regressive form of taxation. A referendum will allow the people to decide if they wish to continue to permit such gambling to continue in their community” (Green Party of Saskatchewan 2007). Presumably this opposition extends to online gambling. Similarly, the Greens in BC state in their platform that

making genuine progress means reducing government’s dependence on revenue sources that cause long-term social harm to the community.

The Green Party supports instituting a moratorium on issuing new gambling licenses and phasing out, over a five-year period, the most addictive forms of gambling such as slot machines and online gambling. The Green Party would institute a 10 percent tax on all gambling winnings and use a significant portion of these funds for the treatment and rehabilitation of gambling addicts and for harm reduction. (Green Party BC 2005)

The Greens in BC have come the closest to electing a member of federal parliament, and their chances of success would have been even stronger had electoral reform passed in the referendum of 2005. Interestingly, in the 2007 Ontario election, a similar reform was on the ballot, which, had it passed, might have helped the Greens’ electoral fortunes in that province as well. But it was rejected overwhelmingly. Not surprisingly, the Green Party of Ontario had endorsed the recommendation of a Citizens’ Assembly that the province move away from its current first-past-the-post system to a mixed-member-proportional system (Green Party of Ontario 2007).

In sum, although a few platforms and party members mention gambling in general and online gambling in particular, the likelihood that Internet gambling will be forced onto the policy agenda through a routine policy window is unlikely. No national party seems interested in clarifying the status of online gambling in the Criminal Code. No provincial parties seem interested in calling attention to the issue by, for example, expanding the number of provinces that sell lottery tickets online. Should electoral reform ever pass in a province, Green Party members might win seats in provincial legislatures, bringing to office strong advocates for reducing the amount of gambling in the provinces—but this scenario seems unlikely.

## DISCRETIONARY POLICY WINDOWS

Howlett (1998) suggests that discretionary windows open when the behaviour of individual political ac-

tors leads to an opening. The relatively disciplined nature of the Canadian party system makes policy innovation from individual members who are not in cabinet less likely, and the evidence above suggests that the major parties currently have little interest in the issue of Internet gambling. However, non-political actors such as Internet gambling operations in Canada and policy-makers in Canada's closest allies such as the United Kingdom and the United States must be considered under this category as well.

### **First Nations**

The Kahnawake Mohawk Nation near Montreal has been hosting online gambling sites since 1999, offering website providers access to their large computer server space located in a data centre on the reservation (Williams and Wood 2007). The Nation's foray into online gambling was precipitated by the creation of the Kahnawake Gaming Commission (KGC) in 1996 (Belanger 2006). The Commission was established under the Kahnawake Gaming Law, which stipulates that the Kahnawake are a sovereign nation and therefore have the right to issue gambling licences (Belanger 2006). The KGC was set up to issue licences to, and to regulate, gambling companies (Greenwood 2005). Mohawk Internet Technologies (MIT) is the company that runs the server space and functions as an Internet service provider to gambling sites (Belanger 2006). MIT is owned and managed by both the Mohawk Council of the Kahnawake and outside local businessmen, including CEO Mike Tobin (Greenwood 2005).

The increasing popularity of gambling, especially poker, over the past decade has helped the Kahnawake Nation to become one of the top online gambling providers in the world (Greenwood 2005; Williams and Wood 2007). Estimates of the number of gaming sites the Kahnawake now offer vary from 374 (Williams and Wood 2007) to 470 (Wright 2008). MIT charges sites an initial application fee of \$25,000 plus an additional \$10,000 per year

(Wright 2008). MIT's profits are estimated at \$2 million annually (Beazley 2007).

Despite its now being a well-established business, the Kahnawake operation has been declared illegal by the Canadian attorney general (MacKay 2004, 7). Quebec's minister of public security has called the operation illegal as well (Belanger 2006). However, no direct legal action has been taken against the Nation, although the Quebec government did launch an investigation into MIT in 2003 (Greenwood 2005). One reason for this lack of direct action may be the not-too-distant memory of the Oka crisis in 1990, when Mohawks blocked the Mercier Bridge in Montreal in protest of the expansion of a golf course in Kanestake (Belanger 2006; Wright 2008).

