

FEB 11 2020

No. S-201522



IN THE SUPREME COURT OF BRITISH COLUMBIA

Vancouver Registry

BETWEEN:

CORINA RIESEBOS

Plaintiff

AND:

**BRITISH COLUMBIA LOTTERY CORPORATION
AND
HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**

Defendants

NOTICE OF CIVIL CLAIM

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: — STATEMENT OF FACTS

Definitions

1. In this Notice of Civil Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:
 - (a) "**BCLC**" means the British Columbia Lottery Corporation;
 - (b) "**Class**" and "**Class members**" means any and all persons who paid to play line games on video slots (as defined below) in British Columbia, excluding the directors, officers and employees of the Defendants, from February 7, 2018 onwards;
 - (c) The "**Crown**" means Her Majesty the Queen in Right of the Province of British Columbia;
 - (d) The "**Defendants**" means the British Columbia Lottery Corporation and Her Majesty the Queen in Right of the Province of British Columbia, collectively; and
 - (e) "**Video slots**" means the electronic slot machines used throughout British Columbia, otherwise known as "video lottery terminals", "electronic gambling devices" or "slots", through which a user can wager value on the outcome of a line game displayed using symbols on a screen.
2. Video slots are inherently deceptive, inherently addictive and inherently dangerous when used as intended. They are form of continuous gaming which differs from traditional mechanical slot machines, lotteries, and other games of chance 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.
3. Unlike other regulated gambling games, video slots have hidden odds of winning, and users are left guessing or inaccurately presuming their chances of winning any and all prizes. The difficulty of figuring out the odds is augmented by variable prize structures and the resulting volatility of the games that makes it impossible for the user to determine, with any accuracy, the true odds of winning during any given play session.
4. Similar to loaded dice or games of sleight-of hand, video slots combine randomness with subliminal priming, concealed asymmetry and non-linear paytables to deceive the user as to the operation of the game and the real chances of winning.

5. Video slots also have asymmetrical virtual reels that are programmed to weight the distribution of symbols across each reel differently so as to give the user a false impression of the odds of the symbols stopping in a particular pattern. This concealed asymmetry creates a "near miss" effect through which the user is manipulated into believing that they almost won or are getting closer to a win, and that they should keep playing. Asymmetrical virtual reels distort the odds of winning.
6. Video slots also have non-linear paytables, where the payout amounts, hit frequency, or odds of winning change depending on the wager provided by the user. This design feature encourages users to bet higher amounts and incur higher losses.
7. The video displays on video slot machines use attractive, moving images or designs, which provide subliminal priming to device users and manipulate them into a hyper-focused and dissociative mental state. In such a state, users' abilities to make rational decisions and retain control with respect to playing the game are impaired.
8. Some video slots also have a "stop" button or similar input that further reinforces the illusion that the user has some control over the outcome of play.
9. Despite the above representations made through the video slots, in reality, the outcome of play is the result of a random number generator, and is predetermined upon commencement of play. The outcome of play is totally unconnected with what is happening on the video screen, or when the "stop" button is pressed.
10. Use of the video slots as intended resulted in the Plaintiff and the Class suffering economic losses, emotional distress and mental anguish, and other expected harms flowing from these losses and injuries, such as addiction, dependency, self-harm and/or suicide.
11. Video slots in British Columbia are operated through operational service contracts with private sector service providers including 15 casinos, 2 racecourse casinos, and 18 community gaming centres.
12. At all material times, the Defendants had direct knowledge of or ought to have known of the deceptive, addictive and dangerous design features of video slots. The Defendants also knew or ought to have known that problem gambling was associated with video slots.

