

2009 01T 0732 CP

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 ROBERT TUCKER

SUMMARY OF CURRENT DOCUMENT

Court File Number:	2009 01T 0732 CP
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.

I, Robert Tucker, business man, of 100-104 Conception Bay Highway, in the Town of Holyrood,
in the Province of Newfoundland and Labrador, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a class member in this action. I have personal knowledge of the facts stated herein
except where stated to be on information and belief, and I believe the facts to be true.

2. This lawsuit concerns allegations that video lottery terminals (“VLTs”) are inherently deceptive and inherently addictive.
3. I was born on September 15, 1956. I have lived in Newfoundland and Labrador for my whole life and I am presently self-employed.
4. I began personally playing VLTs in or about 1994 when I took over the operation of a bar, the Alley Pub, located in a building I owned at 164 Water Street in the City of St. John’s. This building also had a bar located in the lower level, the Silver Spur.
5. While I was operating the Alley Pub I obtained and placed five VLTs in the bar. I felt it was necessary to have the VLTs in order to effectively operate my business. I operated the Alley Pub for about 6 months, at which point I found a tenant to take over the operation of the bar.
6. The Silver Spur, which I was operating from 1994 to approximately 2000, also contained VLTs. I did not keep the VLTs in the Silver Spur for very long, however. Shortly after taking over the Silver Spur, I decided to take them out of the Silver Spur.
7. As I was a VLT siteholder, I have some familiarity with the operation of VLTs by siteholders. For instance, as a siteholder I was not given any training or instruction by the Defendant with respect to any steps I or my staff should take to address problem VLT gamblers who attended at the Silver Spur or the Alley Pub. I was instructed by the Defendant to obtain a bank account so that I could make weekly deposits to the Defendant of its share of the revenue generated by VLTs in my bars, to obtain an

independent phone line that the VLTs could be connected to, and to have a float on hand to pay out winning gamblers.

8. By my estimate, the annual revenue the VLTs located in the Silver Spur would have generated (in the range of \$25,000-\$30,000) would be about equal to my net income from the Silver Spur or about ten per cent of the gross revenues generated by the Silver Spur (approximately \$250,000 annually).
9. From observing other bars in St. John's, it seems fair to say that for some siteholders VLT revenue is more important or as important as revenue generated by liquor sales. For instance, the Guv'nor Pub located on Elizabeth Avenue is an example of one bar operating as multiple sites in the same premises. Dooley's on Topsail Road has 20 VLTs, but at times only one bartender. Many times I observed customers at the Windsock Lounge on Water Street, which was located across the street from the Silver Spur. It did not appear that the Windsock Lounge was selling much in the way of alcohol, but its VLTs were always in use.
10. The revenue sharing arrangement with ALC may have changed over the years, but from my personal observation and experience, there are bars which exist for the purpose of VLT revenues. I agree with the statements of Eric Healey, a Mount Pearl bar owner and former president of the Beverage Industry Association, that bar owners obtain a liquor licence not to sell liquor but to obtain VLT sites: see Exhibit A hereto.
11. When I was working at the Alley Pub and the Silver Spur I could always see the flashing lights and screens of the VLTs. I eventually began to play the VLTs located at 164 Water

Street. At the time, the game I played was “Swinging Bells”, a line game. I played many line games until I stopped playing, as well as other types of VLT games.

12. I played VLTs in the province regularly until December of 2007. I quit because I ran out of money. The amount of money I deposited into VLTs was significant. For instance, in 2006 and 2007, the last two years I was using VLTs, I spent approximately \$150,000 playing VLTs in Newfoundland. I make this estimation relying on ATM withdrawal slips.
13. As the amount of money I was putting into VLTs became fairly significant, I tried to quit using VLTs. I would try leaving my house without a credit card or debit card, so that I would not be able to access funds to gamble. I tried having the amount of money I could withdraw from my bank account with my debit card reduced to a daily amount of \$100, so that I could not lose more than that amount in a day on VLTs. These steps were not effective, as I would attend at a bank later in the day to make cash withdrawals or request a new debit card so I could withdraw funds.
14. When I played VLTs I felt like I was under a hypnotic spell. I felt like I did not have the choice of walking away from the machines – it felt like I had no control over the process.
15. As my VLT losses became more substantial, I financed my VLT habit through the sale of real properties I owned in the province. Between January 30, 2002 and January 8, 2007 I sold five properties I owned for the sum of \$645,900. With each sale I would apply the majority of the funds to paying off debt accumulated because of VLT use or use the funds directly in VLTs. Attached hereto and marked as Exhibits “B”, “C”, “D”, “E”, and “F”

respectively are copies of an Indenture made April 15, 2004, an Indenture made October 20, 2005, an Indenture made October 20, 2004, an Indenture made January 8, 2007, and an Indenture made January 30, 2002.

16. For me personally, this lawsuit is not about recovering lost money. It is about exposing the misleading and inherently harmful nature of VLTs so that other people and their families will not have to suffer through my experience. If any money compensation is found owing to me as a result of this suit, I will ask the Court to donate it to charity. I am informed by counsel that one of the remedies the Court has available is an injunction which would restrain the use made of VLTs in the province. I am also informed by counsel that one of the remedies that the Court has available is to order a distribution of a portion of a money judgment to a charitable organization, such as an addictions counseling centre. However, I recognize that many members of the class will view monetary compensation as important, and that in addition to compensation, monetary relief has a deterrence and behavior modification function.

SWORN TO before me at the City of St. John's, in the Province of Newfoundland and Labrador, this day of December, 2009.

ROBERT TUCKER