Recent statements and actions by public officials indicate, however, that action against the Kahnawake may be imminent. Liberal MP Roy Cullen has met with Justice Minister Rob Nicholson to discuss the Kahnawake's online gambling sites (Wright 2008). Cullen's riding includes other gambling operations, such as the Woodbine Entertainment Group and the Fort Erie Race Track (Wright 2008). Woodbine and other gambling operations in Canada are angry that, unlike their operations, the Kahnawake do not pay taxes to the federal or provincial governments (Wright 2008). They argue that the online sites siphon business from their operations and receive a competitive edge in not being taxed. "These offshore operations just poach horse-racing and no one can do anything about it," said Ross McLeod, the chief executive of Great Canadian Gaming Corporation and owner of several tracks in Canada. "They're parasites on the butt of Canada" (Iverson 2008).

Cullen has stated that if no action is taken he will introduce a private member's bill to force Parliament to debate the issue (Wright 2008). "I think something is going to happen," he said. "My preference would be to open it up and regulate it" (Wright 2008). Cullen has acted as something of a "political



entrepreneur” on the issue of Internet gambling. Roberts and King (1991, 151-52) define political entrepreneurs as those “who hold elected leadership positions in government” and “develop a new idea, translate it into a more formal statement (such as a proposal, bill or law), and then help to implement it into public practice as a new program.” Cullen attempted to get the issue of Internet gambling on the Canadian agenda by asking the justice minister a question during Question Period and then following up with discussions about the options, but he does not believe that he has had much success (Cullen 2008). “We try to build coalitions. But this is not easy. It’s not like some issues where you have a large stakeholder group that’s interested. It will be a push to get it on the radar” (Cullen 2008). And because he does not intend to stand for election to the 40th Parliament, soon there may not be even one advocate for policy change on Internet gambling in Parliament.

Justice Minister Nicholson’s director of communications, Genevieve Breton, has also made forceful public statements. She says that “Internet gambling is illegal under the Criminal Code, with some narrow exceptions. It is the responsibility of each province to administer and prosecute, and for the police to enforce it” (Wright 2008). Because the Kahnawake operation has not been officially administered by the province, she presumably sees their sites as illegal. She has stated further that “following recent concerns surrounding Internet gambling in Canada, the Minister of Justice has asked his officials to examine whether the enforcement of the Criminal Code provisions could be assisted with other measures” (Iverson 2008).

These potential other measures would be similar to those taken by the US administration to stop credit card companies from authorizing transactions to online gambling sites (Iverson 2008). As Cullen said, “A bill that I’ve actually drafted along the lines of the legislation in the United States . . . basically requires the financial intermediaries, the financial

institutions, to block transactions through debit and credit cards. . . . If government doesn’t respond I will table this bill” (Cullen 2008). He made it clear, however, that such a direction was not his preference.

Despite fierce rhetoric from government officials, the Kahnawake believe their gambling operation is legal. Chuck Barnett, a member of the board of supervisors at Mohawk Internet Technologies, says that “MIT is not a gaming company, we’re a utility company. Think of us as Ma Bell, or Hydro Quebec. We simply provide the service, the fibre-optic backbone and connectivity which permits online gaming clients to make their offerings on the global grid” (Wright 2008). The Kahnawake argue further that they are a sovereign nation and thereby not controlled by the Criminal Code (Belanger 2006; Iverson 2008). They also cite Section 35 of the Constitution, which protects native culture, arguing that this protection covers online gambling because the business is vital to their culture (Iverson 2008).

Although no direct action against the Kahnawake has been taken, the provincial government has sanctioned the Nation indirectly. In 2006, Quebec police raided the offices of GoldenPalace.com, the world’s largest Internet casino, which is run by the Cyber World Group company (“Kahnawake’s Resident” 2007). Cyber World Group was charged with illegal gambling and pled guilty in September 2007. The company was fined \$2 million (“Kahnawake’s Resident” 2007). The GoldenPalace.com casino was hosted by the computer infrastructure on the Kahnawake reservation. The case questions whether the gambling licences handed out by Mohawk Gaming Commission are legal, but because the case was settled with a plea deal, the legal ambiguity remains (Hansen 2007).

