

IN THE SUPREME COURT OF NEWFOUNDLAND & LABRADOR
TRIAL DIVISION

BETWEEN:

THE ESTATE OF SUSAN PIERCEY, as
represented by KEITH PIERCEY

PLAINTIFF

AND:

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

DEFENDANT

BROUGHT PURSUANT TO THE *CLASS*
ACTIONS ACT, SNL 2001, c.C-18.1

STATEMENT OF CLAIM

The Plaintiff

1. The Plaintiff, Estate of Susan Piercey, deceased, is represented by Keith Piercey, father of Susan Piercey, who resides at 34 North Street, Corner Brook, in the Province of Newfoundland and Labrador, A2H 2L1. The Plaintiff brings a class action pursuant to the *Class Actions Act*, SNL 2001, c. C-18.1, on behalf of persons and estates harmed by Video Lottery Terminal (“VLT”) gambling which the Defendant purports to manage and control in the Province of Newfoundland and Labrador.

The Defendant

2. The Defendant, Atlantic Lottery Corporation Inc. – Société des Loteries de l'Atlantique, was incorporated under the *Canada Business Corporations Act* in 1976, and registered to do business in Newfoundland and Labrador, with a current registered office at 30 Hallett Crescent, St. John's, A1B 4C5 (“the Defendant”). The head office is located in Moncton,

New Brunswick, and the name and address of the attorney for service is William J. Parsley, 922 Main Street, PO Box 5500, Moncton, New Brunswick, E1C 8W6.

3. The authorized share capital of the company consists of four shares, and the right to transfer the shares of the corporation is restricted to transfer to the governments of the provinces of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island, or their agencies. The present shareholders are the Lotteries Commission of New Brunswick, the Nova Scotia Gaming Corporation, the Prince Edward Island Lotteries Commission, and the Province of Newfoundland and Labrador (“the province”). Corporate documents state the nature of the Defendant’s business to be the operation of lotteries.

Statutory Background

4. The *Criminal Code of Canada* broadly prohibits lotteries, gambling, gaming, slot machines, and video devices used for gambling, subject to s. 207. In effect, s. 207 decriminalizes certain forms of lotteries and creates a regulated industry. In particular, s. 207(1) permits the government of a province to conduct and manage lotteries, in accordance with laws enacted by the legislature of that province.
5. By the *Lotteries Act*, SNL 1991, c. 53, the province assumed the conduct and management, and licensing and regulation of lottery schemes, purportedly as permitted by the *Criminal Code*. The *Act* came into force on February 21, 1992.
6. Pursuant to s. 5 of the *Lotteries Act*, the Lieutenant-Governor in Council promulgated regulations known as the Video Lottery Regulations. The Regulations grant extensive monopolistic powers to the Defendant to approve who is permitted to operate a video lottery terminal (VLT), and the site on which it is operated. VLTs are installed directly by the Defendant, and must have affixed to them the official decal of the Defendant. No VLT siteholder may remove or replace a VLT without the prior consent of the Defendant.

No person may manufacture or supply a VLT in the province unless approval has been given by the Defendant.

7. Details of the Defendant's ownership of the physical property in VLTs, whether owned or leased, and if leased whether paid by fixed rental or percentage of profit, are unknown to the Plaintiff.
8. The Defendant is a business corporation driven by profit motive. The province is a 25% shareholder. The Defendant is constituted both as a VLT monopolist which allocates a small share of profits from VLTs to siteholders according to its sole discretion, and as a regulator and licensor of VLTs. It is in conflict of interest as its own regulator, but is subject to minimal oversight by the province, to which it remits enormous profits in the range of \$60-90 million annually. It is not formally subject to accountability under the *Access to Information and Protection of Privacy Act*, SNL 2002, c. A-1.1, the *Public Tender Act*, RSNL 1990, c. P-45, the *Auditor General Act*, SNL 1991, c. 22, or the *Citizens Representative Act*, SNL 2001, c. C-14.1. The province nominates two members of the Defendant's board of directors, who are officials of the Department of Finance, and the Department of Tourism. The Defendant's board does not include an official from the Department of Health.
9. The legislative framework supports, and the Defendant itself claims, that the Defendant has been delegated management and control of lotteries, including VLTs, as a matter of public trust and confidence and for the benefit and health and safety of the public. This is so even though the Defendant is structured as a business corporation driven by profit motive, and it is reinforced by the reposing of regulatory responsibilities in the Defendant.
10. Defendant is admitted and putative agent or delegate of the Parliament and government of Canada, and of the legislature and government of the province, in respect of matters within their respective authority. The Defendant claims to discharge legally mandated

functions of a governmental character. The conduct of the Defendant is subject to the *Canadian Charter of Rights and Freedoms*.

