

AMENDED THIS Dec 9/09 PURSUANT TO
MODIFIÉ CE _____ CONFORMÉMENT À _____

☒ RULE/LA RÈGLE 26.02 (9)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No. CV-08-356378-0000

REGISTRAR _____
SUPERIOR COURT OF JUSTICE
GREFFIER _____
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

S. Chan **BETWEEN:**
Registrar

PETER AUBREY DENNIS and ZUBIN PHIROZE NOBLE

Plaintiffs

-and-

ONTARIO LOTTERY AND GAMING CORPORATION

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the rules of court, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June 9, 2008 Issued by N. Mohammad
Local registrar

Address of court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: **Ontario Lottery and Gaming Corporation**

Attention: Kelly McDougald (Chief Executive Officer)
4120 Yonge Street, Suite 420
Toronto, ON M2P 2B8

CLAIM

1. The Plaintiffs claim, in their personal capacities and as representative plaintiffs for the Class A Members and the Class B Members (as defined in paragraph 5 below), as follows:

(a) A declaration that the Defendant is liable to the Plaintiffs and to all Class Members for damages for negligence, occupiers' liability and breach of contract arising from its failure to deny them entry to gambling venues operated by the Defendant, as described more particularly below;

(b) On behalf of the Plaintiff, Peter Aubrey Dennis, and the Class A Members as defined in paragraph 5 (a) below, damages for negligence and occupiers' liability:

(i) General damages in the amount of \$1,000,000,000.00;

(ii) Special damages in the amount of \$1,000,000,000.00 or such further amount as may be proved at trial;

(c) In the alternative to general and special damages for negligence and occupiers' liability, an order for payment of the revenues or net income or profits realized by the Defendant from problem gamblers

engaging in Gambling Activities as defined in paragraph 17 below
at Gambling Venues as defined in paragraph 14 below;

- (d) On behalf of the Plaintiff, Peter Aubrey Dennis, and the Class A Members as defined in paragraph 5(a) below, expectation or restitution damages for breach of contract in the amount of \$2,000,000,000.00 or such further amount as may be proved at trial;
- (e) On behalf of the Plaintiff, Zubin Phiroz Noble, and the Class B Members as defined in paragraph 5(b) below, damages under section 61 of the *Family Law Act*, R.S.O. 1990, c.F.3, as amended, in the amount of \$500,000,000.00;
- (f) On behalf of all of the Plaintiffs and Class Members:
 - (i) Punitive damages in the amount of \$1,000,000,000.00;
 - (ii) The costs of administering and distributing an aggregate monetary award;
 - (iii) Prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(iv) Their costs of this action on a substantial indemnity basis;
and

(v) Such further and other relief as this Honourable Court may
deem just.

A. The Parties

2. The Plaintiff, Peter Aubrey Dennis ("Dennis"), born October 30, 1959, is and was at all material times a person suffering from compulsive problem gambling residing with his family in Markham, Ontario. Dennis is and was married, the father of two children, and trained and employed as an account manager.

3. The Plaintiff, Zubin Phiroze Noble, ("Noble"), born December 9, 1947, is and was at all material times Dennis' spouse. Noble and Dennis were married on July 29, 1985, have two children, Phiroze Noble Dennis (born May 15, 1987) and Xerxes Richard Dennis (born October 28, 1989), and live together with their children in Markham, Ontario.

4. The Defendant Ontario Lottery and Gaming Corporation ("OLGC") is and was at all material times a corporation incorporated pursuant to the laws of Ontario with head offices located at 4120 Yonge Street, Suite 420, Toronto, Ontario. The OLGC was established by statute, (the *Ontario Lottery and Gaming*

Corporation Act, 1999, R.S.O. 1999, c.12, Sched. L), as a Crown agent with objects, *inter alia*:

- (a) To develop, undertake, organize, conduct and manage lottery schemes on behalf of Her Majesty in Right of Ontario ("Ontario");
- (b) To provide for the operation of gaming (i.e., gambling) premises; and
- (c) To provide for the operation of any business reasonably related to operating gaming premises, including any business that offers goods and services to persons who play games of chance in a gaming premises.

B. Representative Plaintiffs and Classes

5. The Plaintiffs bring this action in their personal capacities and as representative plaintiffs under the *Class Proceedings Act, 1992, S.O. 1992, c.6*, as amended, on behalf of the following classes:

- (a) "Class A Members", being Dennis and all other residents of Ontario and the United States, or their estates, who: ~~(i) suffered from compulsive problem gambling at any time after December 1, 1999~~ (ii) signed the Self-Exclusion Contract (as defined in paragraph 39 below) at any time during the period from December 1, 1999 to February 10, 2005; ~~and (iii) were nonetheless permitted~~

~~entry to one or more of the Gambling Venues (as defined in paragraph 14 below) after signing the Self-Exclusion Contract.~~

(b) “Class B Members”, being Noble and all other living parents, grandparents, children, grandchildren, siblings and spouses of the Class A Members entitled to claim damages arising from the fault or neglect of the OLGC under section 61 of the *Family Law Act*.

C. Creation and Legal Context of the OLGC and its Gambling Activities

6. Gambling has been a criminal offence in Canada since the creation of Canada’s first *Criminal Code* in or about 1892. The underlying rationale for this long-standing criminal prohibition is to protect individuals from those who would exploit individuals who dream of substantial monetary gains that materialize overnight. The prohibition on gambling to afford such protection has been well understood and recognized by legislators and the judiciary since 1892.

7. Gambling is only legal when carried on in accordance with narrow exemptions established by the *Criminal Code*, R.S.C. 1985, c.C-46. In or about 1985, the *Criminal Code* R.S.C. 1985, c.C-46 was amended to grant to the provinces and their agencies the legal right to conduct, or to have conducted, lotteries and certain games of chance. The intent of these amendments was not

to condone the business of organized gambling, but to de-criminalize it in circumstances in which there was reduced potential for public harm.

