




A Governmentality of Online Gambling: Quebec's Contested Internet Gambling Website Blocking Provisions*

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Abstract

This article examines Canada's first internet gambling website blocking scheme, which was enacted in Quebec as part of the implementation of the province's 2015 budget. Using qualitative research methods, the article illustrates the complexities of regulating online gambling. Influenced by critical sociological and anthropological studies of gambling, and taking a socio-legal, governmentality perspective, it shows how socio-legal studies can illuminate research on the regulation of gambling, and how the study of online gambling can, as a sentinel site for the regulation of online consumption, contribute to the development of socio-legal studies. Our analysis shows that the governmentality of online gambling is framed so as to exclude 1) a range of risks (e.g., related to consumer profiling and the capacity to stimulate "addictive consumption"), 2) the heterogeneity of everyday experience that connects online gambling with online addictive consumption more generally, and 3) a range of possibilities for governing online gambling otherwise.

Keywords: Consumption, addictive consumption, digital play, internet censorship, risk, situational analysis

Résumé

Cet article offre une analyse du premier système canadien de blocage de sites de jeux d'argent sur Internet, un système qui a été mis en place au Québec dans le cadre de la mise en œuvre du budget provincial de 2015. À l'aide de méthodes de recherche qualitatives, cet article illustre la complexité de la réglementation des jeux d'argent en ligne. Influencé par des études sociologiques et anthropologiques sur les jeux d'argent qui s'ancrent dans une perspective critique, et en adoptant également une perspective sociojuridique et de gouvernementalité, cet article montre plus précisément comment les études sociojuridiques peuvent éclairer la recherche sur la réglementation des jeux d'argent et, inversement, comment l'étude des jeux d'argent en ligne peut, en tant que site sentinelle pour la réglementation de la

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consommation en ligne, contribuer au développement des études sociojuridiques. Notre analyse montre que la gouvernementalité des jeux d'argent en ligne est conçue de manière à exclure 1) une série de risques (p. ex. risques liés au profilage des consommateurs et à la capacité de stimuler la *consommation addictive*, etc.), 2) l'hétérogénéité de l'expérience quotidienne qui relie les jeux d'argent en ligne à la consommation addictive en ligne de manière plus générale, et 3) une gamme de possibilités pour régir autrement le jeu en ligne.

Mots clés: Consommation, internet, jeux d'argent, gouvernementalité, Québec, jeux numériques, risque, censure

Introduction

The online gambling market is large and growing. According to one estimate, the global online gambling market in 2017 was valued at over 45 billion US dollars. It was projected to grow to over 94 billion US dollars by 2024.¹

For governments that have bet big on land-based gambling by institutionalizing legalized gambling within their jurisdictions, extra-jurisdictional online gambling represents a threat to the established order of business. Indeed, so vexing is the prospect of potential gambling revenues leaking to extra-jurisdictional venues via the internet that several governments have explored or actualized systems that block access to sites that are operating outside their jurisdiction. In Russia, for example, where internet gambling is completely banned, the government is reported to have blocked in 2017 over 5,000 sites deemed to be providing illegal gambling services.² Denmark also requires internet service providers (ISPs) to block non-licensed foreign sites.³ Busch and colleagues also identified similar legislation in Belgium, France, Greece, and Italy.⁴

This article discusses the first legally mandated internet gambling website blocking scheme to be enacted in a Canadian province. Housed within an omnibus bill designed to implement Quebec's 2015 budget—*Bill 74*—the internet blocking⁵

¹ Statista, "Size of the online gambling market in 2017 and 2024 (in billion U.S. dollars)," <https://www.statista.com/statistics/270728/market-volume-of-online-gaming-worldwide/>.

² L. Haworth, "The Latest Wave of Internet Blocking in Russia—What's Behind It and If It Matters," *Gaming Law Review* 22, no. 1 (2018): 31.

³ R. Williams, R. Wood, and J. Parke, "History, Current Worldwide Situation, and Concerns with Internet Gambling," in *Routledge International Handbook of Internet Gambling*, ed. R. Williams, R. Wood, and J. Parke (London: Routledge, 2012), 10.

⁴ A. Busch, P. Theiner and Y. Breindl, "Internet Censorship in Liberal Democracies: Learning from Autocracies?" in *Managing Democracy in the Digital Age: Internet Regulation, Social Media Use, and Online Civic Engagement*, ed. J. Schwanholz, T. Graham, and P. Stoll (Cham: Springer, 2018), 11–28.

⁵ As Diebert and Crete-Nishihata note, internet blocking—or, in their terms, "filtering or censorship"—can be defined as "the prevention of access to information online within territorial boundaries," and can involve an array of measures, including "media regulation, licensing regimes, content removal, libel and slander laws, and content filtering." See R. Diebert and M. Crete-Nishihata, "Global Governance and the Spread of Cyberspace Controls," *Global Governance* 18, no. 3 (2012): 343. We use the term *blocking* instead of *filtering* or *censorship* because this is the terminology found in Bill 74. Liberal democratic governments have made arguments in favour of internet blocking "to clamp down on copyright infringements, online child pornography, or other content deemed objectionable, hateful, or likely to incite violence." See R. Diebert, *Black Code: Surveillance, Privacy, and the Dark Side of the Internet* (Toronto: McClelland & Stewart, 2013), 19. In Canada, there is an internet blocking scheme in place to limit access to child pornography. It

provisions of this law (which were set out in section 12) empowered *La Société des loteries du Québec* (SLQ) to “oversee the accessibility of online gambling.”⁶ Section 12 of Bill 74 amended Quebec’s *Consumer Protection Act*, imposing the website blocking scheme as a way to protect consumers and the population. It gave the SLQ the power to establish a list of sites that contravened the laws of the province and to provide this list to the Régie des alcools, des courses et des jeux (the province’s gambling regulator), which was in turn empowered to notify ISPs about the listed sites. These ISPs were then given thirty days to block access to the site. The SLQ was furthermore given responsibility for overseeing compliance and ensuring that ISPs complied with internet blocking requirements.

In 2018, Quebec’s Superior Court struck down section 12, arguing that it did not respect federal jurisdiction. In his ruling, the Honorable Justice Pierre Nolle concluded that the legislation enacted “a disposition that intervenes directly in two fields of exclusive federal competence, namely, telecommunications and the criminal law.”⁷ However, Justice Nolle also left the door open for the Quebec government to make an appeal, provided it could justify its intervention. Indeed, the government did appeal Justice Nolle’s decision, and the matter is, as we write, before the Court of Appeal of Quebec.

Regardless of the outcome of the contestation over Bill 74 in Quebec, the question of how provincial governments might address risks associated with online gambling offerings made available to their residents from outside of their jurisdictions remains open (and, as pandemic lockdowns have spurred online activity—including online gambling—this open question has acquired added urgency). How, then, might socio-legal studies help to make sense of this open question, and what might be learned by studying contestation over Bill 74? In this article, we address that question through a situational analysis of Bill 74. Influenced by critical sociological and anthropological studies of gambling,⁸ and taking a socio-legal, governmentality perspective,⁹ we illustrate how socio-legal studies can illuminate

works through a government-sponsored national clearing house that receives complaints regarding websites potentially hosting child pornographic images. If the complaint is substantiated, the offending site is added to the “Cleanfeed Canada distribution list,” and participating ISPs block access to listed addresses. See: <https://www.cybertip.ca/app/en/projects-cleanfeed>. Unlike the blocking scheme found in Bill 74, this scheme relies on the voluntary participation of ISPs.