More recently, the British Department for Culture, Media, and Sport refused to allow the Kahnawake to advertise their Internet gambling sites within the UK (Hamilton 2008). The department’s decision came after a cheating scandal involving one



of Kahnawake's gaming websites, Absolute Poker (Hamilton 2008). The Kahnawake fined Absolute Poker \$500,000 after it was discovered that multiple people associated with the site were using programs to reveal the cards of opponents and win huge jackpots (Hamilton 2008). Kahnawake Grand Chief Michael Delisle blamed the Quebec government for the denial of their advertising application (Hamilton 2008). The Kahnawake had received a refusal letter from the UK indicating that the Quebec Justice Department had provided the UK with information about the Kahnawake (Hamilton 2008). These actions coupled with the comments by public officials indicate that more direct action may be forthcoming.

Other First Nations are following the Kahnawake. Both the Ochapowace Band in Saskatchewan and the Six Nations briefly hosted online gambling sites (Williams and Wood 2007). Under the tutelage of the Mohawks, the Alexander First Nation near Edmonton has created an identical online casino-hosting operation. In November 2006, the Alexander First Nation set up the Alexander Gaming Commission (Williams and Wood 2007). Like the Kahnawake, the Alexander First Nation has a large server space, boasting a 25,000 square-foot data centre (Beazley 2007). By July 2007, several sites were registered there (Williams and Wood 2007). Alberta solicitor general Fred Lindsay has told the Nation to stop. "If they don't, we will do what we have to do. We'll (lay charges). You bet," he said (Beazley 2007).

If the federal or provincial governments take action against any of the First Nations' gambling-related businesses, the courts could be called upon to settle the issue. Given the increasingly fiery rhetoric from provincial and federal law-enforcement officials, and the equally strong rhetoric from the First Nations' representatives, neither side seems much interested in a compromise. The Kahnawake's claim that they are a sovereign nation and therefore not subject to the Criminal Code, as well as their

defence of their Internet gambling-related operations based on Section 35 of the Constitution, could be solved by the courts. Such a decision would clarify the status of a particular kind of Internet gambling but would also sidestep the political process, thereby furthering the judicialization of Canadian politics. This development would not likely be welcomed by those who fear that an increase in the judicialization of politics means a decrease in the democratic aspect of the process (Morton and Knopff 2000).

### **The UK and the US**

Perhaps Canadians could elect to borrow from the very divergent policies on Internet gambling being pursued by two of their closest allies: the UK and the US. Indeed, the UK is explicitly inviting other nations to join them in a new regime of legalization, regulation, and taxation of online gambling.

Since the *Gambling Act* of 2005, the UK has allowed fully legal, governmentally regulated online gambling sites within its borders. The Act has three main objectives: keeping gambling crime free, making sure that gambling is fair and open, and protecting children and vulnerable adults (UK *Gambling Act* 2005, Section 13). The Act created a gaming commission to regulate gambling sites and to grant operating licences. To protect children and vulnerable people, the Act stipulates that companies will not be allowed to seek out children and will be responsible for keeping customers aware of their spending. Although the amount of tax revenue the government will collect from online gambling is highly anticipated, the government has yet to set a rate.

The UK is interested not only in allowing legalized Internet gambling within its own borders but also in encouraging other countries to match their policies with the new UK system. In 2006 Britain's culture secretary, Tessa Jowell, hosted a conference of 32 nations to try to convince them to create an international code of conduct for online gambling companies. Canada attended the conference, but the United States did not.

Unlike Canada, and completely in the opposite direction of the UK, the US national government has taken a clear stance against Internet gambling and has attempted to wipe it out. One major method has been to pressure banks and companies like PayPal and Neteller that specialize in online money transfers to stop wiring money to offshore, online gambling accounts. At the state level, the attorneys general in both Florida and New York successfully pressured banks to stop offshore money transfers to gambling sites (Stewart 2006, 5). Nationally, the Justice Department reached a settlement recently with e-wallet PayPal, which was forced to pay \$10 million for conducting online gambling transfers.