8. In or about 1990, the *Ontario Lottery Corporation Act*, S.O. 1990, c.O.25, established the Ontario Lottery Corporation ("OLC") as a Crown agent with objects to, *inter alia*, develop, undertake, organize, conduct and manage lottery schemes on behalf of Ontario.

9. In or about 1993, the *Ontario Casino Corporation Act, 1993*, S.O. 1993, c.25, established the Ontario Casino Corporation (the "OCC") as a Crown agent with objects to, *inter alia*: conduct and manage games of chance; provide for the operation of casinos; and provide for the operation of any business reasonably related to operating a casino including any business that offers goods or services to persons who play games of chance in a casino. The stated purposes of this Act were:

(a) to enhance the economic development of certain regions of Ontario;

(b) to generate revenues for Ontario; and

(c) to ensure that any measures taken in accordance with these principles were undertaken for the public good and in the best interests of the public.

10. In or about April 2000, the OCC and OLC were amalgamated to form the OLGC. Pursuant to this amalgamation:

(a) all rights, property and assets of the OCC and OLC became the rights, property and assets of the OLGC; and

(b) the OLGC became liable to pay and discharge all the debts, liabilities and obligations of the OCC and OLC.

11. In this pleading, the acronym "OLGC" shall be understood from this point to refer to the OLGC and its corporate predecessors, the OCC and OLC, unless otherwise stated.

12. The business of organized gambling as carried on by the OLGC was at all material times a commercial activity, undertaken to generate profits for the OLGC and for those commercial operators of casinos and other providers of goods and services with which the OLGC contracted from time to time.

13. The inherently dangerous nature of the business of organized gambling was at all material times reflected by the regulatory regime established by the *Gaming Control Act, 1992*, S.O. 1992, c.24, as amended and regulations issued under that Act and which governs the activities of the OLGC.

D. Gambling Venues Operated by the OLGC

14. At all material times, the OLGC operated gambling premises throughout Ontario (collectively the “Gambling Venues”) as follows:

- (a) ~~4~~ **Resort Commercial Casinos:** The four commercial casinos known as and located at: Casino Niagara in Niagara Falls; Fallsview Casino Resort also located in Niagara Falls; Casino Rama in Rama; and Casino Windsor in Windsor;
- (b) ~~6~~ **Other Casinos:** The six other casinos known as and located at: Casino Brantford in Brantford; Great Blue Heron Casino in Port Perry; Point Edward Casino in Point Edward; Casino Sault St. Marie in Sault St. Marie; Casino Thousand Islands in the Thousand Islands; and Casino Thunder Bay in Thunder Bay; and
- (c) ~~21~~ **Slots Facilities:** The 21 slot gambling venues known as and located at: Ajax Downs in Ajax; Barrie Raceway in Barrie; Clinton Raceway in Clinton; Dresden Raceway in Dresden; Elmira Raceway in Elmira; Flamboro Downs in Dundas; Fort Erie Racetrack in Fort Erie; Georgian Downs in Innisfil; Grand River Raceway in Elora; Hanover Raceway in Hanover; Hiawatha Horse Park in Sarnia; Kawartha Downs in Fraserville; Mohawk Racetrack in Campbellville; Picov Downs in Ajax; Quinte Raceway in Belleville; Rideau Carlton Raceway in Ottawa; Sudbury

Downs in Sudbury; Western Fair Raceway in London; Windsor Raceway in Windsor; Woodbine Racetrack in Toronto; and Woodstock Raceway in Woodstock.

15. At all material times, the OLGC was in physical possession of the premises of the Gambling Venues and/or had responsibility for the condition of those premises, the activities carried on there and control over persons allowed to enter those premises.

16. At all material times, when planning the location of each of the Gambling Venues, the OLGC carried out assessments with a view to ensuring that each such venue would be located within a catchment area capable of yielding significant revenues. Based on the results of these assessments, the OLGC also knew at all material times that the introduction of a Gambling Venue into an identified community would result in a given number of individuals within the catchment area for the Gambling Venue beginning to gamble and becoming compulsive gamblers when they otherwise would have avoided such pathology.

17. At all material times, the gambling activities carried on at the Gambling Venues included slot machines and casino table games (the "Gambling Activities").

18. At all material times, all revenues earned by the Gambling Venues flowed to the OLGC.

E. OLGC Revenues and Profits Dependent on Increased Gambling

19. At all material times, customers of the Gambling Venues paid for their Gambling Activities on the basis of use. The longer a customer gambled, the more money he or she would spend, increasing revenues to the Gambling Venues. Since all revenues earned by the Gambling Venues flowed to the OLGC, the OLGC's revenues and profits similarly increased with every additional customer who gambled at the Gambling Venues.

20. For these reasons, the OLGC had a special and direct financial incentive to conduct itself so as to maximize the number of customers engaging in Gambling Activities at the Gambling Venues and to maximize the time and money spent on Gambling Activities by each such individual customer.

F. Design and Operation of Gambling Venues to Maximize OLGC Revenues

21. The physical layout and interior design of the Gambling Venues were at all material times conducive to, and induced, protracted gambling episodes by customers. Particular features of this physical layout and interior design included, but were not limited to:

- (a) the absence of clocks and windows on the premises;
- (b) maze-like floor-plans, minimizing distractions and making it difficult to exit the premises;
- (c) the maintenance of high ambient noise levels within the premises;
- (d) the presence of mirrors and flashing lights within the premises; and
- (e) the crowding of customers within the premises.

22. Similarly, the design features of the Gambling Activities and other available goods and services were at all material times conducive to, and induced, protracted gambling episodes by customers. Particulars of these design features and other available goods and services included, but were not limited to:

- (a) latent design elements to engender customers' anticipation of imminent "wins" and continued gambling in an effort to realize those "wins";
- (b) latent design elements to enhance customers' illusion of control over the outcome of the games played;

- (c) the use of high limit bets;
- (d) the use of flashing lights and high volume on the machines;
- (e) the use of multiple versions of the same game with different “pay-back” percentages, concealed from customers and distorting their understanding of how the games work;
- (f) the availability of alcoholic beverages to customers participating in Gambling Activities; and
- (g) the ready availability of funds (including on credit) capable of being used for gambling.