⁶ *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015*, SQ 2016, c 7; for the wording of the preliminary versions of the bill and the final statute, see <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-74-41-1.html>. The SLQ is one of two branches of the Crown monopoly; the other branch is Loto-Québec (LQ).

⁷ *Association canadienne des télécommunications sans fil v Procureure générale du Québec*, 2018 QCCS 3159, para. 165 (our translation) [*ACTS v Québec*]. Although it will not be our focus in this article, readers interested in the court-mediated jurisdictional struggle between the provinces and the federal government of Canada will find this decision to be interesting. It is arguably well aligned with the “cooperative view of federalism,” which has “generated a large number of *de facto* overlapping powers that clearly favour the federal government, to the detriment of provincial autonomy.” See E. Brouillet, “Canadian Federalism and the Principle of Subsidiarity: Should We Open Pandora’s Box?” *Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 54, no. 21 (2011): 604.

⁸ See, for instance: K. Bedford, “Bingo Regulation and the Feminist Political Economy of Everyday Gambling: In Search of the Anti-Heroic,” *Globalizations* 13, no. 6 (2016): 801–14; K. Bedford, “Regulation and Resistance in Canadian Bingo Halls: A Socio-Legal Account,” *Journal of Law and Social Policy* 30 (2018): 11–35; R. Cassidy, C. Loussouarn, and A. Pisac, eds, *Qualitative Research in Gambling: Exploring the Production and Consumption of Risk* (London: Routledge, 2013);

research on the regulation of gambling, and how the study of online gambling can contribute to the development of socio-legal studies. Our analysis underscores how a governmentality of online gambling operates through a narrow conception of what counts as gambling. As Lemke argues, “the theoretical strength of the concept of governmentality consists of the fact that it construes neo-liberalism not just as ideological rhetoric, as an economic reality, or as a practical anti-humanism,” as other critiques have, “but above all as a political project that endeavors to create a social reality that it suggests already exists.”¹⁰ Insofar as they are implicated in political projects that are claiming a given political reality while also striving to create it, governing rationalities and practices participate in the “production of truth” and the promotion of “forms of subjectivity.”¹¹ This highlights for critical analysis the ways that phenomena come to be framed as problems in need of governing, which require distinctive responses, forms of expertise, and ways of intervening. With respect to online gambling, the narrow frame that we describe in this article excludes 1) a range of risks (e.g., related to consumer profiling and the capacity to stimulate “addictive consumption”),¹² 2) the heterogeneity of everyday experience that connects online gambling with online addictive consumption more generally, and 3) a range of possibilities for governing online gambling otherwise. In critiquing this frame, we illustrate the usefulness of reading gambling and its regulation through a governmentality lens, and the value—for socio-legal and governmentality studies—of attending to online gambling as a sentinel site for studying the government of online consumption.

In what follows, we first touch on the regulation of internet gambling in Canada and Quebec. Next, we discuss our governmentality perspective, which is informed by socio-legal approaches that focus not only on logics and diagrams of power (e.g., laws), but also on “everyday interactions that make up the ever-shifting dynamics of...governance on the ground.”¹³ We then turn to a discussion of our methods, which were devised to answer the broad question of how governments attempt to regulate gambling-related harms stemming from widespread access to online gambling opportunities. Then, following a presentation of our findings, we conclude by noting how this governmentality of online gambling has problematically enshrined an individuated notion of risk—the risk of addiction to gambling—while

J. Cosgrave, ed., *The Sociology of Risk and Gambling Reader* (London: Routledge, 2006); J. Cosgrave and T. Klassen, eds, *Casino State: Legalized Gambling in Canada* (Toronto: University of Toronto Press, 2009); J. Cosgrave, “Embedded Addiction: The Social Production of Gambling Knowledge and the Development of Gambling Markets,” *Canadian Journal of Sociology* 35, no. 1 (2010): 115; S. Kairouz, C. Paradis, and E. Monson, “Does Context Matter? A Multilevel Analysis of Gambling Settings Among Undergraduates,” *Addiction Research & Theory* 23, no. 6 (2015): 518–27; and G. Reith, “Techno Economic Systems of Excessive Consumption: A Political Economy of ‘Pathological’ Gambling,” *British Journal of Sociology* 64, no. 4 (2013): 717–38.

⁹ See, for instance: R. Lippert, “Urban Revitalization, Security, and Knowledge Transfer: The Case of Broken Windows and Kiddie Bars,” *Canadian Journal of Law and Society* 22, no. 2 (2007): 29–53.

¹⁰ T. Lemke, *Foucault, Governmentality and Critique* (London: Paradigm Publishers, 2012), 6.

¹¹ M. Foucault, “The Subject and Power,” *Critical Inquiry* 8, no. 4 (1982): 783–85.

¹² G. Reith, *Addictive Consumption: Capitalism, Modernity and Excess* (London: Routledge, 2019).

¹³ M. Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (Chicago: University of Chicago Press, 2012), 3.

simultaneously ignoring a wider set of risks, not just to individuals but also to collectivities, associated with the online nature of gambling and related forms of consumption.

Regulating Internet Gambling in Canada and Quebec

In Canada, the gambling provisions of the Criminal Code are contained within Part VII on “Disorderly Houses, Gaming and Betting.” For our purposes in this article, we will consider the section of the Criminal Code that pertains to internet gambling, section 202(1)(b): “Every one commits an offence who... imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting.” Although this section would appear to make internet gambling a criminal offense, it is interpreted as following the exemptions associated with “Permitted lotteries,” which are specified in section 207(1), especially 207(1)(a), which states: “Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful... for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province.” As Belanger argues, provincial governments have interpreted these stipulations as allowing them to legally operate and monopolize internet gambling, “as long as the patronage is restricted to residents within that province.”¹⁴

In Quebec, the provincial government began to be concerned by online gambling as early as 2000. By 2010, the government announced that it would develop a public offering of online gambling managed by Loto-Québec (LQ).¹⁵ At this time, several organizations were opposed to the idea of the province getting into the online gambling market. For instance, the directors of Quebec’s eighteen regional public health branches argued that it would risk accelerating and increasing popular participation in gambling.¹⁶ Meanwhile, the provincial Minister of Finance presented the government’s online gambling offering—accessible through

¹⁴ Y. Belanger, “Internet Gambling and the Kahnawà:ke First Nation,” in *Routledge International Handbook of Internet Gambling*, ed. R. Williams, R. Wood, and J. Parke (New York: Routledge, 2012), 317. Belanger’s work illustrates how Quebec’s move into online gambling conflicted with the operations of the Kahnawà:ke Gaming Commission, pitting provincial economic interests against Kahnawà:ke. Kahnawà:ke is one of eight communities that make up the Mohawk Nation. Its unceded territories are situated along the southern shore of the St. Lawrence River across from the City of Montreal. By 1999, Kahnawà:ke was permitting servers on its territories to host online gambling sites. It is possible to view Quebec’s move into online gambling, as well as the development of Bill 74, as a challenge to Kahnawà:ke’s exercise of self-determination (see, for instance: http://www.kahnawake.com/pr_text.asp?ID=3146).

¹⁵ R. Bachand, *Le gouvernement autorise Loto-Québec à développer l’offre de jeu en ligne* (Québec: Ministère des Finances, 2010), http://www.finances.gouv.qc.ca/documents/Communiqués/fr/COMFR_20100203.pdf. See also: L. Nadeau et al., *Online Gambling: When the Reality of the Virtual Catches Up with Us* (Montreal: Working Group on Online Gambling, 2014).

