*Case Name:*
# Amar v. Société des loteries du Québec

**MICHAEL AMAR, RAJIB ULLAH, Plaintiffs**
**v.**
**SOCIÉTÉ DES LOTERIES DU QUÉBEC, Defendant**

[2013] Q.J. No. 14846

2013 QCCS 5343

No.: 500-17-065602-115

Quebec Superior Court
District of Montreal

**The Honourable Paul Mayer, J.S.C.**

Heard: September 3, 4, 5, 6 and 10, 2013.
Judgment: October 31, 2013.

(177 paras.)

**Counsel:**

Plaintiffs: Mr. Michael Amar and Mr. Rajib Ullah.

Mtre. Olivier Kott, Mtre. Amélie Aubut, Norton Rose Fulbright Canada, s.e.n.c.r.l., s.r.l., Attorneys for the Defendant.

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**JUDGMENT**

**1.**
### INTRODUCTION

**1**   Mr. Michael Amar and Mr. Rajib Ullah seek no less than $22M in damages from the *Société*

*des lotteries du Québec* ("**Loto-Québec**"). They reveal that the *Extra* lottery is not sufficiently random.

**2**    The enormity of the claim is best captured in their own words. They say that they are the victims of deceptive, insidious, covert and prohibited commercial practices on the part of Loto-Québec.[1]

**3**    They explain that, through great effort and persistence, they discovered that Loto-Québec is "*for financial gain, with foresight of planning, creativity, knowledge and devious calculations, knowingly and deliberately*" using an insidious computer program that removes randomness from the *Extra* lottery and that minimizes chances of winning prizes. It deliberately sells losing selections in advance of each draw.[2]

**4**    They allege that Loto-Québec has, "*with a certain cruelty*", created false expectations and deprived them and many other Quebecers of the hope for financial improvement that comes with the purchase of a lottery ticket.[3]

 **2.**
# THE POSITION OF THE PARTIES

 **2.1**          **Plaintiffs**

**5**    The Plaintiffs' Re-Amended Motion contains some 150 paragraphs over more than 25 pages. Although it has the allure of it, this is not a class action. Rather, the Plaintiffs contend that they were mislead into purchasing *Extra* lottery selections because Loto-Québec failed to disclose several important facts or conditions.

**6**    Their Motion raises several issues with respect to the manner Loto-Québec operates the *Extra* lottery. In their pleadings, they present several others. Essentially, they argue that Loto-Québec has failed to respect the following laws:

>    a)    The *By-law respecting forecast contests and numbers games* (the "**By-law**");[4]

>    b)    the Criminal Code (the "**Cr.C.**")[5]; and

>    c)    the *Consumer Protection Act* (the "**CPA**").[6]

**7**    They each seek the sum of $10,020M in damages:

>    a)    $20,000 is an estimate of the amount spent by each of them to purchase

*Extra* selections over many years;

b) $1M represents the "*equivalent to the winning grand prize*" they were denied the chance of wining because so many selections were predetermined to lose;[7] and

c) $10M in punitive damages.[8]

## 2.2     Loto-Québec

**8**    Loto-Québec argues that the claim is frivolous and the quantum of damages is exaggerated. It is of the view that:

a) it has the legislative authority to conduct and administer the *Extra* lottery in the manner it deems appropriate;

b) it has committed no prohibited business practices or made any false or misleading representations;

c) it did not fail to mention any important facts in the representations made with respect to the *Extra* lottery; and

d) the Plaintiffs are trying to redraft the parameters of the lottery to suit themselves.

## 3.     THE LEGAL ISSUES

**9**    The Court proposes to analyse the following questions of fact and law:

a) has Loto-Québec contravened the By-law?
b) has Loto-Québec violated the Cr.C.?
c) has Loto-Québec breached the CPA?
d) if so, what are the damages to be awarded?

## 4.     THE CONTEXT

### 4.1     The parties

#### 4.1.1     The Plaintiffs

**10**    Mr. Ullah is 30 years old. He describes himself as a lottery addict who has spent innumerable

dollars gambling and purchasing lottery tickets, including the *Extra*.