The Parties

13. The Plaintiff, Corina Riesebos, is a resident of Kelowna, in the Province of British Columbia. She began playing video slots line games 20 years ago, and has played them in the Province of British Columbia since 2015.
14. The Defendant, BCLC, is a Crown corporation established on April 1, 1985, and a Crown agent pursuant to the *Lottery Corporation Act*, S.B.C. 1985, c. 50. Its head office is located in Kamloops, British Columbia. The mandate of BCLC is to conduct gaming in a socially responsible manner. The objects of BCLC are to develop, undertake, organize, conduct and manage lottery schemes on behalf of the government of British Columbia. At all material times, BCLC is and was responsible for the authorization, distribution, deployment, supervision, advertising and/or promotion video slots in British Columbia.
15. The Defendant, the Crown, established and controls BCLC. In its 2017/18 Mandate Letter, the Crown directed BCLC to take actions in accordance with the "best interests" of the Province and the people of British Columbia.
16. The Defendants are uniquely situated as monopolists of video slots. The Defendants have sole jurisdiction, authority and control over the authorization, distribution, deployment, supervision, advertising and/or promotion of video slots in British Columbia.

Proposed Class

17. As defined above, the proposed members of the Class are:

Any and all persons who paid to play line games on video slots (as defined below) in British Columbia, excluding the directors, officers and employees of the Defendants, from February 7, 2018 onwards.
18. For the purposes of the Class Period, the date of final resolution of the common issues, in whatever applicable form that may take, will serve as the end date thereto.

PART 2: — RELIEF SOUGHT

19. The Plaintiff claims for:
 - (a) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and appointing the Plaintiff as the representative Plaintiff for the Class as defined herein;

- (b) a declaration that the Defendants owed duties of care to the Plaintiff and the Class members with respect to the authorization, distribution, deployment, supervision, advertising and/or promotion of video slots;
- (c) a declaration that the Defendants breached their duties of care to the Plaintiff and the Class members with respect to the authorization, distribution, deployment, supervision, advertising and promotion of video slots;
- (d) a declaration that the Defendants breached their contractual obligations to the Plaintiff and the Class members to provide a fair and safe way to play video slots;
- (e) a declaration that the Defendants breached their obligations to the Plaintiff and Class members under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;
- (f) a declaration that that the operation of video slots as described herein is in contravention of ss. 206 and 207 of the *Criminal Code*, R.S.C. 1985, c. C-46;
- (g) the right to elect to waive the tort of negligence;
- (h) a declaration that the Defendants were unjustly enriched through their unlawful authorization, distribution, deployment, supervision, advertising and promotion of video slots;
- (i) an accounting of the Defendants' profits or revenues resulting from their unlawful actions;
- (j) an order for an aggregate monetary award pursuant to s. 29 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, as a disgorgement of the Defendants' profits or revenues resulting from their unlawful actions, in the amount of \$1,000,000,000.00 or an amount to be assessed;
- (k) punitive damages in the amount of 1,000,000.00;
- (l) the costs of distributing all monies received to Class Members;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (n) costs on a substantial indemnity basis, plus applicable taxes; and
- (o) such further and other relief as this Honourable Court may deem just.

PART 3: — LEGAL BASIS

Defendants' Negligence

20. The Defendants owed a common law duty of care to the Plaintiff and other Class members due to their positions as the sole authorizers, suppliers, controllers and regulators of video slots in British Columbia.
21. The Defendant is and was in a direct consumer-supplier relationship of proximity with the Plaintiff and Class members, sufficient to give rise to a duty of care.
22. The risks of dangers inherent to video slots were foreseeable. The Defendants knew or ought to have known, at all material times, of the deceptive, addictive and dangerous potential of video slots, and that their use would result in significant economic loss, emotional distress and mental anguish, and other expected harms such as self-harm and suicide.
23. For a discoverable period of time before the class period, the Defendants knew of, or ought to have known of, the inherently deceptive, addictive and dangerous nature of video slots. The Defendants knew or ought to have known of high problem gambling rates for video slots and that these rates were reflective of the design of video slots.
24. Knowledge and information concerning the risks associated with video slots were in the exclusive possession of the Defendants and their dealers and agents, including subcontractors and suppliers, and that information was not shared with the public, the Plaintiff or Class members at any time.
25. Given the Defendants' unique positions as the monopolists and sole regulators of video slots, charged with a duty to act in the public interest, knowledge of the design features and effects of video slots should be attributed to the Defendants.
26. The standard of care expected of the Defendants' was that of reasonable and prudent product suppliers and product regulators in charge of the authorization, distribution, deployment, supervision, advertising and/or promotion of video slots.
27. The standard of care expected in the circumstances required the Defendants, amongst other things, to:
 - (a) have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively safeguard against the dangers inherent in video slots;