¹⁶ R. Maguire et al., *Mémoire de la position des directeurs régionaux de santé publique sur l’étatisation des jeux d’argent par Internet au Québec* (Montreal: Montreal Public Health, 2010), http://www.dsp.santemontreal.qc.ca/fileadmin/documents/dossiers_thematiques/Jeunes/Jeux_de_hasard_et_d_argent/MemoireDRSPjeuennignemars2010.pdf.

a new, LQ-run website called *Espacejeux*—as a solution that would help Quebec recapture the online gambling that residents were engaged in using out-of-jurisdiction sites while also providing a secure, legal space for play that would protect citizens and recoup money from the “underground economy.”¹⁷

Unfortunately, from the Quebec government’s perspective, the hope of recapturing Quebec residents’ online gambling has never fully been realized. For instance, Kairouz and colleagues conducted a comparison of the online gambling patterns of Quebec-based players before and after the creation of *Espacejeux*. They found that “the majority of online gamblers have continued playing on unregulated sites,” a result that is in direct contrast with a key rationale behind the creation of *Espacejeux*.¹⁸

According to Nadeau and colleagues, the key to addressing the practice of out-of-jurisdiction gambling and the risks associated with it was to intervene at social (“Hypothèse sociosanitaire”), economic (“Hypothèse socioéconomique”), and regulatory (“Hypothèse juridique”) levels. As we shall see in our discussion of section 12 of Bill 74, however, debates over how to regulate internet gambling tend to be somewhat narrow in how they are framed. Just as debates in 2010 about the province’s venture into internet gambling had raised questions about whether the government was acting in the name of consumer protection and public health or economic self-interest, so too have debates over section 12 of Bill 74 been structured by these questions. What is rather remarkable, though, is that these discussions have occurred largely in the abstract, with very little input via official channels from consumers and the public more generally. As we will argue, the fact that public input was so minimal (the fact that some types of knowledge were privileged over others) is likely related to the privileging of certain types of risks while others were ignored. To set the stage for our presentation of this governmentality of online gambling, we first further develop our analytic framework.

Governmentality’s Analytic Gambit

Michel Foucault described governmentality as “the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument.”¹⁹ With this concept Foucault wanted to also think about the rise of governmental power vis-à-vis other types of power (e.g., sovereign power), as well as the historical process, beginning in the Middle Ages, through which European states were gradually *governmentalized*. In the years since Foucault proposed the concept, governmentality studies have developed into a multidisciplinary field of research characterized by diverse perspectives and

¹⁷ Bachand, *Le gouvernement*.

¹⁸ S. Kairouz, I. Fiedler, E. Monson, and N. Arseneault, “Exploring the Effects of Introducing a State Monopoly Operator to an Unregulated Online Gambling Market,” *Journal of Gambling Issues* 37 (2017): 144.

¹⁹ M. Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977–1978*, ed. M. Senellart et al., trans. G. Burchell (New York: Picador, 2004/2007), 108.

developments. A key development, for our analysis, has been the field's practice turn.

The Practice Turn in Governmentality Studies

Foucault's articulation of governmentality marks, it has been observed, a "new direction" in his analysis.²⁰ Amongst the several interpretations of this new direction, the most compelling, we find, links it to Foucault's evolving interest in understanding the actual practices of government.²¹ This practice-oriented direction in the study of governmentality is indicated most directly, perhaps, in Foucault's lectures on *The Birth of Biopolitics* (1978–1979). Here, Foucault says that he "tried to grasp the level of reflection in the practice of government and on the practice of government."²² Even if this line of thought remained underdeveloped by Foucault, it is especially clear in his treatment of the difference between the "economic game" of the mercantilists and that of the French, German, and American neo-liberals writing during the twentieth century.²³ That Foucault discerns different *games* here, with different rules of play, should suggest to critical analysts the importance of studying not only the rules of the game, but how, where, and when it was actually played.

Indeed, this turn—to practice and enactment—has been progressively taken in governmentality studies as the field has developed. Responding to the critique that the field was too focused on governing logics and not focused enough on practices, and also that it was overly focused on risk at the expense of an adequate understanding of uncertainty,²⁴ more recent studies of governmentality have concentrated on the practical application of logics and their role in the production of uncertainty.²⁵ Bringing together the fields of gambling studies and governmentality studies, Fiona Nicoll's work exemplifies how a governmentality approach can take up questions of practice. By foregrounding attention to the everyday, her work illustrates how different "modalities of governmentality coexist in gambling's governance," and how each "modality of governmentality organizes different constellations of gambling, finance, work and play" in ways that "often overlap in everyday life."²⁶

²⁰ See, for instance, M. Senellart, "Course Context," in *Ibid.*, 369–70.

²¹ See, for instance, P. Veyne, *Foucault, His Thought, His Character*, trans. J. Lloyd (Cambridge: Polity, 2010); M. Valverde, "Beyond Discipline and Punish: Foucault's Challenge to Criminology," in *The Carceral Notebooks, Volume 4*, ed. B. Harcourt (Chicago: The Seminary Coop, 2008).

²² M. Foucault, *The Birth of Biopolitics, Lectures at the Collège de France, 1978–1979*, ed. M. Senellart et al., trans. G. Burchell (New York: Picador, 2004/2008), 2.

²³ *Ibid.*, 52–54, 201–2.

²⁴ P. O'Malley, L. Weir, and C. Shearing, "Governmentality, Criticism, Politics," *Economy and Society* 26, no. 4 (1997): 501–17; P. O'Malley, *Risk, Uncertainty and Government* (London: Glasshouse Press, 2004).

²⁵ See, for instance: M. Brady and R. Lippert, eds, *Governing Practices: Neoliberalism, Governmentality, and the Ethnographic Imaginary* (Toronto: University of Toronto Press, 2016); T. Li, *The Will to Improve: Governmentality, Development and the Practice of Politics* (Durham: Duke University Press, 2007); P. O'Malley, *Crime and Risk* (London: Sage, 2010); Valverde, *Everyday Law on the Street*; and M. French, "Counselling Anomie: Clashing Governmentalities of HIV Criminalisation and Prevention," *Critical Public Health* 25, no. 4 (2015): 427–40.

²⁶ F. Nicoll, *Gambling in Everyday Life: Spaces, Moments and Products of Enjoyment* (London: Routledge: 2019), 16 (emphasis in the original); see also F. Nicoll, "Finopower: Governing

Summing up the implications of this practice turn for our analysis, the analytic gambit in a governmentality studies approach to online gambling lies in its focus on 1) the rules of the game, 2) how the rules change over time and across space, and 3) the effects of such change on the everyday ways the game is played. The analytic gambit, in other words, is that, in studying the unfolding of governing configurations, we can attend to the complexities and power relations that work to accomplish political projects and thereby imagine ways of governing otherwise. This three-fold imperative informed our study design, which, as we shall describe next, looks not just at discourses but also at how these played out in practice in a litigative struggle over section 12 of Bill 74.