11. The *Charter* has constitutionally entrenched the accountability of legislatures, governments and their agents or delegates, and has subjected them to constitutional remedies for constitutional wrongs.

Deceptive Nature of VLTs

12. The terms addicted gambler, pathological gambler and problem gambler are used herein as synonyms. Pathological gambling is a recognized mental disorder characterized by impaired control over gambling, preoccupation with gambling, negative consequences from the activity, and profound cognitive distortions regarding expectation and probability of winning. The theories of VLT deception and VLT addictive potential are intertwined and not severable, and the greater the deception as alleged herein, the greater the potential for addiction.
13. As a result of the deceptive nature of VLTs, addicted, pathological or problem gamblers have impaired control of gambling behavior despite harmful consequences of their behavior, and are fixated on the win they believe is due to them and which will solve their problems. Eventually, they just fixate on playing and wins become irrelevant. Pathological gamblers make up a disproportionately large percentage of regular VLT gamblers and are the source of a disproportionately large share of the Defendant's VLT revenues from this province.
14. VLTs are a form of continuous electronic gaming which differs from lotteries in that they are electronically programmed to create cognitive distortions of the perception of winning, which cognitive distortions are intended to keep the consumer engaged and losing money. VLTs are inherently deceptive, inherently addictive and inherently dangerous when used as intended.

15. All games of chance that give intermittent reinforcements, are exciting or pleasant, or provide an escape, are potentially addictive. VLTs are unlike other games of chance, in that they are designed to be inherently addictive and are inherently dangerous when used as intended. Problem gambling rates for VLTs reflect design features of VLTs, as to which the Defendant knows or ought to know.
16. Unlike other regulated gambling games, such as lotteries, where the odds of winning any and every prize are disclosed or easily determined, VLTs have hidden odds of the games, and players are left guessing about their chances of winning any and all prizes, whether video poker VLT games or line games. Line VLTs exploit hidden odds, in that VLTs have asymmetric virtual reels that are programmed to weight the distribution of symbols across the reels differently so that the visual reels that the player interacts with give a false impression of the odds of winning. Both poker and line VLTs are deceptive in that both the rules of the game and the odds of winning are hidden.
17. VLTs also have non-linear paytables, where the odds, hit frequency and payout amounts change depending on wager amount. This design feature encourages players to bet higher amounts and incur higher losses.
18. The difficulty of figuring out the odds is augmented by the variable prize structures used by VLTs and the resulting volatility of the games. The experience of this volatility and changing odds from non-linear paytables makes it impossible for the player to determine, with any accuracy, the true odds of winning during any given play session.
19. VLTs mimic on screen the mechanical reel slot machine, and have asymmetric virtual reels that are programmed to give a near miss effect by which the consumer is manipulated into believing that he or she almost won or is getting closer to a win. VLTs have variable prize structures that result in potent variable reinforcements that further reinforce this effect.

20. Like loaded dice, VLTs combine randomness with concealed asymmetry to cheat the player. The virtual reel mapping is programmed to generate both vertical and horizontal randomized near misses.
21. VLTs have video displays that utilize subliminal priming to deceive consumers and manipulate them into hyper-focusing and to create a dangerous dissociative mental state, wherein players cannot make rational decisions to continue to play or not, and impaired control is the natural and designed outcome.
22. The outcome of play is in fact the result of a random number generator, and is predetermined upon commencement of play, and is totally unconnected with what is happening on the video screen.
23. The presence of a “stop” button reinforces the illusion of a connection between the reels and the outcome of play by creating a greater illusion of control. The “stop” button is deceitful in that it provides no control over the outcome of play. The absence of a “stop” button removes only one level of cognitive manipulation, with the inherently addictive and inherently dangerous design of the VLT otherwise remaining intact and active.
24. VLTs allow bets from 5¢ to \$2.50. The Defendant does not disclose that the odds of winning are unaffected by the amount of the bet.
25. Although maximum bet is \$2.50, a consumer can lose \$2.50 approximately every six seconds, and more quickly with a stop button. The Defendant does not publish odds. Based on third party calculated odds of 270,000 to 1, a consumer would have to lose \$30,000 to win maximum prize of \$500. VLTs are enormously lucrative to the Defendant, and the consumer is doomed to financial losses over any consistent term of play.

