



In this Issue...

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Case Comment: B.C. Court considers whether a casino owes a problem gambler a duty of care in *Ross v. British Columbia Lottery* (2014) BCSC 320

On March 3, 2014, Mr. Justice Truscott released his decision in *Ross v. British Columbia Lottery* (2014) BCSC 320 ("Ross"). Dolden Wallace Folick was successful Counsel in a novel case that raises, for the first time in Canada, whether a casino owes a duty of care to an addicted gambler that chooses to disregard his or her own self-imposed exclusion from a casino.

Between June of 2007 and 2010, the Plaintiff lost approximately \$78,000 at the Fraser Downs and Cascades Casinos (collectively the "Casinos"). During this same time the Plaintiff was a participant in a voluntary self-exclusion program ("VSE"), which was designed by the British Columbia Lottery Corporation ("BCLC") and put into effect in all gaming facilities across British Columbia. However, the Plaintiff successfully found

ways of "not getting caught," and was able to sneak back into the Casinos on multiple occasions leading her to losses.

When the Plaintiff signed the VSE form, the form included a provision stating that neither the BCLC or any other service providers, referring to casinos, are responsible for any breach of the self-exclusion or for the failure to enforce the self-exclusion, and the BCLC and its service providers are released from any liability for claims related to her self-exclusion, including the Plaintiff's failure to comply with the VSE program. But this was found not to constitute a contract so the Defendants could not rely this.

Some of the expert evidence showed that while self exclusion programs produced positive results, as many as 40-50% of self-excluded persons will breach the program, and some of these



persons will become chronic or compulsive breeders the longer they are enrolled. Because of this, the Plaintiff argued that the Casinos owed her a duty to warn that the operational security and surveillance systems may not identify her, so that she could take additional steps on her own such as handing out a homemade poster with her VSE exclusion form and picture on it - which she actually did do later in 2010 before re-entering the VSE program. However, the Court would not absolve the Plaintiff of her own responsibility. Simply because the Plaintiff was enrolled in the VSE program does not mean that she checked her autonomy at the door, and the Court noted that "*if she was truly concerned about not being identified by the security and surveillance system that was in existence she had the opportunity at that time to do something about it and she didn't.*"

However, the Court found that the Defendants did owe the Plaintiff a duty of care to put in place a voluntary self-exclusion program that

required casinos to exercise all due diligence to prevent and not knowingly permit any person who has been barred from a casino from entry or being present in a casino and gambling. Even though the Plaintiff was actively sneaking back into the Casinos, because of the characteristics of a problem gambler, her actions did not absolve the Defendants of their duty and the Plaintiff was entitled to continue to rely on the Casinos to assist her while she was in the VSE program. Specifically, the Court noted that "*every casino must assume that every person seeking to enroll in the VSE program has some kind of a gambling problem and is not entitled to assume it is only a minor problem and not a major problem.*"

Ultimately, the Court found that the Plaintiff was largely the author of her own misfortune, and a person enrolling in the VSE program retains the primary obligation to control their gambling or cease it all together. The Plaintiff's claim was dismissed against all of the Defendants.

What is the practical implication of this case? Well, there are hundreds of similar cases that have not yet gone to trial, and this case was largely viewed as a test case, with the Judge's decision acting as a type of "roadmap" for future cases. From the point of view of a casino, the *Ross* decision makes it clear that the duty is merely to maintain a monitoring system, and a breach only arises if a casino knowingly permits a self-excluded gambler to remain on the premises after they have been identified.



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