- (b) take reasonable steps to follow its standards of conduct, policies and procedures to adequately, properly and effectively safeguard against the dangers inherent in video slots;
 - (c) adequately warn the Plaintiff and Class of the inherent dangers of video slots, including their deceptive components, and their potential for addiction or dependency;
 - (d) ensure that the Plaintiff, Class, all distributors and all establishments running video slots were fully and completely informed of the potential risks inherent in them; and
 - (e) ensure that video slots were advertised and promoted in a way that made known their deceptive, addictive and danger qualities.
28. The Defendants' standard of care included, at a bare minimum, the obligation to act in accordance with applicable legislation, and policy norms including, *inter alia*:
- (a) the *Criminal Code*, R.S.C. 1985, c. C-46;
 - (b) the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;
 - (c) the *Gaming Control Act*, S.B.C. 2002, c. 1 and Regulations and Directives thereunder;
 - (d) applicable industry standards, policies, directives or advisories, including but not limited to the Advertising and Marketing Standards; Security and Surveillance Standards; Responsible Gambling Standards; and the Technical Gaming Standards.
29. At all material times, the reasonable and prudent product dealers and product regulators would have taken the above described steps to ensure there was no risk of harm to the Plaintiff and Class, or that such risk was minimized to an appropriate degree.
30. The Defendants breached the standard of care required of them in, but not limited to, the following respects:
- (a) failing to have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively safeguard against the dangers inherent in video slots;
 - (b) failing to take reasonable steps to follow its standards of conduct, policies and procedures to adequately, properly and effectively safeguard against the dangers inherent in video slots;
 - (c) failing to adequately warn the Plaintiff and Class that of the inherent dangers of video slots, including their deceptive components, and their potential for addiction or dependency;
 - (d) failing to ensure that the Plaintiff, Class, all distributors and all establishments running video slots were fully and completely informed of the potential risks inherent in them;
 - (e) failing to ensure that video slots were advertised and promoted in a way that made known their deceptive, addictive and danger qualities;

- (f) failing to abide by the *Criminal Code*, R.S.C. 1985, c. C-46, in the manner described below;
- (g) failing to abide by the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, in the manner described below;
- (h) failing to abide by other applicable industry standards, policies, directives or advisories, including but not limited to:
 - (i) Game fairness and display requirements as stipulated in Gaming Policy and Enforcement Branch Technical Gaming Standards; and
 - (ii) Gaming Policy and Enforcement Branch Advertising and Marketing Standards.

31. Although the Defendants knew or ought to have known that video slot losses were concentrated among problem gamblers, it failed to implement adequate warning and screening procedures. Rather than preventing from and warning of the risks inherent in video slots, the Defendants relied on users to exclude themselves from the machines, attempting to place their duties of care on the consumers.
32. The Defendants' breaches of the standard of care occurred at the operational level.
33. Alternatively, if any breaches can be attributed to the policy level, the decisions constituting such breaches were not a good faith exercise of discretion, owing to the exceptional position of the Defendants and their special relationship of responsibility toward the Plaintiff and Class.
34. The discharge of the Crown's duties were the responsibility of its servants and agents, each of whom owed a common law duty of care to the Plaintiff and Class for whom they were responsible.
35. The Crown's servants and agents made, and continue to make, decisions with respect to the authorization, distribution, deployment, supervision, advertising and/or promotion of video slots in British Columbia.
36. As a result of these decisions, and the breaches of the standards described above, the Plaintiff and Class suffered significant economic loss, mental anguish, and/or a risk of future loss in their use of video slots in British Columbia.

Defendants' Breach of Contract

37. The contract between the parties was to provide a fair, safe and entertaining way to play games of chance with the opportunity to win small cash prizes in exchange for small cash bets. By authorizing, distributing, deploying, supervising, advertising and/or promoting video slots that

were inherently deceptive, addictive and dangerous, the Defendants breached this fundamental term of the contract to provide a fair and safe way to play.