26. In 2005, there were 2645 VLTs in 593 different liquor licensed establishments in Newfoundland and Labrador, which is the highest per capita number of VLTs in any province. Although regulations restrict installation of VLTs to five per licensed site, the Defendant has allowed site holders to multiply liquor licenses and sites within the same establishment in order to expand the number of VLTs.
27. The distribution of both machines and losses per person is concentrated disproportionately in low socio-economic areas and groups, and among young male adults, the elderly, those with mental disabilities, and those with physical disabilities. This socially inequitable distribution has been reinforced by the Defendant's policy of placing VLTs at sites of convenience such as bars, clubs and lounges throughout the province.
28. VLTs are so programmed, fixed and manipulative that they do not fit any reasonable definition of "slot machine", "fair game of chance" or the definition of "lottery scheme" in s. 207(4) of the Criminal Code of Canada. They more closely resemble sleight-of-hand trickery such as three-card monte, outlawed by the Criminal Code.
29. The Defendant has failed to prevent VLTs from being infiltrated by organized crime, and has concealed the extent of this infiltration from players. Many VLTs contain veiled source codes, known as Easter eggs, which permit criminals to access subroutines and jackpot the machines. Other VLTs have been hacked through the Defendant's central terminal and jackpotted.
30. The Plaintiff says that the Defendant knows or ought to know all of the foregoing as to the deceptive nature and addictive potential of VLTs, and that the resulting social and individual harms are not unexpected, but are known and expected harms, including suicide, attempted suicide, suicidal ideation, and addiction.

31. Although the Defendant knows or ought to know that VLT losses are concentrated among heavy problematic players, it has failed to implement easily available screening procedures to inhibit, halt and assist problem gamblers. It has instead used this knowledge to target problematic players for further exploitation.
32. The Plaintiff says that the Defendant knows or ought to know VLTs are inherently deceptive, inherently addictive, and inherently dangerous when used as intended, but they have embarked on a “responsible gaming strategy” with messages to consumers which place the onus of responsibility for control and the resulting harm from loss of control on consumers. The Defendant’s message strategy is part of a systematic, deceptive and unconscionable strategy to blame consumers for problem gambling and divert attention from the fact that problem gambling is a natural result of design features of the VLT itself.
33. The Defendant knows or ought to know that the deceptive design features which render VLTs inherently addictive and inherently dangerous can be eliminated such that VLTs can become a reasonably safe form of gambling and generate a reasonable stream of profit, with a stable or expanding consumer base not continually eroded by the casualties of addiction. The Defendant has chosen not to implement available safe design program technologies. For example, on or about March 27, 2007, the Defendant announced measures aimed at VLT reduction and promotion of responsible VLT gambling, such as slowing down the speed of play. The Plaintiff says that the Defendant programmed or designed many of the announced measures into VLTs in this province in 2001, but made a decision to not activate them until March 2007. The Plaintiff says that announced measures are cosmetic and VLTs still retain the essential characteristics by which they remain inherently deceptive and unsafe.
34. The Defendant has based its decisions to promote and supply VLT gambling on the revenue generating potential of VLTs, without ensuring that appropriate, vigorous and independent safety testing for deceptive and addictive features, processes and potentials was conducted, before offering the VLTs to consumers. The Defendant knows or ought

to know that reliance on testing laboratories may tend to ensure that their VLTs comply with gambling laws and standards, but does not ensure or attempt to ensure compliance with laws or standards at general law, including consumer protection law.

35. The Defendant's gambling prevalence data shows that in Newfoundland and Labrador, 9.7% of VLT players are at moderate risk and 8.6% are problem gamblers, for a rate of 18.3% of VLT players who are experiencing significant problems or are at significant risk for such problems. This compares with a problematic gambling rate of only about 3% for other forms of gambling.

