

CANADA

**CLASS ACTION**  
**SUPERIOR COURT**

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No:

**MANON CARTIER**, domiciled and residing at  
1381A Boulevard Iberville, Repentigny, Québec

500  
06-000454-058

and

**ANDRÉ BÉGIN**, domiciled and residing  
at 1381A Boulevard Iberville, Repentigny, Québec,

Petitioners

vs

**LOTO-QUÉBEC**, a legal person, with a head office  
at 500 rue Sherbrooke Ouest, Suite 2000, Montréal,  
Québec, H3A-3G6

Respondent

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**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(A. 1002 C.C.P.)**

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**IN SUPPORT OF THEIR MOTION FOR PERMISSION TO INSTITUTE A CLASS  
ACTION AND OBTAIN THE STATUS OF A REPRESENTATIVE, PETITIONERS  
RESPECTFULLY SUBMIT AS FOLLOWS:**

1. Petitioners wish to institute a class action on behalf of all the persons forming part of the Group hereinafter described and of which the Petitioners are Members, namely:

*All physical persons in Québec and Canada who have, since November 1, 2001, purchased or acquired Instant Lottery Tickets in the province of Québec from a game order for which all tickets containing top prizes had already been sold.*

**Petitioners' personal claims against the Respondent is based on the following facts:**

The Petitioners

2.1 The Petitioners, Manon Cartier and André Bégin, are residents of the province of Québec. The Petitioners purchased scratch lottery tickets at numerous times and at numerous retail locations in the province of Québec during the Group period. The Petitioners are consumers pursuant to Article 1(e) of the Consumer Protection Act, R.S.Q., c. P-40.1

The Respondent

2.2 The Respondent, Loto-Québec is a corporation. Loto-Québec operates lotteries in the province of Québec. Loto-Québec is owned by the Government of Québec. Loto-Québec controls the sale and distribution of, *inter alia*, scratch lottery tickets in the province of Québec.

Scratch Lottery Tickets

2.3 During the Group period, Loto-Québec has marketed and sold dozens of different scratch lottery games in Québec, including, but not limited to: Clue, Ricochet, Gagnant à vie, Noël d'argent, Yum, Cadeau surprise, Mots cachés (\$5), Mots cachés (\$2), Texas Hold'em, Poker, Jeu de mots, le 7 chanceux, Danse, Boggle, Partie parfaite, Scrabble, Loto-bingo chiffre bon, Triple 8, Maestro, Banco instantané, Lotto 6/49 instantané, Jeu de l'horloge, Jeu de patience, Loto-bingo, Explosion, and Duo Pile ou Face (hereinafter referred to as "Instant Lottery Tickets").

2.4 Each Instant Lottery Ticket promises on the face of the ticket a chance to win a top prize in exchange for the purchase price. Loto-Québec prints a series of packs for each game and distributes them to licensed retailers throughout Québec, with a projected end date for each game. Each game contains a set, pre-determined number of top prizes pre-printed into the

game. Loto-Québec markets and designs these tickets and corresponding advertisements so that they all focus upon the top prize, and promise the purchaser a chance to win it.

- 2.5 The Petitioners were unable to examine the back of their Instant Lottery Tickets prior to purchase, as the tickets were in glass display cases and could only be inspected after purchase.
- 2.6 After launching a "game", Loto-Québec monitors sales and claimed prizes. When a "game" proves popular by generating higher sales, Loto-Québec may choose to print and distribute another "game" order of additional tickets for sale in order to generate additional revenue. To do so, Loto-Québec prints and distributes an additional series of consecutively numbered ticket packs, containing a new set of top prizes, and extends the end-date. Although these tickets have an identical name, copy and design to the first series, they are in essence a new "game" with the same appearance as the first. Loto-Québec does not advise potential customers of this practice.
- 2.7 At some point for each of these re-ordered games, Loto-Québec receives actual notice that the last top prize from the first series of packs or "game" has been claimed. After this point, the Loto-Québec knows that there are no remaining tickets from the first "game" order with the promised chance of winning the top prize.
- 2.8 Loto-Québec has the means to immediately recall and stop selling the remaining tickets from the "game" that Loto-Québec knows no longer carries a chance to win the top prize. Nonetheless, throughout the Group period, Loto-Québec has continued to sell out all remaining, now-defective tickets from the first "game" in order to maximize revenue. This is done with no notice to consumers, despite actual knowledge that it is breaching its obligations to provide consumers some chance at winning a top prize.
- 2.9 Throughout the Group period, Loto-Québec has regularly failed or refused to recall or

remove tickets from retail sale even after the final top prize has been claimed. Loto-Québec thereby obtained revenues from sales of Instant Lottery Tickets by falsely promising to the Petitioners the chance to win the top prize.