Methods and Materials

Our project started with the Quebec government's omnibus legislation and involved gathering documents from a wide range of sources related to Bill 74's internet blocking scheme between April 2016 and May 2018, including news media coverage, government websites, blogs of net neutrality advocates, transcripts of debates from committee hearings on the legislation, and fieldnotes from our observations of litigation over Bill 74 in Quebec's Superior Court. In total, we assembled 1,067 pages of material. Our study design and methodology were guided by the conventions of situational analysis. Coming out of the grounded theory tradition, Clarke developed situational analysis in order to regenerate the grounded theory method and de-couple it from its "positivist recalcitrancies."²⁷ Situational analysis takes social situations—which can span spatial and temporal arenas—to be the fundamental units of analysis. It proposes that analysts map social situations in order to guide their data collection, and that they focus on the heterogeneity of different discourses, in different arenas within the social situation, in order to bring their "multiple positions and even contradictions" into view.²⁸

Working in the situational analysis framework, our aim was to map the social situation drawn together by Bill 74. We created situational maps to identify different arenas of inquiry, and this led us to track the contestation of Bill 74 through several arenas, including committee debates in the National Assembly, public debates in the media, and litigation in Quebec's Superior Court. We analyzed discourses produced in these arenas for the ways they configured social relationships and interaction, produced identities and subjectivities, shaped power relations, and envisioned risks and problems. We used analytic memoing techniques to search our data for emergent themes and to track semantic shifts of concepts and themes across arenas.²⁹

Vital to our efforts to understand how discourses governing gambling play out in practice was an ethnographic inquiry centered on the litigation over Bill 74 in

Intersections between Gambling and Finance," *Communication and Critical Cultural Studies* 10, no. 3 (2013): 385–405.

²⁷ A. Clarke, *Situational Analysis: Grounded Theory after the Postmodern Turn* (London: Sage, 2005), xxi.

²⁸ A. Clarke, C. Friese, and R. Washburn, eds, *Situational Analysis in Practice: Mapping Research with Grounded Theory* (Walnut Creek, CA: Left Coast Press, 2015), 14.

²⁹ Clarke, *Situational Analysis*.

Quebec's Superior Court.³⁰ We tracked this litigation over several months of postponement and rescheduling, culminating in three days of hearings from 1 to 3 May 2018 in Quebec's Superior Court in Montreal, and in the ruling of the Court released on 18 July 2018. These proceedings saw the Attorney General of Quebec square off against the legal representatives of the Canadian Wireless Telecommunications Association-Association Canadienne des Télécommunications Sans Fil [ACTS], each presenting compelling arguments for and against the internet blocking scheme at the heart of Bill 74. Four of our seven-member research team attended the three days of hearings with a view to addressing our research question about how governments seek to regulate online gambling. Taking all of this material together, we developed a situational analysis of the complexities of legislating with respect to online gambling. In addition to attending to the challenges faced by governments seeking to regulate online gambling, we also use our materials to reflect more broadly on the governmentality of online play and consumption.

Findings

Although our analysis is developed from the totality of our materials, we have elected to concentrate in this article on debates in Quebec's National Assembly, committee debates, the ruling delivered by Quebec's Superior Court in *ACTS v Québec*, and our ethnographic fieldnotes pertaining to that trial. The discourses articulated in these settings give us clear indications of the logics and practices at work in this governmentality of online gambling. Below we organize our data according to the following themes: 1) the oversight of the accessibility of online gambling games; 2) economic risks; 3) risks to consumers, vulnerable persons, and youth; 4) censorship risks; 5) real money risks; 6) risk of lost revenue; and 7) risks to ISPs. We conclude our presentation of data with a reflection on what seems to be the most marginal risk in the discourse, a risk to imagined consumers. In our view, the marginalization of this risk is significant, since it enables the governmentality of online gambling to overlook the collective risks of harm stemming from the way online operators (not just gambling operators, but also other platforms) can learn from online play about how to stimulate addictive consumption.

Oversight of the Accessibility of Online Gambling Games

The section of Bill 74 that interests us in this article pertains specifically to Quebec's consumer protection legislation. The bill as introduced stated:

13. The Consumer Protection Act (chapter P-40.1) is amended by inserting the following after section 260.32:

“Title III.4

“Online Gambling

³⁰ Our ethnographic approach to the courtroom was inspired by D. Moore, *Criminal Artifacts: Governing Drugs and Users* (Vancouver: UBC Press, 2007), amongst others.

“260.33. For the purposes of this Title, “online gambling site” means a website on which a person may make wagers and bets through an interactive mechanism.

“260.34. An Internet service provider may not give access to an online gambling site whose operation is not authorized under Québec law. ...”³¹

The first point to underscore, here, is that the law is targeted at *online gambling sites*, which are sites where a person can make bets or wagers via an interactive interface. As we shall discuss in greater depth below, this definition excludes online games that, while they may not involve betting, do allow and actively encourage consumers to spend significant amounts of money via in-game purchases.³² Additionally, as noted in our introduction, Bill 74 tasked ISPs with blocking access to unauthorized sites. This provision became central to the litigation in Québec’s Superior Court over the law, which is not surprising given that the litigation was led by an organization representing ISPs. A final point to observe is that the sections of Bill 74 related to the internet blocking scheme nowhere mention public health or public safety. This is noteworthy because, as we shall demonstrate below, public health, public safety, and the protection of consumers were key frames that the government sought to apply to these provisions when it presented them to the National Assembly and defended them at trial. In other words, the discourse evolved as it moved through different arenas of practice.

Beyond these points, we want to note the fact that Bill 74 called for the oversight of unauthorized online gambling sites. As we shall discuss below, the impulse to monitor online gambling sites could serve useful public policy purposes. However, in this case, it was too narrowly framed and also misdirected in the sense that it proposed to target *their accessibility from Quebec* (e.g., the risks related to Quebec residents accessing these sites) and not the ways *they access Quebec* (e.g., the risks related to these sites accessing Quebec residents). The distinction here may be a subtle one, but it amounts to a focus on Quebec residents’ expenditure of money out-of-jurisdiction instead of a focus on the ways that residents of Quebec may be targeted and incentivized to consume online.

³¹ Bill 74, *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015*, 1st Sess, 41st Leg, Quebec, 2015, <http://www.assnat.qc.ca/fr/travaux-parlementaires/projets-loi/projet-loi-74-41-1.html>. It is important to emphasize that Bill 74 was amended following committee hearings, so that by the time the law was before Québec’s Superior Court, the section quoted here was numbered section 12 and the wording was changed to read “260.34. The Société des loteries du Québec shall oversee the accessibility of online gambling. It shall draw up a list of online gambling sites not authorized under the laws of Québec and provide the list to the Régie des alcools, des courses et des jeux, which shall notify it to Internet service providers. ¶ 260.35. An Internet service provider that receives the list of unauthorized online gambling sites in accordance with section 260.34 shall, within 30 days after receiving the list, block access to those sites.”

³² In the field of gambling studies, scholars are increasingly attending to the porous boundary between gambling and “quasi-gambling” games. See, for instance A. Zanesco, M. French, and M. Lajeunesse, “Betting on DOTA 2’s Battle Pass: Gambification and Productivity in Play,” *New Media & Society* (2020), <https://doi.org/10.1177/1461444820941381>; A. Zanesco, M. Lajeunesse, and M. French, “Speculating on Steam: Consumption in the Gambified Platform Ecosystem,” *Journal of Consumer Culture*, <https://doi.org/10.1177/1469540521993928>

Economic Risks

When then Finance Minister Carlos Leitão first presented the Bill to Quebec's National Assembly, he chose to emphasize how it addressed not only economic risks to the province, but also risks to public health. He first argued that its several measures were necessary in order to return the province to a balanced budget while also supporting economic development. He also asserted that, in addition to public finance control measures, the law's objective was to protect public health by taking action against illegal online gaming:

Beyond the control of public finances, we have as an objective the protection of public health. This is why we have put forward a measure to counter illegal online games. In effect, illegal websites are not submitted to the rules of responsible gaming that we find on the website of Loto-Québec. Therefore, in addition to losing revenue linked to illegal online gaming, the government has to assume the social costs of problems that it generates.³³

The argument, here, was that since these sites were not obliged to provide the same responsible gaming measures as LQ, the government was left with the social costs in addition to its lost revenue.