23. At all material times, the OLGC operated the Gambling Venues on the basis of a “House Edge”, meaning that the Gambling Activities were conducted so as to provide the OLGC with a long-term mathematical advantage over its customers (i.e., the statistical probability of success). The House Edge served to maximize OLGC’s gambling revenues and profits by maximizing the gambling losses of customers.

24. Slot machines at the Gambling Venues, for example, operate with a payback percentage ranging from 85% to 98%. This means that, on average, customers lose 2% to 15% of every wager. On average, therefore, a problem gambler with an annual loss of \$10,000.00 (representing \$10,000.00 net revenue to the OLGC) would have wagered between \$66,700.00 and \$500,000.00 in that year.

25. At all material times, the OLGC also engaged in widespread, sustained and vigorous promotional campaigns throughout Ontario and in the United States in a determined effort to maximize its revenues and profits by inflicting the greatest financial losses to as many customers as could possibly be induced to the Gambling Venues.

26. At all material times, the monitoring of customers was an inherent part of the Gambling Activities at all Gambling Venues and included, *inter alia*:

- (a) monitoring all customers entering the Gambling Venues (by “carding” using photo-identification and otherwise) to ensure compliance with the legislative prohibition against persons under 19 years of age playing games of chance and/or entering or remaining in a Gambling Venue;

- (b) monitoring all customers engaged in Gambling Activities for cheating and other conduct enabling such customers to overcome the “House Edge” so that these customers could be effectively excluded from the premises;
- (c) requiring different classes and groups of customers to provide identifying, financial and other information in a range of different circumstances (including, but not limited to, customers to whom the casino extended credit or who gambled in excess of specified amounts); and
- (d) monitoring the number of visits, duration of visits and money spent by customers by implementing loyalty programs such as the “Players’ Prestige Club” and the “Winners’ Circle”, which were designed to encourage gambling and reward frequent use with “perks” such as reward points for food, drinks and other benefits at the casino.

27. With respect to the matters addressed in subparagraphs 26 (b), (c) and (d) above, in particular, the OLGC had a special and direct financial incentive to monitor the Gambling Activities of all customers of all Gambling Venues with a view to: maximizing the time and money spent gambling by each individual customer in every Gambling Venue; increasing the gambling losses incurred by

these customers so as to increase OLGC's revenues and profits; and minimizing OLGC losses attributable to cheating and other customer conduct capable of overcoming the "House Edge".

G. OLGC's Special Knowledge of the Risks, Harms, Signs and Symptoms of Problem Gambling

28. At all material times, Dennis and each of the Class A Members were compulsive problem gamblers. The terms "compulsive gambler", "pathological gambler" and "severe problem gambler" are interchangeable terms referring to a problem gambler whose gambling has caused significant problems in his or her life and who experiences a loss of control over his or her gambling as well as signs of dependence. "Pathological gambler" is the formal medical term used by clinicians and researchers, and is the term used in the American Psychiatric and Statistical Manual of Mental Disorders, 4th ed. (the DSM-IV)).

29. At all material times, the OLGC had special knowledge as an operator of gambling premises (and, in particular, of the Gambling Venues) of the risks and harms of the Gambling Venues to its customers including, in particular, problem gamblers. of whom, known to the OLGC, compulsive gamblers were the most vulnerable subset. One important source of this special knowledge was the Responsible Gambling Council (formerly the Canadian Foundation on Compulsive Gambling). The OLGC knew or ought to have known that these risks and harms included the facts that, *inter alia*:

- (a) Approximately 36 48% of the total revenue generated each year at the Gambling Venues would be derived from problem gamblers engaging in the Gambling Activities; and ~~approximately 53% of that revenue (i.e., 19% of total OLG revenue) would be derived from compulsive gamblers;~~
- (b) Problem gamblers have a propensity to gamble that is latent until they are exposed to the gambling-inducing availability and features of the Gambling Venues;
- (c) Problem gamblers seek a “high” from gambling and the pursuit of that “high” through gambling irrespective of a won or lost bet;
- (d) Problem gambling is a progressive behavioural disorder in which an individual develops a psychologically uncontrollable preoccupation and urge to gamble leading to excessive gambling;
- (e) Key features of problem gambling include uncontrollable feelings and compulsions relating to gambling such as preoccupation with gambling, irrational repeated gambling to recover losses due to gambling, and the development of tolerance to the risk of gambling which requires gambling at higher stakes with the attendant greater risks of greater losses to obtain the same “high”;

- (f) Problem gambling disrupts, compromises and ultimately destroys the lives of individual problem gamblers by causing a range of harms for them and their family members including emotional, social, financial, legal, employment, educational and health-related harms;
- (g) Access to medical care and treatment for problem gamblers in Ontario was inadequate;
- (h) Legalized access to the Gambling Activities at the Gambling Venues has created substantial numbers of problem gamblers and therefore an increase in the associated adverse impacts of problem gambling including divorces, bankruptcies, suicides and corresponding increased health care costs, with the result that problem gambling also has a broader, corrosive effect on society as a whole;
- (i) Problem gamblers and, in particular, compulsive gamblers, needed to be excluded from Gambling Venues in the same manner as “cheaters”, other customers engaging in conduct capable of overcoming the “House Edge”, and persons under 19 years of age; and

- (j) the context in which the OLGC implemented its Self-Exclusion Program (as defined and described below) did not include effective alternative measures to address problem gambling;
- (k) the context in which the OLGC implemented its Self-Exclusion Program (as defined and described below) was one in which it had entered into relationships with profit-driven commercial casino operators contrary to s. 207 and related provisions of the *Criminal Code*, compromising its ability to implement policies and programs consistent with its public commitment and mandate to ensure responsible gambling;
- (l) the OLGC implemented its Self-Exclusion Program (as defined and described below) in the context of not providing its customers with the Rules of Play for games played on slot machines; and
- (m) (i) For all of the reasons set out in subparagraphs (a) through (i) (l) above, the operation of the Gambling Venues was an inherently dangerous activity for its customers, requiring the OLGC to take special precautions to prevent injury to such customers (including compulsive gamblers, in particular).

