

2009 01T 0732CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

**BETWEEN:**

THE ESTATE OF SUSAN PIERCEY, as  
represented by KEITH PIERCEY

PLAINTIFFS

**AND:**

ATLANTIC LOTTERY CORPORATION INC. –  
SOCIÉTÉ DES LOTERIES DE L'ATLANTIQUE

DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE DYMOND,  
CASE MANAGEMENT JUDGE

**AFFIDAVIT OF KEITH PIERCEY**

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**SUMMARY OF CURRENT DOCUMENT**

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Court File Number:	2009 01T 0732CP
Date of Filing of Document:	December , 2009
Name of Filing Party or Person:	Plaintiffs
Application to which Document being filed relates:	Application of Plaintiffs for certification as a class action.
Statement of purpose in filing:	To support application.

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I, Keith Piercey, of 34 North Street, in the City of Corner Brook, in the Province of  
Newfoundland and Labrador, A2H 2L1, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the representative of the estate of Susan Piercey and am also a named Plaintiff in this action. I have personal knowledge of the facts stated herein except where stated to be on information and belief and where so stated, I believe the facts to be true.
2. This lawsuit concerns allegations that video lottery terminals (“VLTs”) are inherently deceptive and inherently addictive. Now shown to me and marked as Exhibit “A” to this affidavit is a true copy of the Amended Statement of Claim.
3. My daughter Susan Piercey was born on March 17, 1972 and was attending Memorial University of Newfoundland in St. John’s when she began playing VLTs in 1995. In 1992, at age 20, Susan Piercey was diagnosed with bipolar disorder, which was controlled with medication.
4. I first became aware that my daughter Susan had a VLT problem when we had a restaurant meal together in St. John’s, and Susan was given money to pay for the meal. Susan left the table, but instead of paying for the meal, she spent the money on VLTs.
5. Over the ensuing years, Susan spent her tuition money, her income from a part-time job, money stolen from her grandmother, and money borrowed from a finance company, all to play VLTs and feed her addiction. She dropped out of university, and took on several jobs to feed her addiction, and still had no money left for the necessities of life. My wife and I went to St. John’s and brought her home, where she received counseling, but on July 28, 2003 she died of a drug overdose. Her death was classified as suicide.

6. My daughter Susan was born in Newfoundland and Labrador and lived here until her death in 2003. I understand that this lawsuit concerns only VLT transactions which took place in this province.
  
7. I am willing to act as the representative plaintiff of the class. I understand that the major steps in a class action are generally as follows:
  - (a) commencement of the action by issuance of a statement of claim;
  - (b) application for certification;
  - (c) notice to the Class of the certification and the right to opt out;
  - (d) discovery of documents;
  - (e) examinations for discovery;
  - (f) pretrial conferences;
  - (g) trial of the common issues;
  - (h) notice to the class if individual participation is required;
  - (i) determination of individual issues, if required;
  - (j) distribution of proceeds of resolution by way of judgment or settlement;
  - (k) appeals; and
  - (l) settlement.
  
8. I also understand that if I am appointed by the Court as a representative plaintiff, it is my responsibility, among other things:
  - (a) to become familiar with the issues to be decided by the Court;
  - (b) to review the Statement of Claim and any amendments;
  - (c) to assist in the preparation and execution of an affidavit in support of the motion for certification;

- (d) to attend, if necessary, with counsel for cross-examination on my affidavit;
  - (e) to attend, if necessary, with counsel for an examination for discovery where I will be asked questions;
  - (f) to assist, if necessary, in the preparation and execution of a list of documents;
  - (g) to attend, if necessary, with counsel at trial and give evidence regarding the case;
  - (h) to receive briefings from class counsel;
  - (i) to express my opinion to class counsel and to the Court if offers to settlement are made;
  - (j) to express my opinion to class counsel and to the Court if settlement positions are to be formulated; and
  - (k) to assist in preparation of an execution of an affidavit in support of Court approval of any settlement.
9. To date, I have taken the following steps in this proceeding:
- (a) I retained Mr. Crosbie to act as class counsel;
  - (b) I provided information for the Statement of Claim;
  - (c) I reviewed the Statement of Claim and the Amended Statement of Claim;
  - (d) I reviewed the Litigation Plan; and
  - (e) I aided in drafting this affidavit.
10. If appointed as a representative plaintiff, I intend to take the following steps to fairly and adequately represent the interests of the class members:
- (a) to interact with other class members, receive their input and generally act as a conduit for information for class counsel;
  - (b) to monitor the website; and
  - (c) to instruct counsel.

11. I do not have any interest which is in conflict with the interests of any other class member. I believe that I can fairly and adequately represent the interests of the class if appointed as a representative plaintiff and I am committed to fulfilling those responsibilities.
  
12. I have no personal knowledge of the size of the proposed class except by information and belief. A “Gambling Prevalence Study” was completed on behalf of the Government of Newfoundland and Labrador in November 2005. It found that 84% of surveyed respondents had gambled at least once in the past 12 months. VLTs accounted for 11% of reported gambling activity type. Based on a provincial adult population of 386,762, the number of VLT players could be estimated at 11% of 324,488, or 35,737 in 2005. The study classified 9.7% of VLT players as moderate-risk gamblers, and 8.7% as problem gamblers, for a combined rate of 18.3% of VLT players, or 6,539 players. In addition, the study reported that of the entire population of approximately 4,641 adult residents who were found to be problem gamblers in relation to any type of gambling, 80% had played VLTs in the past month, and the study referenced VLTs as the “crack cocaine” of gambling. A copy of this study is available online at [http://www.health.gov.nl.ca/health/commhlth\\_old/GamblingReportNov%2021%20FINA\\_L.pdf#xml=http://search.gov.nl.ca/tehis/search/pdfhi.txt?query=gambling+prevalence+study&pr=provincial&prox=page&rorder=500&rprox=750&rdfreq=250&rwfreq=500&rlead=500&sufs=2&order=r&cq=&id=460d5cf68](http://www.health.gov.nl.ca/health/commhlth_old/GamblingReportNov%2021%20FINA_L.pdf#xml=http://search.gov.nl.ca/tehis/search/pdfhi.txt?query=gambling+prevalence+study&pr=provincial&prox=page&rorder=500&rprox=750&rdfreq=250&rwfreq=500&rlead=500&sufs=2&order=r&cq=&id=460d5cf68), and the Executive Summary is appended to this affidavit as Exhibit “B”.

13. Another report, "VLT Gambling", was submitted by the Addiction Treatment Services Association, January 2005. It reported that in 2003/04, each adult in this province lost an average of \$291.46 to VLTs. A copy of this report is available online at: [http://gaming.uleth.ca/agri\\_downloads/1420/VLT\\_Report.doc](http://gaming.uleth.ca/agri_downloads/1420/VLT_Report.doc), and is appended to this affidavit as Exhibit "C".
14. The Globe and Mail newspaper has reported that profit generated by VLTs in this province during fiscal year 2005-2006 was \$73 million. A copy of the article, dated April 2, 2007, is appended as Exhibit "D".
15. I am not aware of any other class or representative proceeding in this province or any other province relating to all or part of the class proposed to be certified. I am not aware of any fact important to the certification application that has not been disclosed in this affidavit.

**SWORN TO** before me at the City of Corner Brook, in the Province of Newfoundland and Labrador, this                      day of December, 2009.

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**KEITH PIERCEY**