This framing of Bill 74 was further developed by Minister Leitão in committee debates before the *Commission des finances publiques*, which focused on specific details of the legislation. There, Minister Leitão argued that there had been a proliferation of unregulated, illegal websites skimming off what would otherwise be LQ customers. Whereas LQ had to follow a series of government regulations designed to protect public security and public health, its out-of-jurisdiction competition was not bound by the same strictures:

...the problem is that there is a proliferation of Internet gaming sites that are unregulated, illegal, and that create a situation of unfair competition for Loto-Québec, which itself runs an online gambling site on the Internet, but must follow a whole series of regulations that the government imposes, which are in fact appropriate in terms of public safety, public health, the identification of players, etc., things that the unregulated sites don't have to do, by definition...we therefore judge it necessary to create a more fair environment, and also questions of public health and the consumer protection are very important.³⁴

Accordingly, a key goal of Bill 74 was to address a situation that, from the government's perspective, appeared to create unfair competition. From this perspective, the law clearly targets a set of economic risks. Note, also, that questions of public health and the protection of consumers are emphasized, secondarily, as very important.

³³ Québec, National Assembly, Debates, http://www.assnat.qc.ca/en/travaux-parlementaires/assemblee-nationale/41-1/journal-debats/20151119/159481.html#_Toc435794392 (our translation).

³⁴ Québec, National Assembly, Debates, <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cfp-41-1/journal-debats/CFP-151203.html> (our translation).

Risks to Consumers, Vulnerable Persons, and Youth: Public Security and Public Health

Given the fact that section 12 of Bill 74 modified Quebec's *Consumer Protection Act* in order to implement the law's internet blocking scheme, questions of public health and consumer protection were raised more than once by Minister Leitão. An opposition member of the committee—André Spénard—suggests that the internet blocking provisions of Bill 74 seemed to be mainly about making a losing horse, LQ, more competitive: "...that makes me think of being given a horse in a race, which never wins, and holding onto it while getting rid of all the others. It would be sure to win, of course, but it wouldn't improve its time."³⁵ In response to this critique, Minister Leitão appeared to concede that LQ was a losing horse in the analogy of the race, but this was because its offer had to conform to a series of rules designed to impose limits on play, as well as rules related to "public health and the protection of consumers."³⁶

Further on in the committee debates, Mr. Spénard asks whether the costs of the internet blocking scheme, borne by ISPs, would not be passed onto consumers. Instead of responding directly to Mr. Spénard's question, Mr. Leitão pivots the discussion away from considerations of how much the scheme would cost consumers. He does this by emphasizing public security and public health:

Yes, for sure, this is a government decision, but a government decision motivated principally by questions of public safety and public health. These sites that offer illegal games do not follow the rules. Therefore, there are risks of abuse of consumers, there are risks to public health, for example, where vulnerable persons and the very young can play and lose large sums. So, yes, there are costs to society for this.³⁷

Here Mr. Leitão raises the prospect of risk to consumers, particularly vulnerable and young consumers. He acknowledges that there will be costs to society, but the framing suggests that any such costs would be more than reasonable.

In further committee hearing debates, in response to questions about feasibility, Minister Leitão reiterates: "...I must, perhaps, affirm that our objective in this exercise is not to promote electronic gaming. On the contrary, our ultimate objective is to better encase and better control electronic gaming everywhere from the point of view of public health and consumer protection."³⁸ Here the minister again calls up consumer protection and public health rationales.

At trial, counsel representing the government also emphasized the public health and consumer protection benefits of the law: "Why are we doing this? Illegal sites, unfair competition for the government of Québec, public safety and public health, identification of players and protection of consumers. These sites must be submitted to the same rules as Loto-Québec" (Tardif fieldnotes, p. 17).

³⁵ Ibid. (our translation).

³⁶ Ibid. (our translation).

³⁷ Ibid. (our translation).

³⁸ Québec, National Assembly, Debates, http://www.assnat.qc.ca/fr/travaux-parlementaires/commis-sions/cfp-41-1/journal-debats/CFP-160208.html#debut_journal (our translation).

In the end, this argument was not accepted by Quebec's Superior Court. The court disputed the contention that the law was about public health and consumer protection, asserting instead that its essential character was to force ISPs to block sites deemed illegal in order to increase provincial revenues³⁹. It ruled that section 12 of the province's Bill 74 intruded on issues of federal competence. Not lost on the court, nor indeed many who criticized the government's public health framework, was the fact that the law was being championed by the minister of finance, and not the minister of health (e.g., *ACTS v Québec*, para. 59). Moreover, in holding these two arenas together—the Committee and the Court—we can trace a continuity in the “rules of the game” across different sites: concern about the risk of harm to consumers does not ring true when it comes from the mouth of a finance minister. This “regime of truth”⁴⁰ says something about the entrenched differences between government knowledge of economy and health, as well as the political project that holds these phenomena apart with a view to governing them.

Censorship Risks: Totalitarian Threats to the Public Good

In addition to the public health risks discussed above, we also see in committee debates arguments about net neutrality and censorship. These arguments touch on questions of how the internet blocking scheme would actually work, and with what effect. For example, during committee debates, François Bonnardel of the then opposition Coalition Avenir Québec, questions whether the internet blocking scheme could conflict with Canada's Telecommunications Act: “...there is an issue touching on the CRTC. At stake is that we would become the first province in Canada, to my knowledge, that could censor free circulation on the internet.”⁴¹ Just previous to this observation, Bonnardel argues that the true reason for the internet blocking scheme was because LQ was not capable of competing with other online sites, and that sites like Full Tilt Poker, PokerStars, and 888poker were better than anything LQ could offer. Accordingly, Bonnardel argues, in order to achieve an economic advantage in the domain of online gambling, Quebec would censor the internet. This observation is followed by Bonnardel likening Quebec to Cuba and Korea (presumably North Korea) with a view to highlighting the potentially totalitarian nature of the scheme.

Minister Leitão objects to this characterization of the internet blocking scheme with respect to the ideas of censorship and totalitarianism: “I find somewhat inappropriate, even very inappropriate, your comparison with Cuba and North Korea. Really, it has to be said, it's not a question of censoring the internet, it's a question of redirecting the games that are presently illegal into a channel that would be legal.”⁴² However, developing the theme of totalitarianism still further, opposition member Mr. Spénard argues that “The Minister did not like the earlier comparison with totalitarian countries, but this is exactly how totalitarian countries

³⁹ *ACTS v Québec*, para 98.

⁴⁰ Foucault, *Birth of Biopolitics*, 18.

⁴¹ Québec, National Assembly, Debates, http://www.assnat.qc.ca/fr/travaux-parlementaires/commis-sions/cfp-41-1/journal-debats/CFP-160208.html#debut_journal (our translation).