H. OLGC Acknowledges Problem Gambling and its Responsibility to Help Problem Gamblers

30. At all material times, the OLGC repeatedly acknowledged, internally and publicly: the risks and harms of the Gambling Venues for problem gamblers; the vulnerability of its customers to develop problem gambling (and progressively more serious problem gambling and related harms) as a direct result of participating in the Gambling Activities conducted in its Gambling Venues; and that there were ascertainable signs and symptoms of problem gambling.

31. At all material times, the OLGC had special knowledge as an operator of gambling premises (in particular, the Gambling Venues) of the signs and symptoms of problem gambling. Unlike other forms of addiction, problem gambling may only be apparent to a trained observer. The OLGC, however, repeatedly and publicly represented that it ensured, "leading edge training for all gaming employees, those on the front lines, to recognize the signs of the problem gambler", and that, "[w]hen it comes to early detection of someone who may need help ... everyone, from the security staff to waiters in the restaurants, has a role to play."

32. The OLGC furthermore repeatedly and publicly represented itself as a responsible operator of the Gambling Venues that was committed to leading the way in the North American gambling industry in dealing with problem gambling and would act: to identify problem gamblers from amongst its customers at the

Gambling Venues; to intervene to exclude them from the Gambling Venues and participation in the Gambling Activities; and to direct them to resources for medical care and treatment responsive to their problem gambling.

I. OLGC establishes the Self-Exclusion Program and Self-Exclusion Policy

33. In or about 1994, the OCC (corporate predecessor to the OLGC, as described above) approved a program to address problem gambling. This document was entitled, "Problem Gambling": Ontario Casino Corporation's Program for Commercial Casinos – Approved by the Board of Directors 1994". In this document, the OCC publicly acknowledged and represented that:

- (a) "... [P]roblem gambling is a societal issue which cannot be ignored."
- (b) "The impact of problem gambling goes beyond the casino and can often affect the family and workplace."
- (c) "Consistent with government policy, OCC firmly believes that any overall strategy to deal with issues on problem gambling rests with the provincial government ... and, that all those involved in the gaming industry ... must play a responsible role."
- (d) "One of the most important factors in dealing with problem gambling is to increase awareness of the issue and where people can turn for help."

(e) "To this end, OCC will develop a program on Responsible Gambling which focuses on customer, community and employee awareness."

(f) The Responsible Gambling program would include a Self-Exclusion Program (the "Self-Exclusion Program"), an Employee Assistance Program and an Awareness Program, and would be supported by staff training to focus on recognizing the symptoms of compulsive problem gambling, crisis intervention and referral knowledge.

The Plaintiffs plead and rely upon the contents of this document, which are hereby incorporated by reference into this statement of claim.

34. In or about 1996, the OLGC adopted a self-exclusion policy targeted at problem gamblers and implemented that policy at Casino Windsor.

35. In or about December 1999, the OLGC adopted a self-exclusion policy targeted at problem gamblers to be implemented as of that date at all of the Gambling Venues entitled, "Self-Exclusion Policy/Procedures". Throughout the period December 1999 to February 10, 2005, this policy (the "Self-Exclusion Policy") was repeatedly affirmed by the OLGC and remained in effect without substantial change.

36. At all material times, the OLGC assumed administrative responsibility for the Self-Exclusion Program (which included the Self-eExclusion Policy and the Self-Exclusion Contract identified in paragraph 38 below) in all Gambling Venues.

37. The Plaintiffs plead and rely upon the contents of each successive version of the Self-Exclusion Policy as established in or about December 1999 and reaffirmed on or about April 1, 2000 and July 18, 2000, which are hereby incorporated by reference into this statement of claim.

38. Further to the OLGC's special knowledge of the risks, harms, signs and symptoms of problem gambling and the vulnerability of its customers to develop problem gambling (and progressively more serious problem gambling and related harms) as a direct result of the availability of, and participation in, ~~participating in~~ the Gambling Activities conducted in its Gambling Venues (as set out above), the Self-Exclusion Policy, *inter alia*:

(a) entitled every individual customer of the Gambling Venues to enter into a binding contract with the OLGC to obtain the OLGC's commitment to use its "best efforts" (and those of any commercial casino operators acting for the OLGC) to ~~exclude them from~~ deny him or her entry to all of the Gambling Venues and to detect and remove him or her if entry was gained; and

(b) required the OLGC to use its "best efforts" to ~~exclude from~~ deny entry to all of the Gambling Venues every individual customer who entered into such a contract with the OLGC and to detect and remove all such customers who gained entry.

39. Throughout the period December 1999 to February 10, 2005, the OLGC's Self-Exclusion Policy included three different versions of form (with only minor, non-substantialive changes between them) to implement the Self-Exclusion Policy Program at the Gambling Venues dated: December 1999; April 1999; and July 2000. The Plaintiffs plead and rely upon the contents of each of these forms, which are hereby incorporated by reference into this statement of claim and referred to collectively as the Self-Exclusion Contract.

40. At all material times, the essential elements of the Self-Exclusion Contract included, *inter alia*:

(a) an offer to the individual customer to enter into a binding contract with the OLGC to obtain the OLGC's commitment to use its "best efforts" (and those of any commercial casino operators acting for the OLGC) to deny him or her entry "as a service" to the Gambling Venues and to detect and remove all such customers who gained entry;

(b) a requirement that consideration pass between the individual customer and the OLGC consisting of, *inter alia*:

(i) a photograph and personal information about the customer and the customer's authorization to use and share these with other Gambling Venues for the purpose of responding to the request for self-exclusion in accordance with all relevant provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended; and

(ii) a release of liability by the customer in favour of the OLGC should the OLGC, in the exercise of its best efforts under the Self-Exclusion Contract, take steps to apprehend the customer for trespassing and deal with him or her according to law; and

(c) a requirement that the customer demonstrate acceptance of the offer by signing the Self-Exclusion Contract.