**11** Between 2007 and 2010, he had his own Loto-Québec terminal as he worked in his family's Internet café (*Uptown-Net*) in the Plamondon metro station that sold lottery tickets.

**12** Mr. Amar is 52 years old. He enjoys purchasing lottery tickets, including the *Extra*. He met Mr. Ullah in the café. Over time, they became friends.

### 4.1.2 Loto-Québec

**13** Loto-Québec is a joint-stock company created pursuant to *An Act respecting the Société des loteries du Québec*. (the "**Act**").[9] One of its principal functions is to conduct and administer lottery schemes.[10]

**14** The Act grants it the rights and obligations of a mandatory of the State.[11]

**15** The members of its board of directors are appointed by the Government.[12]

**16** The board of directors of Loto-Québec determines the general standards and conditions relating to the nature and holding of lottery schemes it conducts and administers by by-law.[13] Pursuant to that authority, the By-law is adopted.

**17** Its shares are allotted to the Minister of Finance.[14] The dividends are fixed by the Minister.[15]

**18** The books and accounts of Loto-Québec are audited annually by the Auditor General and an external auditor.[16]

**19** In the year ending March 31, 2013, it earned nearly $3.6B in revenues generating a net profit of some $1.28B.[17] The total contribution remitted to the Government that year (including dividends and the QST) was $1.379B.[18]

### 4.2 The *Extra* lottery

**20** The *Extra* lottery was first developed by Loto-Québec in the 1990's as a **game of chance.**

**21** It has evolved over time, going from six digits to seven digits in 2006. Its most recent change was introduced in May 2010 when the grand prize was increased from $500,000 to $1M and made divisible.

**22** It is an add-on lottery that cannot be played alone. It can only be purchased with another

lottery including, among others, *Banco*, *Astro*, *Loto-Max*, *6/49*, *Triplex and La Quotidienne*.

**23**   Each selection (a number) is composed of seven digits from 0 to 9 generated by Loto-Québec's central computers. The selections are chosen from a total pool of digits ranging between 0000000 and 9999999, thus providing 10M possible choices.

**24**   Each selection costs $1.00.

**25**   Up to 10 *Extra* selections can be purchased on a lottery ticket.

**26**   In 2012, Loto-Québec sold, on average, some 400,000 selections per day.[19]

**27**   On an annual basis, 92.5% of *Extra* customers buy one selection, 3.1% purchase two and 1.6% get the maximum 10. The remaining 3% of customers take between three to nine selections.[20]

**28**   The prize structure and chances of winning advertised by Loto-Québec is as follows:[21]

| Categories | Prizes | Chances of winning |
|---|---|---|
| Complete digits (7 digits) | $1,000,000 divisible | 1 / 10,000,000 |
| 6 last digits | $25,000 | 1 / 1,111,111 |
| 5 last digits | $500 | 1 / 111,111 |
| 4 last digits | $50 | 1 / 11,111 |
| 3 last digits | $20 | 1 / 1,111 |
| 2 last digits | $5 | 1 / 111 |
| The last digit | $2 | 1 / 11 |
| 6 first digits | $10,000 | 1 / 1,111,111 |
| 5 first digits | $500 | 1 / 111,111 |
| 4 first digits | $50 | 1 / 11,111 |
| 3 first digits | $20 | 1 / 1,111 |
| 2 first digits | $5 | 1 / 111 |
| TOTAL | | 1 / 9.1 |

**29**    As can be seen, there is one grand prize of $1M and eleven smaller ones.

**30**    The odds of winning the grand prize are one in 10M. The chances of collecting $2.00 are one in 11.

**31**    It is the sole lottery in Quebec in which a player can win a prize with the last digit only.

**32**    The draw is conducted on a daily basis (depending on the lottery to which it is combined).

**33**    On average, some 20 grand prizes are won each year.[22]

**34**    For the year ending March 31, 2013, the *Extra* generated $137M in revenues.[23] It is the fourth most popular lottery in Quebec in terms of annual revenues after the *6/49*, *Loto-Max* and *Banco*.[24]

**35**    The annual value of prizes (the "**Payoff Rate**") published by Loto-Québec for the *Extra* is 45.55% of wages staked.[25]


 **4.3**
### The litigation

**36**    Both Plaintiffs testified on discovery before the trial and during the hearing with respect to the facts leading to this litigation. The following is their story.