### Breach of Contract

- 2.10 The Petitioners entered into individual contracts with Loto-Québec each time they purchased Instant Lottery Tickets. These contracts were formed by the Petitioners, *inter alia*, for the chance to win the top prize as advertised on each of their respective Instant Lottery Tickets and in other advertising. Loto-Québec promised to deliver an Instant Lottery Ticket with a chance of winning an available top prize in exchange for the purchase price.
- 2.11 In some or all of the occasions at which the Petitioners formed their contracts with Loto-Québec, Loto-Québec was aware that the top prizes had already been awarded for the “game” order containing the Instant Lottery Tickets, even though the Instant Lottery Tickets promised a chance of winning the top prize at the time of purchase.
- 2.12 Loto-Québec breached its obligations under the contract with the Petitioners by failing to deliver the promised chance to win up to the top prize. The Petitioners entered into substantially identical, individual contracts with Loto-Québec by which Loto-Québec was obligated to furnish them some chance to win the top prizes advertised.
- 2.13 Loto-Québec breached its civil responsibility according to the Québec *Civil Code*, including, *inter alia*, Articles 1384, 1401 and 1458.
- 2.14 Loto-Québec established all the rules of the Instant Lottery Ticket. The Petitioners were unable to bargain the terms of the contract. In fact, the Petitioners were unable to even become aware of the terms of the contract until after purchase. As such, the contracts between Loto-Québec and the Petitioners were contracts of adhesion, as defined in article

1379 of the Québec *Civil Code*.

- 2.15 Because of the acts and omissions of Loto-Québec, the Petitioners have the legal right to annul their contracts with Loto-Québec, per Article 1407 of the Québec *Civil Code*.

#### Consumer Protection Act

- 2.16 When Loto-Québec omitted to inform the Petitioners, upon purchase of Instant Lottery Tickets, that the top prizes were no longer available to be won, Loto-Québec was making a false and misleading representation as to the qualities of the Instant Lottery Ticket, according to, *inter alia*, Articles 219 and 221(a) of the Québec *Consumer Protection Act*. These misrepresentations appeared on the Instant Lottery Tickets themselves, as well as in the advertising placed in retail outlets and other locations easily visible to the Petitioners.
- 2.17 The fact that top prizes were no longer available to be won was an important and material fact that Loto-Québec failed to disclose to the Petitioners, according to Article 223 of the Québec *Consumer Protection Act*.
- 2.18 Per Article 272 of the Québec *Consumer Protection Act*, the Petitioners may legally pursue the Respondent, as manufacturer, distributor, and/or provider of the Instant Lottery Tickets.

#### Damages Suffered By Petitioners

- 2.19 The Respondent is civilly responsible for damages suffered by the Petitioners as a result of the misrepresentations, false statements, and the omission to disclose important facts regarding the availability of top prizes in Instant Lottery Tickets provided for sale by the Respondent.
- 2.20 The Petitioners have suffered economic loss and damages caused or materially contributed

to by Loto-Québec's inappropriate, unjust and unfair business practices, as described herein.

### Exemplary Damages

2.21 Loto-Québec engaged in inappropriate, unjust and unfair business practices in a malicious and oppressive manner, with the intent to harm the Petitioners, and with conscious disregard of their rights. Loto-Québec was aware that there was no way for the Petitioners to know that top prizes were no longer available to be won. Loto-Québec relied on its own privileged inside information to extract extra unjustified revenues from the Petitioners and all Group Members. Such conduct was despicable, such that an award of exemplary damages is justified against Loto-Québec in an amount sufficient to deter such conduct in the future, pursuant to Article 272 *in fine* of the Québec Consumer Protection Act.

### **3. The facts giving rise to personal claims by each of the Group Members against the Respondent are:**

3.1 The claims of each Group Member are founded on the same general facts as the Petitioners' claims as pertains to the acts and omissions of the Respondent regarding the existence of top prizes and the chances of winning these top prizes upon purchase of Instant Lottery Tickets.