41. In recognition of the uncontrollable nature of the impulse to gamble experienced by problem gamblers, ~~(including compulsive gamblers, in particular),~~ the Self-Exclusion Contract provided at all material times that self-exclusion would be for an indefinite period. The right to gamble could be reinstated only if requested by the customer in writing after a minimum period of 6 months, and a

mandatory 30 day “cooling-off” period would have to expire before any reinstatement could take effect.

42. At all material times, the object of the Self-Exclusion Contract was to secure important psychological benefits for problem gamblers including, but not limited to:

(a) preventing problem gamblers (including Dennis and each of the Class A Members) from acting on their compulsive urge to gamble and suffering the related consequences as set out in paragraph 29 above; and

(b) thereby also protecting the family members of problem gamblers (including Noble and each of the Class B Members) from suffering the related consequences.

J. OLGC’s Deficient Implementation of the Self-Exclusion Policy Program

43. At all material times, the OLGC was responsible for implementing the Self-Exclusion Policy Program at all Gambling Venues including, *inter alia*, using its best efforts (and those of any commercial casino operators acting for the OLGC) to deny customers who had signed the Self-Exclusion Contract (“Self-Excluded Customers”) entry to its Gambling Venues and to detect and remove any who gained entry.

44. At all material times, the OLGC knew or ought to have known that significant numbers of problem gamblers (~~including, in particular, compulsive gamblers~~) would sign the Self-Exclusion Contract and rely upon its provisions.

45. At all material times, “memory-based enforcement” was the sole or primary measure implemented by the OLGC purportedly to discharge its obligation to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove any who gained entry.

46. Memory-based enforcement entailed reliance upon staff members (in particular, security guards at the entrances of the Gambling Venues) to recognize and identify for ~~exclusion~~ denial of entry and detection and removal Self-Excluded Customers, having previously had access to photographs of these customers and using only their memories to exclude thousands of such customers from Gambling Venues across Ontario.

47. Other measures, if any, implemented by the OLGC to discharge its obligation to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to its Gambling Venues are unknown to the Plaintiffs and within the sole knowledge and means of knowledge of the OLGC.

48. At all material times, the OLGC knew or ought to have known that the measures it had implemented to deny Self-Excluded Customers entry to its Gambling Venues were ineffective or likely to prove ineffective for reasons that include, but are not limited to, the following:

- (a) at all material times, the numbers of Self-Excluded Customers, of Gambling Venues and of customers to all Gambling Venues, were such that it was or should have been obvious to the OLGC that staff members using only their memories would be unable to remember the faces of Self-Excluded Customers in order to identify them for denial of entry to, or removal from, any Gambling Venue to which they might seek entry across Ontario when millions of customers entered these facilities annually.
- (b) the OLGC failed to take reasonable, or any, steps to monitor or assess the adequacy of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues;
- (c) the OLGC ignored existing experience and/or evidence as to the inadequacy of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues (including, but not limited to, staff complaints and assessments and evaluations of OLGC policies, procedures and practices).

- (d) the OLGC failed to implement other measures reasonably available to it at all material times including, but not limited to, “carding” using photo-identification and other approaches and technologies reasonably available to the OLGC, some of which were already in use to identify, monitor, deny entry to and/or exclude “cheaters”, customers engaging in behaviours capable of overcoming the “House Edge” and under-age customers from the Gambling Venues and for other purposes; and
- (e) there were no accountability measures imposing adverse consequences upon persons who failed to identify and deny entry to and otherwise exclude Self-Excluded Customers from the Gambling Venues or to reward persons who successfully identified and denied entry to and otherwise excluded such customers.

49. Further to paragraph 48 (c) above, the OLGC engaged a consultant in or about 2001 to review its problem gambling policies and programs including, but not limited to, the Self-Exclusion Policy and the Self-Exclusion Contract (collectively, the “Self-Exclusion Program”). The results of this review are set out in the consultant’s final report entitled, “Responsible Gaming Problem Gambling Consultation” and Appendices dated October 30, 2001 (the “Martin Report”). The entirety of the findings of this consultant are unknown to the Plaintiffs and

within the sole exclusive knowledge and means of knowledge of the OLGC.

They did, however, include the findings and conclusions that:

- (a) self-exclusion programs form a core element of responsible gaming programs within the Canadian gaming industry;
- (b) the OLGC's move to create a province-wide self-exclusion program had created complex organizational problems;
- (c) the large number of customers relying upon the OLGC's Self-Exclusion Program made effective recognition across sites (i.e., the Gambling Venues) relatively impossible, at the same time as that Program stressed the OLGC's responsibility to enforce the restrictions (i.e., denial of entry of all Self-Excluded Customers to the Gambling Venues);
- (d) the OLGC was aware of, and acknowledged, its difficulty in ensuring consistent enforcement of self-exclusion (i.e., of the Self-Exclusion Contract) due to the large numbers on the Self-Exclusion Program and the lack of recognition technology to support the Program;

- (e) staff training and related monitoring and evaluation were essential to an effective Self-Exclusion Program, but were not provided by the OLGC;
- (f) the gaming industry was not the “expert” for the purposes of developing and implementing effective responsible gaming policies and programs but that active involvement of relevant experts was required, which the OLGC failed to undertake;
- (g) the OLGC had established few mechanisms to garner input or understand issues and concerns pertaining to its programs;
- (h) the OLGC was an organization that was defensive about its programs and closed to new ideas;
- (i) the OLGC’s actions were often seen to be out-of-sync with its stated commitment to responsible gaming, most evident in the area of advertising and marketing;
- (j) the OLGC was discouraging promotion of the Self-Exclusion Program, contrary to its stated commitment to responsible gaming;

- (k) the OLGC lacked policy, strategic vision, priorities and objectives for developing and implementing responsible gaming policies and programs (i.e., including the Self-Exclusion Program);
- (l) the OLGC reasonably required a senior staff position with designated responsibility for responsible gaming, independent of any responsibility for marketing and public relations or public affairs activities, and carrying with it dedicated and sufficient financial and human resources to develop and implement effective policies and programs (including the Self-Exclusion Program); and
- (m) despite (l) above, responsibility for the OLGC's responsible gaming program was divided between multiple OLGC staff members who together accounted for no more than approximately 20% of a full time equivalent and had no designated budget.