Additionally, several pieces of legislation have been used to restrict online gambling. Although decades old, the *Wire Act* of 1961, which originally sought to prohibit gambling over telephone “wires,” has been interpreted by the federal government as prohibiting online gambling (Stewart 2006, 7). More recently, in an amendment to a port security bill, Congress added a measure entitled the *Unlawful Internet Gambling Enforcement Act*, which updates the *Wire Act* to include the Internet and orders financial institutions to stop any transactions to online gambling sites (Weisman 2006). After passage of the law, the Canadian co-founders of e-wallet Neteller were arrested by US officials and accused of money laundering for transferring \$2.9 billion from US gamblers to offshore sites.

Although the United States has taken a prohibitionist stance regarding online gambling, not all forms are illegal. The *Interstate Horseracing Act* of 1978 was updated by Congress in December 2000 to allow bets across state lines by both telephone and “other electronic media” (Rose 2002, 81). This apparent contradiction in policy has recently caused the United States some trouble with the World Trade Organization (WTO).

The small island nation of Antigua and Barbuda, where a large number of online gambling sites op-

erate, brought a case against the US through a WTO panel. Antigua alleged that the ban on Internet gambling through laws like the *Unlawful Internet Gambling Enforcement Act* of 2006 coupled with the *Interstate Horseracing Act* unfairly discriminates against foreign online gambling providers, while protecting US-based companies (James 2006, 1). The US countered that this seemingly contradictory policy was allowable and invoked an exception in WTO rules that allows actions to be taken to protect “public morals and public order” (James 2006, 1). Although the WTO panel ruled in November 2006 in what seemed to be Antigua’s favour, an appeal ruling in 2007 appeared more in favour of the US because it held that the US may unilaterally declare Internet gambling out of the purview of its WTO commitments, but it would have to compensate other WTO members for doing so (Blustein 2007). Antigua is demanding compensation that the US will not likely grant, but the case opened the door for more economically powerful nations with online gambling companies to challenge the US in a similar manner, with perhaps different results.

Prosecution of First Nations for online gambling operations could result in court decisions clarifying the status of Internet gambling in Canada, but at possibly tremendous costs in the form of increasingly strained relations with First Nations and increased judicialization of Canadian politics. With other nations taking explicit stances on Internet gambling, Canada could be pushed to follow suit and place gambling on the agenda. Pro-gambling MLAs and MPs could point to the UK’s policy as the right one for Canada, while anti-gambling forces could use US policy as a guide.

## SPILLOVER POLICY WINDOWS

Spillover windows open when related issues are connected with an already open window. Opponents of Internet gambling might make use of this opportunity by linking gambling with other controversial

uses of the Internet such as child pornography, identity theft, and fraud. For example, the Conservative Party of Canada (2006, 24) declared in its 2006 platform that “Canada has become a haven for Internet child pornographers” and pledged to crack down on the practice through a “zero-tolerance” policy and the elimination of the “legitimate purpose” defence. This could provide a very small window for opponents of Internet gambling to piggy-back legislation clearly banning the practice onto other laws. Other burgeoning uses of the Internet that may provide an opportunity to connect policy with online gambling are discussed below.

### Online Gaming

One policy area that could potentially have spillover effects for online gambling is the rapidly growing online gaming market. The most popular form of online gaming is known as massive multiplayer online role-playing game, or MMORPG (Castronova 2002, 2). Participants in MMORPGs create a character in a fictional online world that rivals the complexity of our own world. Their character completes tasks, works, and interacts with the characters of millions of other online participants. Many of the games take place in fantasy worlds similar to those one would find in Tolkien’s *Lord of the Rings* book series.

One of the most popular and profitable MMORPGs, *World of Warcraft*, boasts nearly 8 million users (one per every 8,000 people on earth) and makes \$1 billion in monthly subscription revenues (Dibbell 2007). Of the 400,000 members of another popular MMORPG titled *Everquest*, some 93,000 spend more time inhabiting its fantasy world called Norrah than they do working for pay (Castronova 2001, 4).