3.2 Each Group Member has facts particular to his or her claim concerning the issues of the particular Instant Lottery Tickets purchased, and the locations and dates of purchase.

### **4. The composition of the Group makes the application of articles 59 or 67 difficult or impractical because:**

4.1 The members of the Group are so numerous that joinder of all members is impracticable. While the exact number of Group members is unknown to the Petitioners at the present time, it is evident that there are thousands of potential Group Members who have purchased the

Instant Lottery Tickets during the Group period in all regions of the province of Québec.

4.2 The potential number of Group members can be estimated from records kept by the Respondent.

4.3 The potential Group members are widely dispersed geographically in the province of Québec.

5. **The identical, similar, or related questions of law or fact between each Group Member and Respondent which the Petitioners wish to have decided by the class action are:**

5.1 Are Group Members “consumers” per Article 1e) of the Québec *Consumer Protection Act*?

5.2 Did Loto-Québec provide or offer for sale Instant Lottery Tickets from a “game” order for which all tickets containing top prizes had already been sold?

5.3 Were the contracts between the Petitioners and Loto-Québec contracts of adhesion?

5.4 Did Loto-Québec commit any breaches of the contracts between itself and the Petitioners?

5.5 Did Loto-Québec make false or misleading statements, as defined by the Québec *Consumer Protection Act*, regarding the availability of top prizes in Instant Lottery Tickets at the time of purchase of these Instant Lottery Tickets?

5.6 Did Loto-Québec fail to disclose an important fact, as defined by the Québec *Consumer Protection Act*, by failing to inform the Petitioners that top prizes were no longer available to be won at the time they purchased Instant Lottery Tickets?

5.7 What are the categories of damages suffered by Group Members?

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- 5.8 What are the legal remedies available to the Petitioners?
- 5.9 Is Loto-Québec liable to pay exemplary damages as a result of its acts or omissions?
6. **The question of law or fact which is specific to each Group Member is:**
- 6.1 The category of damage suffered by each Group Member and the amount of damages owed to each Group Member.
7. **It is expedient that the bringing of a class action for the benefit of Group Members be authorized as:**
- 7.1 The majority of the issues to be dealt with are issues common to every Group Member.
- 7.2 The relatively small claim of individual Group Members might discourage them from pursuing this matter in any other forum.
- 7.3 The high number of potential litigants could lead to a multitude of individual legal actions in different jurisdictions, possibly leading to contradictory judgements on questions of law and fact.
8. **The nature of recourse which the Petitioners wishes to exercise on behalf of the Group Members is:**

An action in civil responsibility against the Respondent based on breaches of contract under the Québec *Civil Code* and breaches of the Québec *Consumer Protection Act* committed by the Respondent because of acts and/or omissions of the Respondent during the distribution and sale of Instant Lottery Tickets in the province of Québec.

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9. **The conclusions sought by your Petitioners are:**

**GRANT** the Petitioners' action against the Respondent;

**GRANT** the relief requested against the Respondent and authorize the Petitioners to commence a class action;

**ORDER** the annulment of the contracts between Loto-Québec and Group Members regarding the purchase of Instant Lottery Tickets.;

**CONDEMN** the Respondent to compensate each of the Group Members for the prices paid for Instant Lottery Tickets purchased by Group Members during the Group period;

**CONDEMN** the Respondent to pay exemplary damages;

**CONDEMN** the Respondent to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of all exhibits, expert reports and testimony and publication of notices.

10. **Petitioners request that they be ascribed the status of representatives for the following reasons:**

They are Group Members. They are well informed of the facts initiating this action. They have the required time, determination, and energy to bring this matter to a conclusion. They collaborate fully with his attorneys, respond diligently and intelligently to requests their attorneys make and comprehend the nature of the class action proceeding. They are not in a conflict of interest with other Group Members.

11. **Petitioners proposes that the class action be brought before the Superior Court of the district of Montréal for the following reasons:**

11.1 The Respondent has a head office in the Judicial District of Montréal, Québec.

11.2 The Respondent offered Instant Lottery Tickets for sale in the Judicial District of Montréal,

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Québec.