In summary, this report was clear that the OLGC was not excluding the Self-Excluded Customers from its Gambling Venues or taking reasonable

steps to do so. The Plaintiffs plead and rely upon this report, which is hereby incorporated by reference into this statement of claim.

50. At all material times, the OLGC nonetheless repeatedly and publicly affirmed its commitment to implement the Self-Exclusion PolicyProgram, represented its implementation of the Self-Exclusion PolicyProgram as effective, and undertook campaigns to create public awareness of the Self-Exclusion PolicyProgram and induce customers and their family members to rely upon the Self-Exclusion Contracts which the OLGC knew were not being implemented.

51. At all material times, the OLGC was required by statute to pay significant proportions of its net revenues (i.e., profits) into Ontario's Consolidated Revenue Fund. These payments from the OLGC to Ontario represented an important source of revenues to Ontario. As was the case for the OLGC, Ontario's revenues and profits increased with every additional customer, especially problem gamblers, engaging in Gambling Activities at the Gambling Venues.

52. At all material times, therefore, the OLGC acted with the knowledge and/or belief that it could fail to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry. This was so because Ontario, which appointed the OLGC's corporate members and directors, had a special and direct financial incentive that weighed heavily against

intervening in any way with OLGC actions or inaction that maximized the number of customers engaging in Gambling Activities at the Gambling Venues and/or maximized the time and money spent by each such individual customer.

53. The OLGC further insulated itself from independent scrutiny and accountability for, *inter alia*, the failure to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers to its Gambling Venues, by employing persons from the Alcohol and Gambling Commission of Ontario, the Ontario Provincial Police and/or the Responsible Gambling Council and/or by entrenching its own senior staff in some or all of these institutions.

K. Dennis and the Class A Members Signed and Relied Upon Self-Exclusion Contracts with the OLGC

54. At all material times, Dennis and each of the Class A Members:

- (a) were customers of the Gambling Venues who engaged in the Gambling Activities;
- (b) were compulsive problem gamblers;
- (c) signed the Self-Exclusion Contract between December 1999 and February 10, 2005;

- (d) signed the Self-Exclusion Contract to obtain important psychological benefits including, in particular: to prevent them from acting on their compulsive urge to gamble and suffering the related consequences and to thereby also protect their family members from suffering the related consequences;
- (e) gave notice to the OLGC of their vulnerability as problem gamblers when they signed the Self-Exclusion Contract;
- (f) were permitted entry to one or more of the Gambling Venues following execution of the Self-Exclusion Contract, contrary to the OLGC's obligation to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all such customers who gained entry;
- (g) engaged in Gambling Activities upon entry to one or more of the Gambling Venues on one or more occasions, consistent with the nature and extent of their illness as compulsive problem gamblers;

- (h) suffered injuries and losses as a direct and foreseeable consequence of their Gambling Activities at the Gambling Venues including the ~~worsening~~ progression of their illnesses as problem gamblers and significant consequential financial losses and other consequential pecuniary and non-pecuniary losses; and
- (i) ~~in the period following October 30, 2001,~~ were not warned of the inadequacies of the Self-Exclusion Program including, in particular, in the period following October 30, 2001 further to the OLGC's receipt of the Martin Report.

55. With respect to Dennis, in particular:

(a) In or about 1998, Dennis learned about the Gambling Venues through OLGC marketing materials and visited them occasionally to play the slot machines. By late 1998, Dennis was regularly attending the Gambling Venues.

(b) Between August 11, 2000 and May 23, 2004 Dennis gambled well over \$350,000.00 using slot machines at the Gambling Venue located at the Woodbine Racetrack and other Gambling Venues.

(c) Dennis's health declined, as he experienced anxiety attacks and symptoms of depression.

(d) On May 23, 2004, after gambling more than \$59,000.00 in the preceding eleven weeks, Dennis realized he was a problem gambler and presented himself at the Gambling Venue known as "Slots at Woodbine Racetrack" with the necessary identification to execute the Self-Exclusion Contract.

(e) On that date, Dennis's photograph and other personal information were collected by the OLGC and Dennis executed the Self-Exclusion Contract.

(f) The OLGC nonetheless failed repeatedly after May 23, 2004 to deny Dennis entry to the Gambling Venues and to detect and remove him once he gained entry.

(g) As a result of the OLGC's failure to deny him entry to the Gambling Venues and to detect and remove him once he gained entry, Dennis continued to participate in Gambling Activities at the Gambling Venues and suffered, among other consequences:

- (i) The progression of his illness as a compulsive problem gambler;
- (ii) Financial losses of approximately \$200,000.00;
- (iii) A bank foreclosed on his residence in or about April 2005;

- (iv) His employment at a data management company was terminated in September 2005 for failure to pay his personal debts owing to a client of his employer;
- (v) A non-institutional lender foreclosed on his second house in or about September 2007;
- (vi). Dennis accumulated significant debt and his credit rating collapsed; and
- (vii) Throughout the precipitous deterioration of the welfare of Dennis and his family members, the OLGC enriched itself at the Dennis family's expense, contrary to its contractual obligations under the Self-Exclusion Contract and other duties.