Deception and Addiction of Representative Plaintiff

36. Keith Piercey is father of Susan Piercey, and representative of her estate, and pleads the *Fatal Accidents Act* and the *Survival of Actions Act*.
37. 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.
38. In 1992, at age 20, Susan Piercey was diagnosed with bipolar disorder, which was controlled with medication.
39. Keith Piercey first became aware that his daughter Susan had a VLT problem when he had a meal with her at a restaurant in St. John's, and she was given money to pay for the meal. She left the table, but instead of paying for the meal, she spent the money on VLTs.
40. 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. Her

parents 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 a suicide caused by the deceptive and addictive features of VLTs.

Unauthorized by Criminal Code

41. The Plaintiff states that matters of criminal law within the authority of Parliament, but not authorized by Parliament, cannot be authorized by a province. In purporting to exercise the management and conduct of lotteries, the Defendant is acting in violation of the intent of Parliament, which is that the conduct and management of a lottery scheme in the province be conducted by the government of the Province of Newfoundland and Labrador. Consequently, the Defendant's conduct and management of VLTs is not a permitted lottery pursuant to s. 207(1) of the *Criminal Code*, and is not authorized by the *Code*.
42. The Plaintiff also pleads that in placing VLTs at sites of convenience, such as bars, clubs and lounges owned by private sector siteholders, and in sharing substantial revenues with siteholders, the Defendant has unlawfully delegated the conduct and management of a lottery scheme in the province, outside the government of a province, which delegation is not authorized by s. 207(1) of the *Code*.
43. The Plaintiff also pleads that VLTs are not lotteries or games of chance within the meaning of the *Criminal Code*. Rather, they are so unconnected with chance or skill and so manipulative and deceptive as to fall within the prohibition against "three-card monte", and any other game of trickery and sleight-of-hand that is similar to it, contained in s. 206(1)(g) of the *Code*. Consequently, the Defendant's conduct and management of VLTs is not a permitted lottery pursuant to s. 207(1) of the *Criminal Code*, and is not authorized by the *Code*.

44. The Defendant's distribution of VLTs to sites of convenience in bars, clubs and lounges, has created a vast system of common gaming houses, which gaming houses are prohibited by s. 201(1) of the *Criminal Code*. Although s. 207(1) permits the government of a province to conduct and manage a lottery scheme, nothing in s. 207 authorizes a province or the Defendant to conduct and manage common gaming houses, and the Defendant's conduct in this regard is not authorized by the *Criminal Code*.
45. Further, the definition of a "lottery scheme" contained in s. 207(4) excludes VLTs. Consequently, the Defendant's purported management and control of VLTs is not a permitted lottery and is not authorized by the *Criminal Code*.

Breach of Competition Act

46. The Plaintiff states that the Defendant's conduct in promoting, directly or indirectly, the supply or use of VLTs or its business interest, and in knowingly or recklessly making representations to the public that were false or misleading in material respects, is contrary to s. 52(1) and (1.1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended.
47. The Plaintiff also relies on s. 52(1.1) of the *Competition Act* and plead that it is unnecessary to show actual reliance on the misleading representations of the Defendant for the purpose of establishing a breach of s. 52(1) of the Act.

Breach of Contract

48. The contract between the parties was to provide a safe, interactive and entertaining way to play games of chance with the opportunity to win small cash prizes in exchange for small frequent cash bets.
49. The Plaintiff pleads the *Sale of Goods Act* and says that the Defendant warranted to the Plaintiff and the Class Members that VLTs were of merchantable quality and fit for use.

The Defendant breached the warranty to the Plaintiff and the Class Members by designing, testing, researching, formulating, developing, manufacturing or altering, producing, labeling, advertising, promoting, distributing and/or selling VLTs which were inherently dangerous to users and which the Defendant knew or ought to have known would lead to dependency and addiction.

50. In the alternative, should action on breach of implied warranty of fitness or merchantability not be available, the plaintiffs state that the Defendant breached an implied contractual term that it would use reasonable care and skill in its provision of VLT gaming. As a necessary incident of the implied duty to use reasonable care and skill, the Defendant owed the plaintiff class a duty to warn of any inherent danger in the consumption of the games, and to satisfy itself of the safety of the games. This the Defendant did not do.
51. The Defendant is the purported lawful delegate to conduct and manage lottery schemes (including VLT gaming) in this province, in accordance with laws enacted by the legislature of the province, and as permitted by Parliament. As such, the Defendant is charged with the fulfillment of public policy objectives including the safety and protection of consumers of lottery scheme products or services including VLT gaming. The Plaintiff states that by reason of the exceptional public policy role of the Defendant, its contractual relations with consumers of VLT gaming are subject to an implied term of good faith.
52. The Plaintiff states that the nature of the contract between the parties and the vulnerability of the plaintiffs implies a duty of good faith which requires the Defendant to consider the interests of the plaintiffs as at least equal to its own and not to offer or supply an inherently dangerous service or product.
53. The Plaintiff further states that in providing games of chance which were not safe but which were inherently dangerous, the Defendant committed fundamental breach of contract.