11.3 The Petitioners reside in Repentigny, Québec, close to the Judicial District of Montréal.

**WHEREFORE Petitioners PRAY**

**THAT** the present motion be granted;

**THAT** the bringing of a class action be authorized as follows:

An action in civil responsibility against the Respondent based on breaches of contract under the Québec *Civil Code* and breaches of the Québec *Consumer Protection Act* committed by the Respondent because of acts and/or omissions of the Respondent during the distribution and sale of Instant Lottery Tickets in the province of Québec.

**THAT** the status of representatives be granted to the Petitioners for bringing the said class action for the benefit of the following group of persons, namely:

*All physical persons in Québec and Canada who have, since November 1, 2001, purchased or acquired Instant Lottery Tickets in the province of Québec from a game order for which all tickets containing top prizes had already been sold.*

**THAT** the principal questions of law and fact to be dealt with collectively be identified as follows:

- 1) Are Group Members “consumers” per Article 1e) of the Québec *Consumer Protection Act*?
- 2) Did Loto-Québec offer for sale Instant Lottery Tickets from a “game” order for which all tickets containing top prizes had already been sold?
- 3) Were the contracts between the Petitioners and Loto-Québec contracts of adhesion?

- 4) Did Loto-Québec commit any breaches of the contracts between itself and the Petitioners?
- 5) Did Loto-Québec make false or misleading statements, as defined by the *Québec Consumer Protection Act*, regarding the availability of top prizes in Instant Lottery Tickets at the time of purchase of these Instant Lottery Tickets?
- 6) Did Loto-Québec fail to disclose an important fact, as defined by the *Québec Consumer Protection Act*, by failing to inform the Petitioners that top prizes were no longer available to be won at the time they purchased Instant Lottery Tickets?
- 7) What are the categories of damages suffered by Group Members?
- 8) What are the legal remedies available to the Petitioners?
- 9) Is Loto-Québec liable to pay exemplary damages as a result of its acts or omissions?

THAT the conclusions sought with relation to such questions be identified as follows:

**GRANT** the Petitioners' action against the Respondent;

relief requested against the Respondent and authorize the Petitioners to

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- 4) Did Loto-Québec commit any breaches of the contracts between itself and the Petitioners?
- 5) Did Loto-Québec make false or misleading statements, as defined by the Québec *Consumer Protection Act*, regarding the availability of top prizes in Instant Lottery Tickets at the time of purchase of these Instant Lottery Tickets?
- 6) Did Loto-Québec fail to disclose an important fact, as defined by the Québec *Consumer Protection Act*, by failing to inform the Petitioners that top prizes were no longer available to be won at the time they purchased Instant Lottery Tickets?
- 7) What are the categories of damages suffered by Group Members?
- 8) What are the legal remedies available to the Petitioners?
- 9) Is Loto-Québec liable to pay exemplary damages as a result of its acts or omissions?

**THAT** the conclusions sought with relation to such questions be identified as follows:

**GRANT** the Petitioners' action against the Respondent;

**GRANT** the relief requested against the Respondent and authorize the Petitioners to commence a class action;

**ORDER** the annulment of the contracts between Loto-Québec and Group Member regarding the purchase of Instant Lottery Tickets.;

**CONDEMN** the Respondent to compensate each of the Group Members for the prices paid for Instant Lottery Tickets purchased by Group Members during the Group period;

**CONDEMN** the Respondent to pay exemplary damages;

**CONDEMN** the Respondent to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of all exhibits, expert reports and testimony, and publication of notices.

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**THAT** it be declared that any Group member who has not requested his exclusion from the Group be bound by any judgment to be rendered on the class action, in accordance with law;

**THAT** the delay for exclusion be fixed at ninety (120) days from notice to members and that at the expiry of such delay, the members of the Group who have not requested exclusion be bound by any such judgment;

**THAT** it be ordered that a Notice to Members be published in the following manner:

A copy of the Notice to Members be published once in each of the following daily newspapers:

La Presse, Le Journal de Montréal, The Montreal Gazette;

Publication of the Notice to the Members on Respondent's website.

Publication on the website of Petitioner's legal counsel.

**THAT** the record be referred to the Chief Justice so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard. That the Clerk of this Court be ordered, upon receiving the decision of the Chief Justice, in the event that the class action be brought in another district, to transmit the present record to the clerk of the designated district.

Montréal, Québec

Date of Issuance: November 24 , 2008

*Merchant Law Group LLP*

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