56. At all material times, Dennis and each of the Class A Members relied upon the OLGC's repeated and public representations that it was a responsible operator of the Gambling Venues that was committed to leading the way in the North American gambling industry in dealing with problem gambling and would implement all appropriate measures to, *inter alia*, fulfill its obligation under the Self-Exclusion Contract to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to

its Gambling Venues and to detect and remove all such customers who gained entry.

L. The OLGC's Negligence

57. At all material times, the OLGC knew or ought to have known the facts set out at paragraphs 6 to 56 above.

58. At all material times, the OLGC owed a duty of care to Dennis and each of the Class A members, as a commercial host or otherwise, to take reasonable and proper steps to exclude them from its Gambling Venues based on the facts set out at paragraphs 6 to 56 above.

59. Further to paragraph 58, it was reasonably foreseeable at all material times that Dennis and each of the Class A Members would suffer the harms complained of in this statement of claim if the OLGC failed to take reasonable and prudent steps to implement the Self-Exclusion Policy and to fulfill its obligations under the Self-Exclusion Contract to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to all OLGC Gambling Venues and to detect and remove all such customers who gained entry.

60. Further to paragraph 58, the OLGC was at all material times in a relationship of proximity to Dennis and each of the Class A Members sufficient to

impose a related duty of care upon the OLGC. There are no residual policy concerns to preclude the imposition of such a duty of care.

61. The OLGC's duty of care to Dennis and each of the Class A Members was a non-delegable duty of care.

62. The OLGC breached its non-delegable duty of care to Dennis and each of the Class A Members, as a commercial host or otherwise, by failing to take reasonable and prudent steps to implement the Self-Exclusion Policy Program and fulfill its obligations under the Self-Exclusion Contract to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers (including Dennis and each of the Class A Members) entry to all OLGC Gambling Venues and to detect and remove all such customers who gained entry. These failures include, but are not limited to:

- (a) relying upon memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all such customers who gained entry;
- (b) failing to take reasonable steps to monitor the effectiveness or lack of effectiveness of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry and to remedy identified deficiencies;

- (c) failing to take reasonable steps to inform itself as to the inadequacies of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry and/or ignoring existing experience and/or evidence as to these inadequacies (including staff complaints received by the OLGC and/or any commercial casino operators acting for the OLGC);
- (d) failing to take reasonable steps to remedy inadequacies of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all such customers who gained entry;
- (e) failing to warn of the inadequacies of memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry and/or experience and/or evidence as to these inadequacies known to the OLGC;
- (f) failing to implement reasonable measures other than memory-based enforcement to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry including, but not limited to, “carding” using photo-identification and other approaches and technologies available to the OLGC, some of which were already in use

to identify, monitor and/or exclude under-age customers from the Gambling Venues, to identify, monitor and/or exclude “cheaters” and other customers capable of overcoming the “House Edge”, and for other purposes;

- (g) failing to hire reasonably competent employees, servants and agents to identify and deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry, and/or failing to take reasonable steps to do so;
- (h) failing to take reasonable steps to train and/or supervise employees, servants and agents responsible for denying Self-Excluded Customers entry to its Gambling Venues, and to detect and remove all who gained entry, and to monitor, evaluate and improve that training and supervising;
- (i) failing to provide for accountability measures that imposed adverse consequences upon employees, servants and agents who failed to identify and deny Self-Excluded Customers entry to the Gambling Venues and to detect and remove all who gained entry, and/or rewarded employees, servants and agents who successfully did so;
- (j) placing responsibility for oversight of implementation of the Self-Exclusion Policy Program with the OLGC’s head of marketing, whose

objectives of promoting the Gambling Venues and/or increasing OLGC revenues were inconsistent with the objectives of the Self-Exclusion Policy Program and the obligations established by the Self-Exclusion Contract;

- (k) making repeated public representations as to its commitment to implement the Self-Exclusion Policy Program, representing its implementation of the Self-Exclusion Policy Program as effective, and undertaking campaigns to create public awareness of the Self-Exclusion Policy Program and to induce customers and their family members to rely upon the effectiveness of the Self-Exclusion Contracts, when it knew or ought to have known that the means utilized were inadequate and not in keeping with the “state of the art” for denying entry by problem gamblers to Gambling Venues and detecting and removing all who gained entry;
- (l) failing to investigate, research and implement the “state of the art” with respect to the denial of entry to Self-Exclude ~~exclusion of eCustomers to~~ Gambling Venues and the detection and removal of all who gained entry, including consulting with relevant experts within and outside Ontario, and failing to implement such “state of the art” ~~in the case of compulsive~~ gamblers;

~~(m) failing to establish policy, strategic vision, priorities and objectives for developing and implementing responsible gaming policies and programs (i.e., including the Self-Exclusion Program);~~

(m) failing to establish a senior staff position with responsibility for responsible gaming, independent of marketing and public relations or public affairs activities, and having dedicated and sufficient financial and human resources to develop and implement effective policies and programs (including the Self-Exclusion Program);

(n) directly or indirectly tying the compensation of its directors, officers, other staff members and third party corporate affiliates (including, but not limited to, the Windsor Casino Limited, Casino Niagara, Casino Rama, Casinos Austria International Limited, Fantasy Gaming Entertainment Inc. and Sonoco Gaming Inc., which participated in the operation of OLGC's commercial casinos) to OLGC revenues and/or profits;

(o) failing to take reasonable steps to acknowledge and redress the conflict of interest inherent in the OLGC's revenue and profit-generating objectives versus its obligation to use best efforts to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry;

- (p) discouraging promotion of the Self-Exclusion Program, contrary to its stated commitment to responsible gaming;
- (q) taking steps to insulate itself from independent scrutiny and accountability for, *inter alia*, the failure to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny Self-Excluded Customers entry to its Gambling Venues and to detect and remove all who gained entry, by employing persons from the Alcohol and Gaming Commission of Ontario, the Ontario Provincial Police and the Responsible Gambling Council and/or entrenching its own senior staff in some or all of these institutions and taking other similar steps;
- (r) collecting, using and disclosing personal information pertaining to Self-Excluded Customers in breach of relevant provisions of the *Freedom of Information and Protection of Privacy Act* 41 (1) and 42 (1); and
- (s) breaching relevant provisions of the *Business Practices Act*, R.S.O. 1990, c. B.18, as amended, including sections 3, 2(1) paragraphs (vii), (viii) and (xiii), and 2(2) paragraphs (i), (iii) and (vii).