The area of online gaming of import to policy-makers is the booming real market for the fictional market in MMORPGs. This real market is known as “gold mining”; participants in the fantasy world need the currency of that world to buy weapons and goods to advance in the game but do not want to spend the

time performing the mundane tasks needed to obtain it. Enter businesses like those sprouting up in China that offer to do the mundane tasks in the fantasy world to gather fake money and in turn sell it for real currency to players in the West. The real market for fake online fantasy currency is now a \$1.8 billion a year industry (Dibbell 2007). Online retailers like eBay (which recently left the business), IGE, BroGame, and Massive Online Gaming Sales all operate multimillion-dollar-a-year businesses in retailing fake online currency and all occupy a legal grey zone (Dibbell 2007). Should the desire to legislate and regulate these online retailers arise, concern could easily spill over to the legal grey zone Internet gambling occupies and both may become regulated.

Another potential for spillover arose in 2007 when the American Medical Association (AMA) considered a proposal to encourage the American Psychiatric Association (APA) to declare excessive video-game playing a mental disorder on the same order as compulsive gambling (Pham 2007). Instead the AMA forwarded its concerns about video games and the Internet to the APA. Dr. Ronald M. Davis, the AMA president, said in a statement, “While more study is needed on the addictive potential of video games, the AMA remains concerned about the behavioral, health and societal effects of video-game and Internet overuse” (Pham 2007).

### The Global Poker Boom

Since 2003, the popularity of poker both online and at in-person tournaments has expanded dramatically. Perhaps the poker boom is best encapsulated by the story of Chris Moneymaker. In 2003, the amateur qualified for the World Series of Poker (WSOP) through an online tournament. He won free entry into the \$10,000 buy-in tournament and went on to win \$2.5 million by winning the series’ main event, no limit Texas Hold’em. His win coincided perfectly with the advent of a “hole card camera” that allowed TV viewers to see the down cards in each player’s hands, which helped fuel the WSOP’s audience on

ESPN.<sup>5</sup> Moneymaker, the hole camera, and ESPN all contributed to what is referred to as the “poker boom.”

Picking up on the popularity and ratings boom from ESPN’s coverage of the WSOP, the Travel Channel made a deal with another poker circuit to showcase the World Poker Tour (WPT), the Bravo Network launched the show *Celebrity Poker Showdown*, and Fox Broadcasting began its own *Poker Dome Challenge*. To gauge the size of the boom, when the Travel Channel and the WPT televised their first tournament in 2003, there were 1,400 entrants vying for a total of \$11.6 million in prize money, while four years later there were about 10,000 entrants competing for winnings of between \$90 and \$100 million (O’Brien 2006). The WSOP has seen a similar rise in participation in its tournament. The 2006 event boasted 8,772 players compared with 5,600 in 2005 and just over 200 in the early 1990s (Dalla 2005). The winnings for the champion have climbed as well from Moneymaker’s \$2.5 million prize in 2003 to \$12 million in 2006 (Dalla 2005). Worldwide, the amount spent buying into games like the WSOP and WPT rose from \$72 million in 2001 to \$376 million by 2005 (O’Brien 2006). The number of competitors over the same period climbed from 147,400 to 304,500 (O’Brien 2006).

The aspect of the poker boom most salient for Canadians is the dominance in the sport by Toronto native Daniel Negreanu. Negreanu turned pro in 1997 and won an event at the World Series of Poker at the age of 23, the youngest player to do so. He has since won two more events at the World Series of Poker and been named both the WSOP and WPT “Player of the Year.” He has written three books on poker strategy and over 100 articles for *Card Player Magazine*, and he has a syndicated newspaper column. He opened his own poker website called Full Contact Poker, where he offers online poker lessons, writes avidly in his own blog, and for the third year is running a contest to find a poker player to mentor, who qualifies by playing online. Most recently,

Negreanu joined a host of other professional poker players as a sponsor of the online poker website *PokerStars.com*, where he plays poker online against professional and amateur competitors. His promotion of poker has extended beyond the Internet to instructional DVDs, PC poker games, and an endorsement of a poker vitamin that he claims reduces anxiety and increases concentration for players. His likeable public face and intense promotion of poker, coupled with the TV poker boom, may increase the visibility of online gambling and the chances that it will be forced onto the policy agenda.