**37**    They state that they purchased the maximum amount of *Extras* on a regular and consistent basis over many years.[26]

**38**    One day, in June 2010, Mr. Ullah observed that the first digit in the 10 selections he sold to a customer do not repeat. He made no conclusion from this reflection until Mr. Amar brought up the subject a few months later.

**39**    In August 2010, Mr. Amar noticed that the last digits of 10 selections did not repeat. He recalls that, at the time, he was representing himself in a difficult custody trial, using Mr. Ullah café's internet connection to draft legal documents.

**40**    Here is how he describes the moment of discovery that led to these legal proceedings:

> "*After a very long day of printing out all the materials, because my computer wasn't working, I said: "I need a break, I need some good luck, give me a ticket." I bought a ticket from* (Mr. Ullah) *and then I looked at it.* [...] *I was so tired that day that I actually stared at this ticket for a good 3, 4 seconds, hoping that one of them was going to be the $1M winner, like everyone does.* [...] *at that moment, I noticed that it was guaranteed $2.00. So I brought it to Rajib's* [Mr. Ullah] *attention. We had a discussion, which lead to the reasons we're here.*"[27]

**41**     The following is the face side of the *6/49* lottery ticket with 10 *Extras* selections purchased by the Plaintiffs for the draw of August 11, 2010:[28]

```
                    6 49  LOTTO
                 2010-08-11

          07-14-15-23-38-44

                   EXtra
                 (mercredi)

          0265462  6096634
          5209820  4701366
          9400455  8377177
          1610311  7013429
          3551878  2579323

                12,00 $

      SIGNEZ
      SIGN

          Numéro de controle
      51-3871-3801-9457-1335-993

          Dét. 104243-01081
            4DB5971E4A06-E

              269856812001

   Services aux consommateurs : 1 866 611-LOTO (5686)

       ▼ Code de vérification ▼

            LOTO-QUÉBEC
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**42**     Scrutinizing the pattern of non-duplication of the first and last digits of each *Extra* selection, the Plaintiffs conclude that Loto-Québec is using a computer software program that controls the selections generated by Loto-Québec's central computer system.

**43**     After further reflection and study, they realize that one cannot win more then two prizes with 10 selections as the first and last digits of a number are the "*gatekeepers*" to the other prizes. This

convinces them that eight losing selections are being sold by Loto-Québec before each draw.

**44**    Mr. Ullah says that he was sick to his stomach when he discoverd that he was not losing fair and square. He remarks that he prefers collecting multiples prizes rather then having a guaranteed win of $2.00.

**45**    The Plaintiffs considered this to be an important and valuable discovery. They decided to partner together in order to investigate further as more information was needed to make a convincing case.

**46**    To this end, on August 29th, Mr. Ullah signed a letter addressed to Loto-Québec pursuant to *An Act respecting the distribution of information held by public bodies and the Protection of personal information.*[29]

**47**    It is a long and complicated letter written by Mr. Amar. One can see that the 14 questions were drafted with care. Questions 9 and 10 go to the core of their concerns and give a sense of its tone:

> "*Q # 9. Are all "EXTRA" numbers including both "participating" and "non-participating" as well as multiple "EXTRAS" (meaning 2 to 10 EXTRAS purchased on the same ticket for the same draw on the same day) generated and issued "completely and totally" at random from Loto-Quebec's main computer?*
>
> *Q # 10. Are all "participating EXTRAS" generated completely and totally at random, and this, free from any "interference or calculation" either by human or by any other means including, but not limited to, a computer program, software or algorithm designed to either manipulate and/or affect the issuance of and/or the output of generating "EXTRA" numbers for and within the same draw?*"