⁴² *Ibid.* (our translation).

behave: it is we who control, because we know what is best for you guys, and that's it."⁴³

While less explicit than Minister Leitão's arguments about risks to consumers, public security and public health, the arguments of the opposition members that raised the spectre of totalitarianism also invoked the notion of the public and the public good. Their critiques present Bill 74 as a type of censorship of the internet, as totalitarian behaviour. This implies a threat to democratic decision-making, and thus to the *demos*, the people.

Real-Money Risks

In committee debates, a question was posed by Nicolas Marceau, a member of the opposition Parti Québécois, about whether the province's internet blocking scheme would apply to sites that host gambling games using virtual money instead of real money. Marceau noted that these sites are often "twin brothers" of real-money sites⁴⁴ and asked whether they would be blocked along with real-money sites. Minister Leitão responded that, no, the law would only apply to real-money and not virtual-money sites. Mr. Marceau followed up by asking if there would be an internet beyond the control of the internet blocking scheme. He gave the example of players visiting a virtual-money site, and then using a link on that site to travel to a real-money site. Would this allow players, in other words, to bypass the blocking scheme? Minister Leitão indicated that he had no response to this question, that he had not yet arrived at that step. Mr. Marceau noted that this was a technical problem, but an important one, and Minister Leitão agreed.

Although both Mr. Marceau and Minister Leitão agreed that the issue was a key technical problem related to how best to ensure that players who play online are playing using LQ's site, neither discussed the broader question of the difference between real-money games and virtual-money games. In gambling studies literature, it is recognized that virtual-money games represent a form of media that, not unlike advertising, directs consumers towards products they can spend money on.⁴⁵ This understanding seems to be the driving force of Mr. Marceau's line of questioning. What is missed, in the exchange between Mr. Marceau and Minister Leitão, however, is a deeper discussion of the business models and user experiences of free or play-money gambling sites, and especially the fact that many such sites rely not only on in-game transactions as forms of revenue, but also on the archiving and commodification of player data produced as players interact with these so-called free platforms.⁴⁶

⁴³ Ibid. (our translation).

⁴⁴ Québec, National Assembly, Debates, <http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cfp-41-1/journal-debats/CFP-151203.html/> (our translation).

⁴⁵ J. Reynolds, "Youth, Poker and Facebook: Another Case of Candy Cigarettes?" (Ph.D. diss., University of Toronto, 2016).

⁴⁶ C. Albarrán-Torres, *Digital Gambling: Theorizing Gamble-Play Media* (London: Routledge, 2018), 109–15; J. Whitson and M. French, "Productive Play: The Shift from Responsible Consumption to Responsible Production," *Journal of Consumer Culture*, <https://doi.org/10.1177/14695405211993922>.

At trial, Justice Nollet also posed a question about games that do not use real money. In an exchange with the attorney for the Government of Quebec, he asked: “Let’s say that the definition of online gambling is erroneous (e.g., games where we do not spend money, swaps, and pay to win); how can ISPs know that what they would block would be criminal? How can Loto-Québec assume the right to define online games?” (Tardif fieldnotes, p. 21). At issue in this question is not just whether LQ should have the right to define what counts as an illegal game, but also the larger question of what counts as an online game. Although this larger question was only opened and not explored—the argument centred instead on how LQ could determine the legality of content, and what would happen if it erroneously designated content as illegal—we think this opening is worth exploring and we will return to it. Additionally, the Court’s line of inquiry foregrounds a consideration of the nature of the il/legality of gambling games. Are they, for example, comparable in some sense with child pornography, or the propagation of hate speech online?

Finally—and again holding the Committee and Court arenas together—we can trace the development of this governmentality across time and space. Instead of marking a continuity as we did above, however, here we want to highlight a semantic shift. Whereas Bill 74 defined online gambling as occurring when a person makes wagers or bets via an interactive mechanism, and whereas Committee debates did not fundamentally question this definition, the Court opens the door to (but does not fully enter) questions about the nature of online gambling. In opening up this line of questioning, the Court is also posing questions about the appropriate expertise for defining what counts as an il/legal game. A governmentality studies approach highlights such discursive shifts—or rule changes—in order to emphasize their potentially consequential effects, not least for their capacity to reconfigure the production of truth and forms of subjectivity.

Risk of Lost Tax Revenue Related to Online Gambling

In committee debates, members of the National Assembly also had an exchange about whether the internet blocking scheme might apply to online purchases more generally. For instance, Mr. Spénard stated, there had been lots of discussion about online business operating outside of Quebec’s jurisdiction and providing consumer goods to Quebecers. In these instances, the transactions are not subject to provincial tax:

We talk a lot about online purchases, where consumers don’t pay their taxes, where sellers don’t charge their taxes, and you arrived with a solution that seems to me, in any case, that seems to you very simple, to block these sites. Is this—because here I’m speaking to the Minister of Finance—is this applicable for furniture, for goods and services online that aren’t registered and that don’t pay their taxes? It’s just like illegal betting, I imagine?⁴⁷

⁴⁷ Québec, National Assembly, Debates, <http://www.assnat.qc.ca/fr/travaux-parlementaires/commis-sions/cfp-41-1/journal-debats/CFP-151203.html> (our translation).

In response to this line of questioning, Minister Leitão argued that these sites would not be blocked because “...these sites are not illegal. If you buy a pair of shoes somewhere, the act of buying a pair of shoes is not illegal.”⁴⁸

This line of inquiry, although it was not developed in committee debates or at trial, begins to touch on a wider set of risks that are almost completely obscured in the governmentality of online gambling, namely those linked to online consumption. Although these risks are discussed here solely in terms of lost revenues to the government—and are dismissed by Minister Leitão as not pertinent because online consumption is legal and online gambling (outside of LQ) is technically illegal—they do merit consideration. Indeed, as we shall argue, the governmentality of online gambling is presently constrained by the idea that gambling is an activity limited to the act of making a real money wager within a game of chance. This governmentality focuses on a narrow bandwidth of risks related to a particular form of legally circumscribed play. Obscured by this governmentality are risks related to myriad other forms of online consumption that create powerful tools of persuasion, which can be used to push consumers if not necessarily to a destructive, self-immolating form of addiction, then to its threshold.

Risks to ISPs

In his ruling in *ACTS v Québec*, the Honorable Pierre Nolle held that the government’s appeals to frames of public health and public security were superficial. He contended that the key question to be resolved was whether the provincial right to exploit online gambling would allow provincial governments to impose on ISPs the obligation to block signals, or to give content judged to be illegal to the province. In this arena of practice, in other words, the discourse had evolved to address matters over which courts claim competency, the rule of law, jurisdiction, and so on.

To answer this question, Justice Nolle followed the Supreme Court of Canada’s 2016 decision in *Rogers Communications v Châteauguay (City)*,⁴⁹ observing that Courts must attend to the essential character of the contested legislation.⁵⁰ This involves understanding the goal targeted by the legislature in the adoption of a law.⁵¹ To achieve this understanding, Justice Nolle argued, it is important to attend not only to intrinsic proofs—the text of the law—but also extrinsic proofs. For this reason, the Court considered the general legislative history of the bill, parliamentary debates, and other documents where they were deemed pertinent.⁵²

⁴⁸ Ibid. (our translation).

⁴⁹ 2016 SCC 23, [2016] 1 SCR 467, para. 87. In this decision, the Supreme Court argues that analyses of the constitutional validity of impugned measures involve two steps: 1) the determination of “the ‘pith and substance’ or essential character of the law” and 2) the classification of that essential character “by reference to the heads of power under the *Constitution Act, 1867* in order to determine whether the law comes within the jurisdiction of the enacting government.”