54. The Plaintiff says that due to the exceptional position of the Defendant as VLT monopolist, charged with a duty to act in the public interest, “state of the art” knowledge of the design features and effects of VLT games should be attributed to the Defendant.

Breach of Fiduciary Duty

55. The Defendant is the purported lawful delegate to conduct and manage lottery schemes (including VLT gaming) in this province, in accordance with laws enacted by the legislature of the province, and as permitted by Parliament. As such, the Defendant is charged with the fulfillment of public policy objectives including the safety and protection of consumers of lottery scheme products or services including VLT gaming. The Plaintiff states that by reason of the exceptional public policy role of the Defendant, its dominant monopolistic role, the vulnerability and dependency of the Plaintiff, and the trust and confidence which she reasonably reposed in the Defendant to safeguard her interests as charged by law, there is a mutual understanding that the Defendant would act in the interest of the Plaintiff to the exclusion of its own interest. The Defendant is in breach of its fiduciary duty to the Plaintiff not to sacrifice her interests in the safety of VLT gaming in preference to making profits, by reason of providing inherently dangerous games to consumers for the purpose of profit maximization.

Statute of Anne, 1710

56. The Plaintiff pleads the *Statute of Anne*, 1710, 9 Ann. C. 14 § 1 (Eng.), entitled an Act for the better preventing of excessive and deceitful Gaming, and in particular, Section II thereof. This provision was received into the law of this jurisdiction in 1832 and has not been repealed.
57. This provision permits any person who has lost money on gaming to sue for and recover the money so lost by action of debt founded on the Act, without setting forth the special matter, and to recover treble the value thereof.

Action for Infringement of *Charter* s. 7 and s. 15(1)

58. The Plaintiff states that VLTs represent one of the leading preventable causes of contemporary social and individual harm in this province, and the invocation of the *Canadian Charter of Rights and Freedoms* is commensurate to the gravity of the social and individual harm that VLTs cause.
59. Unlike other provinces, Newfoundland and Labrador has never consulted the public with respect to policies related to VLT gambling.
60. The Plaintiff refers to the foregoing material facts and pleads that in causing or contributing to suicide, attempted suicide, suicidal ideation, and addiction, the Defendant has infringed or denied rights or freedoms as guaranteed by the *Canadian Charter of Rights and Freedoms*, specifically, the right guaranteed by s. 7 to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
61. The Plaintiff pleads that in causing or contributing to discrimination based on age or mental or physical disability, the Defendant has infringed or denied rights or freedoms as guaranteed by the *Canadian Charter of Rights and Freedoms*, namely equality rights guaranteed by s. 15(1). The Defendant has done this by targeting vulnerable groups on the basis of age (seniors), and physical and mental disability.
62. In the action for infringement of *Charter* s. 7 and s. 15(1) rights, the Plaintiff applies, pursuant to s. 24(1) of the *Charter*, to obtain such remedy as the court considers appropriate and just in the circumstances.
63. In so far as the Plaintiff has a cause of action founded in infringement or denial of *Charter* rights, the limitations and immunities otherwise available to the Defendant at ordinary law do not apply.

64. Historical precedent, modern medical and psychological knowledge, and moral and social values support the characterization of addiction as inherently harmful, and as attracting substantial damages in itself, without examination in detail of individual specific harm. Damages for addiction are therefore presumed, and are at large.
65. Independently of whether damages should be at large based on the inherently harmful nature of addiction, the infringement or denial of s. 7 or s. 15(1) *Charter* rights is actionable *per se* without proof of damage, and substantial damages should be awarded based on infringement or denial of *Charter* s. 7 or s. 15(1) rights alone, due to the importance of the interests which are constitutionally protected.
66. The Plaintiff states that the remedy for a cause of action founded in the *Charter* is flexible, broad and plenary, namely, to give such directions or grant such relief as the court considers appropriate.
67. The Plaintiff states that the Defendant has conducted itself with recklessness or deliberate indifference, willfulness or *mala fides*.
68. The Plaintiff states that the Defendant's conduct amounts to gross, serious, or pronounced negligence, or patent unreasonableness.
69. The Plaintiff states that the Defendant's conduct is intentional in that the Defendant knows and has known with reasonable certainty that the harm complained of is the result of its conduct.
70. The Plaintiff pleads that if a *prima facie* case is established as to the infringement or denial of her *Charter* rights, the burden of proof as to all other issues shifts to the Defendant.