**48**    On October 4th, Loto-Québec responded as follows[30]:

> "*Questions 9 et 10 : Les numéros Extra, "participant" ou "non-participant", sont attribués aléatoirement par un algorithme de génération de numéros qui est utilisé par le système central de Loto-Québec. Ainsi, chaque numéro compris entre 0000000 et 9999999 est généré aléatoirement et sans intervention ou calcul. La seule exception est lorsque le consommateur désire rejouer la même sélection pour des tirages subséquents en choisissant d'utiliser l'Option Rejouer.*"
>
> [our underlining]

**49**    The Plaintiffs state that this is patently false.[31] It is evident for them that there is nothing

random about the selections given that the first and last digits of each selection do not repeat. Here is proof that Loto-Québec is evasive, unclear and misleading and that it deliberately avoids disclosing its manipulation of the lottery.[32]

**50**    A week later, on October 10th, Mr. Ullah sent a second access to information request, raising some 16 additional questions.[33]

**51**    In the covering letter to the President and Chief Executive Officer, he offered to keep the matter confidential and expressed his desire to discuss his grievances in a "*private forum*".[34]

**52**    A meeting was held with Loto-Québec on November 15th. The Plaintiffs were there with an attorney. Their various concerns were explained and the issue of the compensation they wished to obtain was discussed. At the end, they were left with the impression that Loto-Québec would consider the issues they raised and get back to them within a week.[35]

**53**    On November 30th, Loto-Québec responded to their request for information of October 10th. It repeated that an algorithm was being used in the issuance of *Extra* selections and that it nevertheless remains a <span style="color:red">**game of chance:**</span>

> "[...] *Extra numbers are generated by a computerized number generation algorithm within Loto-Québec's central computer system.*
>
> *As such, Extra numbers are generated by use of an algorithm, which, by definition, is a sequence of operations to be performed by the central computer system every time a ticket is purchased at a terminal.*
>
> *Moreover, since the Extra is drawn using ball machines that contain balls numbered from 0 to 9, any selection is just as likely to win as a selection made up of different numbers. It is important to remember that all selections have the same mathematic probability of being drawn. The winning numbers are all based on chance.*"[36]

**54**    The Plaintiffs deemed that this response failed to address their concerns. On January 3, 2011, they wrote to Loto-Québec another letter, requesting that it be more forthcoming. They resubmitted 13 detailed questions.[37]

**55**    On February 7th, Loto-Québec replied for a third and final time.[38]

**56**    The Plaintiffs found the letter inadequate. Evidently, Loto-Québec was refusing to address the serious issues raised.

**57**    They waited some three months to see if it would clarify or reconsider its position before

proceeding with litigation.

**58**   On May 19, 2011, they filed their Introductory Motion.

**59**   A five day hearing was held in September 2013 to hear the matter.

**5.**
## HAS LOTO-QUÉBEC CONTRAVENED THE BY-LAW?

**60**   The Plaintiffs allege that two conditions of the By-law have been breached by Loto-Québec:

   a)   the minimum Payoff Rate stipulated in Section 10 is not respected; and
   b)   the *Extra* lottery is not sufficiently random as per Section 14.

**5.1**
### Payoff Rate

**61**   The Plaintiffs allege that Loto-Québec does not respect Section 10 of the By-law that stipulates that the Payoff Rate for each lottery scheme may not be less than 35% or more than 75%.[39]

**62**   The evidence submitted by Loto-Québec proves that they are mistaken. The actual Payoff Rate of the past eight years is as follows:[40]

Actual Payoff Rate since 2006 for the Extra lottery

| Financial Years | Actual Payoff Rates |
| --- | --- |
| 2005-2006 | 44.94% |
| 2006-2007 | 45.07% |
| 2007-2008 | 43.73% |
| 2008-2009 | 44.61% |
| 2009-2010 | 45.57% |
| 2010-2011 | 51.11% |
| 2011-2012 | 44.9% |
| 2012-2013 | 41.8% |