⁵⁰ *ACTS v Québec*, para 51, our translation.

⁵¹ Ibid., para 56.

⁵² Ibid., para 57.

Three elements are considered under the rubric of intrinsic proofs: section 12 of Bill 74, the provincial disposition, and the Consumer Protection Act.⁵³ Justice Nollet notes that Bill 74 is above all a law with an economic flavour. Its objective is to implement the discourse of the provincial budget. It is the responsibility of the Minister of Finance and it proposes policy that relates to economic, fiscal, budgetary, and financial matters.⁵⁴ The *Consumer Protection Act* is modified with the goal of controlling the offer of online gambling. The only control measures offered were the obligation for ISPs to block online gambling sites, and the creation of infractions for ISPs who do not block access.⁵⁵ Based on this, Justice Nollet argues that the law actually had very little to do with the objectives of the Consumer Protection Law: “It is not a question of merchants, consumers, prohibited practices and roles, for the Office of the protection of consumers. The Court concludes that the link to the LPC [Quebec’s Consumer Protection Law] is superficial, not to say opportunist.”⁵⁶

Although an incidental benefit of the law could be a measure of protection for vulnerable clients, the text of the law itself does not mention them. Indeed, “No other measure was evident to establish that the object of the provincial law was the protection of vulnerable consumers and the public’s health.”⁵⁷

Turning to extrinsic proofs, Justice Nollet covered several points related to public inquiry into, and discourse on, the social and economic repercussions of gambling in Quebec. One point that he emphasized in his ruling was that, in 2010, when LQ launched *Espacejeux* to offer lottery and casino games online, the then minister of Finance indicated that LQ would recapture online gaming, placing it within a legal and secure framework. He added that this was a means of acting against the underground economy and also of recuperating escaping revenues.⁵⁸ The same day, LQ published a communique announcing the diverse measures it would undertake to realize its new mandate. The communique argued that the task could be accomplished by verifying the age of players, by providing players the option of self-exclusion and of limiting the weekly amount of money spent, through communication of information about metrics of player behaviour (time spent playing, money spent, money remaining in their account), and by elaborating means of detecting problematic behaviours in play. It also referenced the helpline, and means of self-testing for problems, indicating that the only mode of accepted payment would be debit or credit card. In Justice Nollet’s view, however, these promised risk mitigation measures were not really embraced by LQ.

To make this point, he cited The Nadeau Report,⁵⁹ referred to above, which indicates that, in spite of LQ’s initial gestures towards the establishment of best practices in responsible gambling, a number of decisions undermined consumer protection measures adopted in 2010, including the decisions that made

⁵³ Ibid., para 58.

⁵⁴ Ibid., para 59.

⁵⁵ Ibid., para 64.

⁵⁶ Ibid., para 65.

⁵⁷ Ibid., para 66.

⁵⁸ Ibid., para 76.

⁵⁹ Nadeau, *Online Gambling*.

responsible gambling tools less visible on the website.⁶⁰ All of this—in addition to the fact that the government’s economic plan noted only online gambling as a growth area, and that the government noted that Quebec has proportionally fewer pathological players than other provinces⁶¹—indicates that the reduction of the number of gamers with problems, or the protection of vulnerable players, was at most a secondary objective of the legislation.⁶² Justice Nollet argues that, if health and/or the protection of consumers had been the true motivation for the provincial position, other measures would have accompanied the law. The Nadeau report had recommended educating the population about laws regulating online games, but education initiatives were not in evidence in the law. Accordingly, in a stinging rebuke, Justice Nollet asserted: “The government, which prides itself on intervening in the name of public health and protecting consumers, has not proven that it had acted on this recommendation.”⁶³

On the basis of this analysis, Justice Nollet argued that the essential character of the law was to force ISPs to block online gambling sites deemed illegal and thereby increase provincial revenues.⁶⁴ Ultimately, in the view of Quebec’s Superior Court, the law was not primarily linked to health protection motives. For these reasons, the attorney for the Government of Quebec’s attempts to articulate a defense of the law in terms of provincial jurisdiction did not hold water. Although provincial jurisdiction over matters related to health is well established, Bill 74 only touched indirectly on health. No measures concerning gamers with problems were in evidence in the provincial disposition. Nor were other measures (e.g., prevention measures) announced at the same moment.⁶⁵

Because it struck down Bill 74’s internet blocking provisions on the basis of a complaint by the ACTS, the Nollet decision could be read as managing undue risks presented by the law to the businesses and business models of ISPs. Interestingly, however, Justice Nollet left the door open for a provincially initiated internet blocking scheme, provided it could be defended under the theory of ancillary powers.⁶⁶ Under the theory of ancillary powers, even though section 12 of Bill 74 intrudes on two areas of federal competence, it could be saved if it was an important part of a broader legislative regime, such as consumer protection.⁶⁷ But, like the Supreme Court of Canada’s decision in *Quebec (Attorney General) v Lacombe*,⁶⁸ the degree of integration required increases in proportion to the severity of the encroachment.⁶⁹ From this perspective, the provincial disposition needs to have a rapport of necessity with the consumer protection act. However, as Justice Nollet found that the integration of the provincial disposition with

⁶⁰ *ACTS v Québec*, para 91.

⁶¹ *Ibid.*, para 94.

⁶² *Ibid.*, para 95.

⁶³ *Ibid.*, para 97 (our translation).

⁶⁴ *Ibid.*, para 98.

⁶⁵ *Ibid.*, paras 103–4.

⁶⁶ Here Justice Nollet cites the 2010 *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 SCR 457.

⁶⁷ *ACTS v Québec*, para 156.

⁶⁸ 2010 SCC 38, [2010] 2 SCR 453.

⁶⁹ *ACTS v Québec*, para 158.

consumer protection was superficial, and as section 12 of Bill 74 was held not to be primarily about consumer protection,⁷⁰ the legislation could not be saved under the theory of ancillary powers.⁷¹

This argument might have been easier to make at trial if the legislation had not been narrowly restricted to gambling games defined in terms of games where a person can make bets or wagers via an interactive interface, and to the exclusion of games that do not involve the exchange of real money. As we will argue below, the actual range of interactive activities that involve people making wagers—not just in terms of real money but also in terms of their time and personal information—is huge. As Abarbanel notes, if “we consider a social sciences definition of gambling as risking something of value on an event whose outcome is uncertain, many activities suddenly fall into that classification.”⁷² These activities may not fall under the legal definition of gambling, but they should fall under some kind of regulatory authority, perhaps financial regulatory authorities. Presently, though, they are inadequately regulated.

Risks to the Imagined Consumer

A final noteworthy point is that the public was oft invoked but rarely actually present. For instance, in committee debates, the government move was to frame Bill 74 as a matter of public health and the protection of vulnerable consumers. Meanwhile, members of the opposition parties also invoked the public interest, speaking out on behalf of consumers who might lose money they currently have invested in out-of-jurisdiction online gambling sites, and arguing that the public would be harmed by lack of access to an open internet. And, at trial, government lawyers invoked public health and consumer protection rationales while ACTS attorneys disputed these positions by appealing to the ideal of an open internet.

From a governmentality perspective—one focused not just on logics and diagrams of power, but also how these are enacted in practice—what is interesting in the articulation of these positions is the “absent presence” of the public. Where were the voices of those who have lived experiences of gambling online? Where were the voices of those with lived experience of addiction to, or problems with, online consumption? It is noteworthy that, during committee debates, several Members of the National Assembly voiced their lack of experience playing online:

...I am not a player, and I don't know this, these illegal gaming sites, I, in this instance, I'm thinking that these are just card games, but, in any case, I find that its...