Strict Liability

71. The Plaintiff says that due to the exceptional position of the Defendant as VLT monopolist and regulator, charged with a duty to act in the public interest, “state of the art” knowledge of the design features and effects of VLT games should be attributed to the Defendant.
72. The Defendants are strictly liable for some or all of the damages suffered by the Plaintiff and other Class Members in that:
- (a) the Defendant is charged with a duty to act in the public interest;
 - (b) the Defendant owns or leases thousands of VLTs;
 - (c) VLTs are inherently dangerous;
 - (d) the Plaintiff and other Class Members had no opportunity to inspect or test VLTs to ensure their safety; and,
 - (e) VLTs were used by the Plaintiff Susan Piercey, and other Class Members.

Failure to Warn in Tort

73. The Plaintiff repeats the foregoing and pleads that the Defendant is liable in tort of negligence for failure to warn of inherent danger. The Plaintiff “waives” this tort as further specified below.

Unjust Enrichment

74. The Plaintiff states that there has been a deprivation of the Plaintiff and the plaintiff class and a corresponding enrichment of the Defendant, by reason of the breaches of the *Criminal Code of Canada*, the *Statute of Anne*, the *Canadian Charter of Rights and Freedoms*, the *Competition Act*, tortious misconduct and breaches of contract described herein. This deprivation and corresponding enrichment is without juridical reason.

75. The Plaintiff claims a remedy in restitution on the basis that the interest of the Plaintiff in the safety of VLT gaming makes it just and equitable that the Defendant should retain no benefit from the breaches pleaded.

“Waiver of Tort”

76. The Plaintiff pleads “waiver of tort” as a cause of action giving rise to the remedies of constructive trust, disgorgement and accounting, and that those remedies can be determined at trial of common issues without the involvement of any individual class member and after liability has been determined pursuant to waiver of tort.
77. The Plaintiff further states that there is a reasonable likelihood that s. 29 of the *Class Actions Act* will be satisfied and an aggregate assessment made if the Plaintiff is otherwise successful at the trial of common issues.
78. As a result of the Defendant’s conduct described herein, the Plaintiff and Class Members reserve the right to elect at or after the trial of the common issues to waive wrongs attracting a remedy in damages and to have damages assessed in an amount equal to the gross revenues earned by the Defendant, or the net income received by the Defendant or a percent of the proceeds from the sale of VLT gaming as a result of the Defendant’s conduct.
79. The Plaintiff and Class Members claim that such an election is appropriate for the following reasons, among others:
- (a) revenue was acquired in a manner in which the Defendant cannot in good conscience retain it;
 - (b) the integrity of gaming regulation and the marketplace would be undermined if the court did not impose an effective remedy;
 - (c) absent the Defendant’s wrongful conduct, VLT gaming could not have been marketed nor would the Defendant have received any revenue from its use;

- (d) the Defendant engaged in wrongful conduct by putting into the marketplace a gaming product which causes or has the potential to cause serious risk of injury, dependency and addiction; and,
- (e) the Defendant has failed to fulfill its unique statutory responsibilities to promote and safeguard public health and safety.

Punitive Damages

80. The Plaintiff pleads that the Defendant has acted in such a high-handed, wanton and reckless or deliberate manner, without due regard to public health and safety, as to warrant an award of punitive damages, in accordance with the goals of retribution, denunciation, and deterrence.
81. The Plaintiff pleads that an award of compensatory damages is inadequate to the goals of retribution, denunciation and deterrence, as is indicated by the following factors:

Blameworthiness of Defendant's Conduct

- (a) the conduct is planned and deliberate;
- (b) the intent and motive is to profit from sales;
- (c) the outrageous conduct has persisted over a lengthy period of time;
- (d) the Defendant has concealed or attempted to cover up its misconduct;
- (e) the Defendant is and has been aware that its conduct is wrong;
- (f) the Defendant has profited from its misconduct;
- (g) the interest violated by the Defendant is deeply personal to the Plaintiff and Class Members, specifically their bodily and mental integrity and their health;