38. Additionally, the Defendants warranted to the Plaintiffs and the Class members that video slots were of merchantable quality and fit for use. The Defendants breached the warranty to the Plaintiffs and the Class members by authorizing, distributing, deploying, supervising, advertising and/or promoting products which are inherently dangerous to users and which the Defendant knew or ought to have known would lead to economic loss, dependency, addiction and mental anguish and emotional distress.
39. In the alternative, the Defendants breached an implied contractual term that they would use reasonable care and skill in their provision of video slot line games, including a complying with the duty to warn of any inherent danger in the consumption of the video slot games, and to satisfy themselves of the safety of these games. The Defendant failed to adequately warn consumers in this regard.
40. At all material times, the operative trade or business usage or custom that governed the relationship between the Defendants and the Plaintiff and Class required at a bare minimum the following of, *inter alia*:
 - (a) the *Criminal Code*, R.S.C. 1985, c. C-46;
 - (b) the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;
 - (c) the *Gaming Control Act*, S.B.C. 2002, c. 1 and Regulations and Directives thereunder;
 - (d) applicable industry standards, policies, directives or advisories, including but not limited to the Advertising and Marketing Standards; Security and Surveillance Standards; Responsible Gambling Standards; and the Technical Gaming Standards.
41. By breaching the *Criminal Code*, the *Business Practices and Consumer Protection Act*, and applicable industry standards as described herein, the Defendants breached implied contractual terms of operative trade or business usage.
42. Additionally and in the alternative, the Defendants owed the plaintiff a duty of good faith and honest dealing by virtue of their positions as the lawful delegates of conducting and managing lottery schemes in the province, as permitted by Parliament, and by virtue of their relationship to vulnerable parties such as the Plaintiff and Class. The Defendants were at all material times charged with the fulfillment of public policy objectives, including the safety and protection of consumers of the lottery scheme they were providing, including video slot line games.

43. The Defendants breached the term of good faith and honesty in their contract with the Plaintiff and Class by authorizing, distributing, deploying, supervising, advertising and/or promoting video slots which were inherently deceptive, addictive, dangerous, and unlawful.
44. To the extent that relief is sought in tort, it is expressly pleaded that such relief is sought for the vicarious liability of the Crown's employees, servants, officers, and agents. The Plaintiff pleads and relies on section 2 of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

Defendants' Breach of the Consumer Protection Legislation

45. The Defendants' authorization, distribution, deployment, supervision, advertising and/or promotion of video slots is in contravention of Part 2 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
46. The Defendants represented video slots to be fair and safe games when in actuality they were not of that particular standard. This was a deceptive act or practice contrary to ss. 4 and 5, and an unconscionable act or practice contrary to ss. 7-10 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
47. It is the Defendants burden to prove that their supply of video slots was not a deceptive or unconscionable act or practice.

Defendants' Breach of Criminal Legislation

48. The Defendants' authorization, distribution, deployment, supervision, advertising and/or promotion of video slots is in contravention of ss. 206 and 207 of the *Criminal Code*, R.S.C. 1985, c. C-46.
49. The video slots described herein are so programmed, fixed, and manipulative that they do not fit any reasonable definition of "slot machine" or "fair game of chance" and do not form part of a valid "lottery scheme", as defined in s. 207 of the *Criminal Code*. They are therefore prohibited by s. 206 of the *Criminal Code*.
50. Additionally, video slots are so unconnected with chance or skill and are so manipulative and deceptive that they are more adequately described as a game similar to "three-card monte".
51. The placement of reels of symbols in video slot line games are designed to and do create the perception that all reels are weighted with an equal number of symbols. Operating on this belief, users expect the symbols to appear in a particular place on the screen, given the relative movement of the other reels, in order to produce a "win".