## RANDOM POLICY WINDOWS

Could US arrests of Canadian businessmen such as Neteller co-founders John Lefebvre and Stephen Lawrence become a crisis that prompts the Canadian federal government to act on the legality of online gambling? Lefebvre and Lawrence were arrested in 2007 for transferring billions of dollars from US customers to Internet gambling sites. While national policy changes because of the difficult situation of two citizens seem unlikely, *Toronto Star* columnist Dave Perkins (2006) believes that the recent corruption scandal in the Ontario Lottery and Gaming Corporation (OLGC) is a sufficient crisis to merit a complete overhaul of gambling in Canada. Ticket clerks were found to have won a disproportionate percentage of lottery prizes, and one high profile case of a clerk defrauding a septuagenarian winner prompted the OLGC to pay a \$200,000 settlement on the day the victim’s trial was to begin. Perkins called for Canada to adopt the British model. It does not yet appear that the government of Ontario is ready to completely leave the gambling business as Perkins proposes, but scandals such as the one faced by the OLGC may open policy windows.

The Canadian economy has suffered from the US ban on transferring money to Internet gambling sites. Gambling software manufacturer Cryptologic, based

in Toronto, announced plans in 2007 to move to Dublin. The annual Global Interactive Gaming Summit and Expo in Montreal saw a drop in attendance from 1,864 participants in 2006 to just 640 in 2007 (Rocha 2007). Also, Neteller cut about 200 jobs in Calgary after the US ban went into effect (“Calgary Job Cuts” 2007). While these economic hits are significant, they may not rise to the level of crisis that would open a policy window.

Yet another potential, random policy-window opening is the growing prevalence of at-risk gambling among Canadian youth. Currently, gambling rates among youths are high. A report by the Alberta Alcohol and Drug Abuse Commission (AADAC 2005) entitled *Youth Gambling in Alberta: The Alberta Youth Experience Survey 2002* reported that earlier studies of youths in grades 7 through 12 in eight Canadian provinces found that in the previous 12 months as few as 41 percent (Alberta) to as many as 78 percent (Manitoba) of youths had participated in gambling activities. The Centre for Addiction and Mental Health (CAMH) found in a survey of Ontario students that “one-third of students played cards for money at least once during the 12 months before the survey. About one-in-six played lottery tickets, and 17 percent bet money in sports pools” (Adlaf et al. 2006, iv). Further, the study found that the percentage of all students who gambled at cards increased from 24 percent in 2003 to 33 percent in 2005, with a marked increase among males from 32 to 44 percent (iv).

Youths are also gambling online and at higher rates than older people. For example, the Nova Scotia Gaming Corporation’s (2006) survey *Decoding Risk: Gambling Attitudes and Behaviours Amongst Youth in Nova Scotia* found that “while 12 percent of 19–20 year olds indicate that they have gambled online, 15 percent of 18 year olds and 19 percent of 15–17 year olds report that they have” (7). The survey also found that Canadian youths rank gambling and betting as only moderately risky behaviours. “Overall, the majority of respondents (67

percent) feel neutral or slightly positive about gambling as an activity. [Seventy-six] 76 percent believe that ‘gambling is harmless,’ and 54 percent believe that ‘gambling doesn’t hurt anyone’” (8).

The high percentage of youth gamblers might not open a policy window were those students participating in a responsible manner. However, as the CAMH report indicates, 4.5 percent of Ontario students reported a gambling problem in 2005 (Adlaf et al. 2006, iv). Even more troubling is the AADAC’s finding that “young people who are at risk and problem gamblers are more likely to experience higher rates of attempted suicide” (2002, 23). Should any of these youth trends continue or increase, Internet gambling could be propelled onto the policy agenda in Canada.