The Chair (M. Bernier): It seems that there are not very many of us around this table who know this.

M. Spénard: There is no one who plays around the table, but...

The Chair (M. Bernier): ...there are people who counsel us.⁷³

⁷⁰ Ibid., para 159.

⁷¹ Ibid., para 160.

⁷² B. Abarbanel, “Gambling vs. Gaming: A Commentary on the Role of Regulatory, Industry, and Community Stakeholders in the Loot Box Debate,” *Gaming Law Review* 22, no. 4 (2018): 232.

⁷³ Québec, National Assembly, Debates, http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cfp-41-1/journal-debats/CFP-160208.html#debut_journal (our translation).

We see these exclusions as working hand-in-hand with the narrow articulation of risks associated with online gambling.

We should consider other exclusions at work here too. As we noted, the issue received scant media coverage, which is surprising considering that Bill 74 enacted Canada's first internet blocking scheme for regulating the consumption of online gambling games. This lack of media coverage likely meant that there was low public awareness concerning the nature and ramifications of Bill 74. Additionally, while we were following the litigation over Bill 74, we found it difficult to glean information about its progress through the court system. There were several adjournments, and these were difficult to track. When the day of the hearing did arrive, we had some difficulty finding the appropriate court room. These factors would have made it very difficult for the public to access the hearing.

Add to this the fact that, if they could access the hearing, they might have found the procedures of the litigation to be difficult to follow. For instance, when ACTS attorneys were disputing the government position, when they were invoking the public, they were doing so whilst facing the judge and with their backs to the audience (Tardif fieldnotes, p. 6). We noted that this made their arguments difficult to hear.

These architectures of exclusion are not unique to policy-making in the context of gambling regulation, nor even to policy-making more generally.⁷⁴ It would be easy, therefore, to underplay their importance, to dismiss them as trivial, or as already documented in the literature and as consequently unworthy of further remark. However, for our analysis, they are significant. They point to the everyday, under-the-radar ways that the governmentality of online gambling is greased by exclusionary practices. As governmentality scholars argue, it is important to critically scrutinize such "architectures of indirect regulation."⁷⁵ These have been instrumental in producing situations that, in "striking contrast to other fields where patient and public participation is considered absolutely essential," remain bereft of "the views of experts by experience."⁷⁶

Conclusion

Our aim in this article has been to provide an overview of the governmentality of online gambling. This situational analysis illustrates some of the challenges faced by provincial governments seeking to regulate online gambling. Beyond this, it provides insight into the more general governmentality of online consumption and play, and particularly the way that this governmentality has evolved to emphasize

⁷⁴ C. Campbell and G. Smith, "Gambling in Canada—From Vice to Disease to Responsibility: A Negotiated History," *Canadian Bulletin of Medical History* 20, no. 1 (2003): 121–49; G. Smith and C. Campbell, "Tensions and Contentions: An Examination of Electronic Gaming Issues in Canada," *American Behavioral Scientist* 51, no. 1 (2007): 86–101; L. Hancock, "Giving Dracula the Keys to the Blood Bank? Interrogating the Fifth Crown Casino Licensing Regulatory Review," *Journal of Law and Governance* 8, no. 1 (2013): 1–28; S. Kingma, "'Gaming is Play, It Should Remain Fun!' The Gaming Complex, Pleasure and Addiction," in *Constructing the New Consumer Society*, ed. P. Sulkunen et al. (New York: St. Martin's Press, 1997), 173–93.

⁷⁵ Nicoll, *Gambling in Everyday Life*, 197.

⁷⁶ R. Cassidy, *Vicious Games: Capitalism and Gambling* (London: Pluto Press, 2020), vii.

some risks while ignoring others.⁷⁷ Additionally, this article suggests how socio-legal studies can illuminate research on the regulation of gambling, and how the study of online gambling can, as a sentinel site for the regulation of online consumption and play, contribute to the development of socio-legal and governmentality studies.

Studying the governmentality of online gambling as it unfolds in practice involves: 1) attending to the rules of the game—governing logics and rationales, the ensemble of procedures, analyses and reflections, calculations, tactics, and so on; 2) grasping how the rules change over time and across space, or from arena to arena; and 3) considering the effects of such changes on the everyday ways the game is played.

1) *The Rules of the Game*

Our analysis of the rules of this game shows that it is organized by a narrow, legal definition of gambling games. It therefore excludes free-to-play and other hybrid games that do not fit this definition. It also excludes other online activities that take place on the margin of games, forms of consumption that are not gambling per se, but that are gamblified. This ensures that some risks (e.g., the economic risks of losing gambling revenue to out-of-province operators) take centre stage while other risks are ignored. These other risks are potentially numerous, but one that is not discussed at all is the risk posed by consumer profiling, whereby online operators can learn details about the desires and predilections not just of individuals, but also of social groups and clusters. This data can then be used to target people who might be susceptible (at certain times) to persuasion. We know that companies like Facebook and Google have this down to a science, but we know much less about how other companies are using similar data-driven tactics to achieve the same ends. We are also only beginning to learn about the role of online games and play in the governance of this information economy, and in the promotion of addictive consumption.

2) *Rule Changes*

Rules change from arena to arena, and from practice to practice. Our analysis suggests, for instance, how different architectures of exclusion operate to grease the governmentality of online gambling. It is not just a range of gamblified consumption that is excluded by narrowly conceived objects of intervention (e.g., gambling games involving real-money exchanges); it is also the public who is an absent presence in the discourse. The lived experiences of online gambling were virtually absent from committee debates about Bill 74. They were also virtually absent from litigation. These absences, however, were produced by different, interlocking

⁷⁷ In codifying our analyses in terms of *risk*, we are cognizant of Nicoll's critique, which argues that literature on risk and gambling has sometimes given insufficient attention to the cultural and affective dynamics of gambling in everyday life (Nicoll, *Gambling in Everyday Life*, 5–6). This critique is a reminder that, while what we have discussed in this article may be understood in terms of risk, it would be a mistake to assume that risk provides the only lens through which to comprehend these phenomena.

effects. Committee debates, driven by the government's and opposition parties' agendas, gave us one set of risks (economic risks, risks to public security and public health, censorship risks, real money risks, and risk of lost revenue). Litigation, driven by the ACTS' challenge and the attorney for the Government of Quebec's response, gave us another set of risks (risks to ISPs versus risks to the imagined consumer). In spite of these rule-changing, discursive shifts, expertise by experience remained on the outside of the game. And, as our analysis suggests, this stems not just from a lack of invitation; the entire architecture of engagement impedes participation (through eventualities like re-scheduling hearings or inaudible arguments). As a consequence, discourse in this governmentality of online gambling is largely out of touch with the everyday, lived reality experienced by consumers.

3) Effects on the Everyday Way the Game is Played

Within this governmentality of online gambling, it may be difficult to imagine how gambling could be regulated otherwise. Yet, it is possible to envision other configurations through the incorporation of consumers' lived experiences of online gambling and consumption, and through critique of the ways this expertise is currently excluded and contained. Such a re-configuration could amount to a much-needed game-changer. A next step for the socio-legal study of this governmentality is to explore consumer experience of online gambling, play and consumption; this problem-space delimits an important, sentinel site for the socio-legal study of internet-mediated consumption.

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