52. In actuality, where the symbols land on the screen is pre-determined by a random number generator in the machine, with no connection to their movement on the virtual "reels". Additionally, the reels are weighted with asymmetrical amounts of symbols. Thereby, symbols do not appear where the user believes they might to given the operation they see on the screen. This difference between how the game operates and how it is presented on the screen is similar to the deception employed in a three-card monte game.
53. Symbols often land just away from where the user believes they might appear. This "near miss" effect is a deception similar to the sleight of hand or quickness of movement employed in a three-card monte game.
54. The seemingly interactive design of video slots and the ability of the user to wager variable amounts creates a perception that the user has control over the outcome of the game. Video slots with a "stop" button or other form of additional input from the user creates an additional perception that the user has control over when and where the respective reels of symbols stop.
55. In actuality, the user has no control over the outcome of the game, as the outcome is pre-determined using a random number generator prior to and/or separate from the game play displayed on the screen. This element of false control is a deception similar to the element of false control placed upon the player of a three-card monte game where the outcome is in actuality wholly decided using sleight of hand or quickness of movement.
56. As a game similar to three-card monte, video slots are excluded from constituting a valid "lottery scheme" under s. 207 of the *Criminal Code*.
57. For greater clarity, the Plaintiff is not seeking a conviction of the Defendants on a criminal standard of proof, only a finding that the Defendants' conduct is in contravention of the lottery schemes authorized under the *Criminal Code*.

Defendants' Unjust Enrichment by Wrongdoing and Waiver of Tort

58. Additionally and in the alternative, the Plaintiff pleads waiver of any tort pleaded above, and pleads that the Plaintiff and Class are entitled to claim and recover economic loss as an unjust enrichment to the Defendant, based on equitable and restitutionary principles.
59. As an expected and intended result of their unlawful conduct, the Defendants have profited and benefited from the deceptive, addictive and dangerous nature of the video slots, which would not have caused any loss to the Plaintiff and Class absent the Defendants' authorizing, distributing,

deploying, supervising, advertising and/or promoting the product in the wrongful ways described above.

60. The Plaintiff seeks remedies of an accounting of the Defendants' revenues and profits through unjust enrichment, and a disgorgement of those revenues and profits or a constructive trust thereon. The Plaintiff seeks that those remedies be determined at a trial of the common issues without the involvement of any individual class member and after liability has been determined.

Punitive Damages

61. The Plaintiff also claims punitive damages in the sum of \$1,000,000.00 as a result of the high-handed, callous and egregious conduct of the Defendants in disregarding the health and wellness of the Plaintiff and Class members.
62. In particular, insofar as the Defendants' conduct is in breach of the *Criminal Code*, it is highly unethical such as to merit punitive damages.
63. Additionally, the Defendants had direct knowledge of the risk of addiction and dependency that users may develop through their use of video slots, and the risk of self-harm and suicide that such addiction and dependency could lead to. Insofar as the Defendants' continued to authorize, distribute, deploy, supervise, advertise and/or promote video slots despite such knowledge, they are guilty of intentionally malicious and egregious conduct deserving of punitive damages.

The Plaintiff proposes that the class action be tried in Vancouver, British Columbia.

Plaintiff's address for service:

Koskie Minsky LLP

20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Koskie Glavin Gordon

1650-409 Granville Street
Vancouver, BC V6C 1T2

Fax number address for service (if any):

E-mail address for service (if any):

kmbaert@kmlaw.ca
cpoltak@kmlaw.ca
cgordon@koskieglavin.com

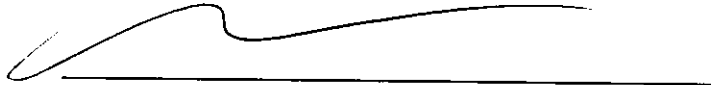
Place of trial:

Vancouver, British Columbia

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: February 10, 2020



Lawyer for the Plaintiff

Kirk M. Baert/Celeste Poltak
Koskie Minsky LLP

Charles Gordon
Koskie Glavin Gordon, Q.C.

Rule 7-1(1) of the *Supreme Court Civil Rules* states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: — Concise Summary of Nature of Claim:

A claim for damages and disgorgement of unlawful profits for breach of a common law duty of care, breach of contract, breach of statute, and unjust enrichment.

Part 2: — This Claim Arises From the Following:

A dispute concerning:

a matter not listed here

Part 3: — This Claim Involves:

a class action

Part 4 – List no more than 3 applicable enactments:

Class Proceedings Act, R.S.B.C. 1996, c. 50;