Suicide resulting from gambling is not just a problem for youths. A survey of coroners across the country conducted by the Canadian Press found that the percentage of all suicides that were gambling related was as high as 10 percent in Alberta, 6.3 percent in Nova Scotia, and 2.6 percent in Quebec (Bailey and Elliott 2003). The estimates vary, however; a 2006 study conducted by the AADAC found that gambling was a factor in 2 percent of suicides in Alberta (Alberta NDP 2007). The Canada Safety Council (2006) estimates that 200 compulsive gamblers in Canada kill themselves each year and that “for every suicide, five gamblers with self-inflicted injuries could end up in the hospital.” A *National Post* estimate puts the number much lower at 85 gambling-related suicides per year (Blackwell 2004).

Although the causal link between gambling and suicide is uncertain and the causes of suicide are likely multiple, a few highly publicized and sensational suicides have created the public appearance of a link. In 2002, after a spate of financial trouble from casino losses, Shyh-Shiang Tung allegedly murdered his wife, set his house on fire (his kids and parents barely escaped) and killed himself



("House Explosion" 2002). In another case, Dorothy Dilling hanged herself in the shower of a casino hotel in Vernon, British Columbia, after losing a few thousand dollars on slots (BC Legislative Session 2005). Should stories such as these become widely understood, scrutiny of gambling could eventually extend to that of the Internet variety, forcing the issue onto the policy agenda.

MP Roy Cullen suggested another kind of crisis that could put Internet gambling on the Canadian agenda. Woodbine Racetrack in Toronto has long been one of Canada's most prestigious horse-racing facilities; it holds a number of Grade One thoroughbred races each year including the Queen's Plate, which has been running continuously since 1860 (Woodbine Entertainment Group n.d.). With hundreds of Internet sites taking bets on the Woodbine races, and gamblers' preferences changing because of the availability of online games, it is not inconceivable that the financial future of Woodbine could be threatened. In fact, the company's 2006 annual report indicates that their net income dropped from \$27,463,000 in 2002 to \$9,070,000 in 2006 (Woodbine Entertainment Group 2006, Financial Highlights). The report also claims that the jobs of 60,000 Ontarians depend on the horse-racing industry (7). Should revenues continue to drop and Woodbine Racetrack cease operations, the threat to the Ontario economy and Canadian culture could be sufficient to prompt government action on Internet gambling. "They'll wake up one morning and Woodbine is closed because they're not making any money anymore, and they'll say 'what the hell happened?'" Cullen said in a personal interview (2008) in reference to Canadians in general not being aware of the weakening position of a cultural institution. Cullen suggested that MPs are equally unaware of the threat posed to the horse-racing industry in Canada by Internet gambling:

One of the things I'm trying to do is reach members of parliament that have race tracks in their riding. One of them is Rob Nicholson who is the

minister of justice. He has a racetrack in his riding. I made sure his racetrack brought these matters to his attention. Frankly, he wasn't aware of the problem until I raised it with him.

Yet it remains unclear whether even financial threat to key industries in members' ridings will be sufficient to elevate Internet gambling to the policy agenda.

#### EVALUATING HOWLETT'S TYPOLOGY, DISCUSSION, AND CONCLUSION

Soroka (1999) criticizes many aspects of Howlett's typology. First, he suggests that Howlett (1998) offers evidence only for the *existence* of discretionary, spillover, and routine policy windows in Canada, and not for their relative *frequency*. Also, Soroka suggests that Howlett's typology is inadequate because "while the categories are conceptually different, they are not mutually exclusive" (770). These criticisms are relevant to the research presented here.

While we are satisfied with the overall utility of Howlett's typology for analyzing the prospects of a particular issue's reaching the agenda, the lack of mutually exclusive categories is somewhat problematic. For example, US policy can be considered under discretionary policy windows because it involves the actions of a significant political actor (the US government) and how these actions may influence Canadian policy. On the other hand, US policy has also included the arrests of Canadians, which we analyze under the category of random policy windows. Similarly, the potential effects of the televised poker boom, which we analyze under the rubric of a spillover policy window, could also be considered a random window opening.