Vulnerability of Plaintiff

- (h) the Plaintiff and Class Members were entirely vulnerable to abuse of power and knowledge by the Defendant;

Proportionate to Harm Directed at Plaintiff

- (i) the conduct is malicious and high-handed and could be expected to cause severe injury;

Proportionate to Need for Deterrence

- (j) the egregious conduct was known throughout the Defendant's management, which took no corrective action;
- (k) the conduct was a product of deliberate corporate policy or strategy;

Proportionate to Other Penalties

- (l) there have been no other penalties at law or alternatively, the penalties are inadequate to the objectives;

Proportionate to Advantage Gained

- (m) the Defendant must not financially profit from its outrageous conduct;

Rational Deterrence

- (n) the Defendant has been unimpressed by the size of previous awards in Canada, whether compensatory or punitive, and has made a rational decision to continue in its misconduct.

Factors Relevant to Remedy

82. The Plaintiff states that the following factors reflect on the reprehensibility of the Defendant's conduct, and are relevant to the issue of remedy, including punitive damages:

- (a) the conduct is planned and deliberate;
- (b) the intent and motive of the Defendant is to maximize profit as a result of its deceit;
- (c) the Defendant has persisted in its outrageous conduct over a lengthy period of time;
- (d) the Defendant has concealed and attempted to cover up its misconduct;
- (e) the Defendant is aware that what it has been doing is wrong;

- (f) the Defendant profited from its misconduct;
- (g) the interest threatened or violated is deeply personal and is irreplaceable, including the life, liberty and personal security of members of the plaintiff class;
- (h) there is a vast imbalance in power and knowledge between the Defendant and the plaintiff members, and class members are vulnerable to the predatory deceptions of the Defendant;
- (i) the Defendant has abused public trust by promoting the image that it manages and controls “responsible VLT gaming” for the public good. The abuse of public trust is the greater, given the Defendant’s role as regulator.

Willful Concealment

83. The Plaintiff states that the Defendant has willfully concealed the cause or causes of action to which its conduct described herein gives rise, so as to postpone the running of any limitations which might otherwise apply.

Relief Requested

84. The Plaintiff states that the moral quality of the Defendant’s conduct forms the fundamental reason for the Court’s intervention with remedies to sustain the integrity of the laws which the Court supervises.

85. The Plaintiff has pleaded the doctrine of fraudulent concealment, but also states that the Defendant has caused, and continues to cause, injury with respect to s. 6 of the *Limitations Act*, SNL 1995, c. L-16.1 and claims the following relief:

- (a) an order certifying the proceeding as a class proceeding;
- (b) an order declaring that the Defendant’s conduct or management of VLTs is not a permitted lottery and is not authorized pursuant to s. 207(1) of the *Criminal Code*;
- (c) an order declaring the act or practice to be an infringement or denial of the right to life, liberty and security of the person and not to be deprived thereof except in accordance with principles of fundamental justice, contrary to s. 7 of the *Charter*;

- (d) an order declaring the act or practice to be an infringement or denial of the right to equality without discrimination on the basis of age, or mental or physical disability, contrary to s. 15(1) of the *Charter*;
- (e) general or moral damages, limited to damages which may be presumed from the nature of the harm, and damages which may be presumed from infringement or denial of *Charter* right, without individual proof of loss;
- (f) an accounting for and disgorgement of profits or revenues, or a constructive trust over same;
- (g) exemplary or punitive damages;
- (h) treble the loss or damage pursuant to the *Statute of Anne*;
- (i) a declaration restraining the Defendant from continuing the unconstitutional act or practice;
- (j) a declaration restraining the Defendant from conduct contrary to s. 52(1) of the *Competition Act*; and,
- (k) such other directions or relief that the court considers appropriate.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 12th day of February, 2009.

CHES CROSBIE BARRISTERS
 Solicitors for the Plaintiffs whose
 address for service is:
 169 Water Street, 4th Floor
 St. John's, NL A1C 1B1
 Per: Chesley F. Crosbie, Q.C.

TO: THE DEFENDANT
 Atlantic Lottery Corporation Inc.
 30 Hallett Crescent
 St. John's, NL A1B 4C5

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this 13 day of February, 2009.

Sgd M. Wheeler
 Trial Co-ordinator (A)