63. The OLGC breached its non-delegable duty of care to Dennis and each of the Class A Members as set out in paragraph 61 above through its own acts and

omissions and through the acts and omissions of its employees, servants and agents for which it is responsible in law.

64. The OLGC's breach of its non-delegable duty of care to Dennis and each of the Class A Members caused serious injuries and losses to the Plaintiffs and Class Members which are wholly due to the OLGC's negligence.

M. Occupiers' Liability on the Part of the OLGC

65. The Plaintiffs plead in the alternative that the injuries and losses to the Plaintiffs and Class Members were caused by the OLGC's failure, as an occupier of premises, to take such due care as in all of the circumstances was reasonable to ensure that Dennis and the Class A Members were reasonably safe while on the premises of the Gambling Venues, in breach of relevant provisions of the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, as amended. Particulars of the OLGC's failures to take due care (and those of its employees, servants and/or agents for whom it is responsible in law) are as set out in paragraph 62 above.

O. The OLGC's Breach of Contract

66. The Plaintiffs plead in the alternative that the OLGC breached its obligations to Dennis and each of the Class A members under their respective Self-Exclusion Contracts, and breached its duty to exercise good faith in the

discharge of those obligations and that one or both breaches amounted to fundamental breaches. Particulars of the OLGC's breaches (and those of its employees, servants and/or agents for whom it is responsible in law) are as set out in paragraph 62 above.

67. The Plaintiffs plead that the object of the Self-Exclusion Contract was to provide important psychological benefits to problem gamblers, including Dennis and each of the Class A Members, by denying them access entry to the Gambling Venues and detecting and removing all who gained entry. At all material times, these psychological benefits included, but were not limited to, preventing compulsive problem gamblers from acting on their compulsive urge to gamble and suffering the related consequences and thereby also protecting the family members of problem gamblers from suffering the related consequences.

68. The OLGC's breach of its contractual obligations under the Self-Exclusion Contract to Dennis and each of the Class A members, and of its duty to exercise good faith in the discharge of these obligations, caused serious and permanent injuries and losses to the Plaintiffs and Class Members which are wholly due to the OLGC's breach of its obligations under the Self-Exclusion Contracts, and of its duty to exercise good faith in the discharge of those obligations.

O. Damages

69. As a direct and foreseeable consequence of the OLGC's negligence, failure to take due care as an occupier of premises and breaches of contract:

- (a) Dennis and each of the Class A Members suffered significant injuries and losses as a direct and foreseeable consequence of their Gambling Activities at the Gambling Venues including the worsening of their illnesses as problem gamblers and significant consequential financial losses and other consequential pecuniary and non-pecuniary losses; and
- (b) Noble and each of the Class B Members sustained losses compensable under section 61 of the *Family Law Act* including loss of care, guidance and companionship and other pecuniary losses.
- (c) In the alternative to their claims for general and special damages arising from the OLGC's negligence and occupier's liability for its failure to take due care as an occupier of premises, Dennis and the Class A Members plead that they are entitled to "waive the tort" claim for the OLGC's negligence and occupier's liability and, instead, elect to claim payment of the revenues or net income or profits realized by the OLGC from problem gamblers engaging in Gambling Activities at Gambling Venues.

70. An award of punitive damages against the OLGC is warranted because:

(a) **Vulnerability:** Dennis and each of the Class A Members suffer from problem gambling, which the OLGC knew or ought to have known at all material times and which allowed the OLGC to exploit their vulnerabilities including, in particular, their psychologically uncontrollable pre-occupation and urge to gamble leading to excessive gambling.

(b) **Blameworthiness:** A significant portion (approximately 36 ~~48~~%) of the annual revenue of the OLGC was derived from problem gamblers engaging in Gambling Activities at the Gambling Venues at all material times, which served as a powerful disincentive to the OLGC's discharge of its obligations under the Self-Exclusion Contract to use its best efforts (and those of any commercial casino operators acting for the OLGC) to deny entry to and otherwise exclude Self-Excluded Customers from its Gambling Venues and to detect and remove all who gained entry; and

(c) **Need for Deterrence:** The OLGC's preference of its financial self-interest over the interests of the Plaintiffs and Class Members was malicious, oppressive and high-handed conduct warranting a significant monetary penalty to deter similar conduct in future.

71. The Plaintiffs plead that further and other particulars in support of an award for punitive damages are solely within the knowledge and means of knowledge of the OLGC and undertake to obtain and provide these particulars six months before the trial of the common issues.

Q. Relevant Statutes

72. The Plaintiffs plead and rely upon the provisions of the following statutes, as amended:

- (a) *Class Proceedings Act, 1992*;
- (b) *Family Law Act*;
- (c) *Ontario Lottery and Gaming Corporation Act, 1999*;
- (d) *Criminal Code*;
- (e) *Ontario Lottery Corporation Act*;
- (f) *Ontario Casino Corporation Act, 1993*;
- (g) *Negligence Act, R.S.O. 1990, c.N.1*;
- (h) *Gaming Control Act, 1992*;
- (i) *Freedom of Information and Protection of Privacy Act*;
- (j) *Business Practices Act*;
- (k) *Occupiers' Liability Act*;
- (l) *Trespass to Property Act, R.S.O. 1990, c. T.21*; and
- (m) *Gaming Control Act, 1992, S.O. 1992, c. 24*

The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

Date: ~~June 6, 2008~~ ~~March 27, 2009~~
~~December 9, 2009~~

June 9, 2009

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