However, this lack of mutual exclusivity is most important for the distinction between routine policy windows, which are most frequently opened, and all others. In no case was there any uncertainty



whether to include a development or fact under the routine policy window or under some other category. Further, we suggest that Howlett's typology is useful because it appears to be exhaustive. Of the myriad ways Internet gambling might reach the agenda in Canada, none are unaccounted for under Howlett's categories. In that sense, this typology clearly provides a helpful framework for analyzing the future direction of a policy.

Time will tell, but our analysis through the lens of Howlett's typology predicts that not much is about to change with regard to Internet gambling in Canada, because the most common window—routine—does not appear likely to open soon. Discretionary, spillover, and random windows are all less predictable, but our analysis suggests that Canadian circumstances currently favour these routes for policy change with regard to Internet gambling.

Canadians gamble on the Internet. Every time they do so through means other than those provided by provincial lottery websites, they enter murky legal territory. However, no change to the legal status of Internet gambling in the Criminal Code of Canada will come without tremendous opposition from parties whose economic interests would be threatened by greater liberalization, or, less likely, by prohibition. But further restriction or greater liberalization present problems as well.

If the federal government followed the UK model and completely legalized Internet gambling and encouraged operators to relocate to Canada, provincial lotteries would be threatened. While racetracks that already have substantial investment in online gambling technology to facilitate bets on races would benefit by being allowed to enter a lucrative market from which they are currently barred, such competition would most certainly reduce participation in provincial lotteries. This would be especially true for provincial lotteries that offer limited sports wagering, but only on multiple-game parlay cards. If Canadian sports bettors could place their money on

legal, single event, online wagers, then provincial lotteries would very likely see substantial drops in revenues.

Perhaps a compromise could be reached in which provincial lotteries would be allowed to run online casinos and sportsbooks where people might bet on a single sporting event. Certainly such a plan would face stiff opposition from opponents of gambling, as well as from racetrack operators (if they were kept out of the market). Moreover, such a compromise could create an "unholy alliance" between gambling opponents and some gambling operations, a combination that was part of the Jack Abramoff lobbying scandal in the United States (Zagorin and Tumulty 2005).

Is the status quo tenable? It is only to the extent that Canadians consider it acceptable for fairly large numbers of citizens to participate in an activity that may be illegal. Respect for and compliance with the law are essential components of peaceful, orderly, and good government. The expansion of both Internet access and opportunities to gamble online, coupled with the increased normalization of gambling (brought on in part by extensive government reliance on revenues produced by their sanctioned gambling activities), means that the question of Internet gambling will not just go away on its own.

## NOTES

<sup>1</sup> This figure is the low end of a range between 1.5 percent and 3.1 percent, where the higher figure includes high-risk stocks and day trading as Internet gambling.

<sup>2</sup> Serious sports gamblers are not particularly interested in the products offered by these provinces. Because the Criminal Code does not permit making a bet on a single sporting event, these provinces offer multi-wager "parlay" bets, which have lower payouts than those generally offered by the offshore sites. The provinces also cannot offer the casino games offshore sites provide.

<sup>3</sup> According to the CBC, in 1997 federal MP Dennis Mills submitted a private member's bill to make online

gambling legal and regulated by the federal government. The bill was never passed ("Online Gambling" 2003).

<sup>4</sup> Interestingly, in 1997 Mills had mentioned the Toronto football team, the Argonauts; between 2004 and 2005 the Argonauts and the Canadian Football League (CFL) accepted hundreds of thousands of dollars in sponsorship from Bowman's, a Mauritius-based betting firm. The CFL did not renew the relationship with Bowman's in 2006, instead inking a deal with partypoker.net, although several CFL clubs maintained Bowman's as sponsors (Koreen 2006).

<sup>5</sup> In the past, before the viewing audience could see all the cards in each player's hand, ESPN attempted to broadcast the tournament, but it did not receive particularly high ratings. One was referred to watching the tournament as similar to watching "bears hibernate and smoke" (CNN Sunday Morning 2007).

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