**63**   Mtre Lynne Roiter, General Secretary and Vice-President - Legal Department of Loto-Québec, states that the annual financial statements of the company contain the Payoff Rate of

each lottery. These are audited annually by the Auditor General and external auditors who attest that Loto-Québec is respecting the law applicable to it when they sign off on the financial statements.

**64**    The Plaintiffs present no evidence to challenge this. Instead, they submit an expert report that indicates that it is possible that the *Extra*'s annual Payoff Rate can fall below 35%.[41]

**65**    Loto-Québec does not deny this possibility. Instead, it describes its context.

**66**    Its expert, Mr. Jean-François Plante ("**Mr. Plante**"), is a Ph.D in statistics and an *adjunct* professor at HEC Montreal. He shows that the Payoff Rate will vary between 40% and 49%, 19 years out of 20 and that it is only likely to fall below 35% once every 62,000 years.[42]

**67**    Mrs. Élaine Thivierge, Vice-President - Marketing of Loto-Québec ("**Mrs. Thivierge**") explains that Loto-Québec monitors the Payoff Rate of the *Extra* closely and that it disposes of a mechanism (that has not yet been used) to ensure that it remains above 35% by issuing bonus draws.

**68**    The Court is satisfied that Loto-Québec meets the requirement of Section 10.

 **5.2**                 **Randomness**

**69**    The Plaintiffs submit that the *Extra* is not a lottery. Rather, it is a sham because it is not random.

**70**    They point out that the *Encore* lottery, a similar $1.00, seven digit, add-on lottery, run by the Ontario Lottery and Gaming Corporation ("**OLG**") does not use an algorithm that prevents the repetition of first and last digits of selections.

**71**    They argue that Loto-Québec is breaching Section 14 of the By-law because its central computer does not issue selections totally randomly.

**72**    Section 14 reads as follows:

> "***14. Procedure for choice:*** *The Company determines the winning numbers by using one or several tumblers that choose numbers at random or a computer that generates random numbers produces numbers at random. Numbers may also be chosen according to the results of sports or other events.*"

**73**    The Court observes that the Plaintiffs misunderstand this provision.

**74**    Loto-Québec has the discretion to conduct and administer lotteries with the parameters it chooses. Mrs. Thivierge explains that similar lotteries exist throughout Canada with different

variations to suit the preferences of consumers in each given market.

**75**    There is no legal obligation to generate selections sold to consumers randomly without some sort of restrictions. Section 14 of the By-law does not require that selections be generated randomly. More precisely, it stipulates that the winning numbers are to be determined by chance using one or several tumblers at random or a computer that generates random numbers.

**76**    The Court considers that Section 14 is observed by Loto-Québec. The draw of the winning number is conducted randomly with seven ball machines, each containing 10 balls numbered 0 to 9. A ball is drawn from each of the seven ball machine simultaneously, making up the winning number.

 **6.**

### HAS LOTO-QUÉBEC VIOLATED THE Cr.C.?

**77**    As stated, the Plaintiffs point out that when a customer purchases 10 *Extra* selections on a lottery ticket, it is predetermined to win a minimum of $2.00.

**78**    They argue that this is a violation of Article 206(1)(d) Cr.C. that reads as follows:

> "***206.*** *(1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who*

> [...]

> *(d) conducts or manages any scheme, contrivance or operation of any kind for the purpose of determining who, or the holders of what lots, tickets, numbers or chances, are the winners of any property so proposed to be advanced, lent, given, sold or disposed of;*"

**79**    They plead that the intent of this Article is to ensure that the fairness and integrity of all lotteries are maintained.

**80**    The Court concludes that the Plaintiffs are incorrect.

**81**    The article has no pertinence in the present case. It must be read together with Article 207(1)(a) Cr.C. which creates an exception to the criminal liability set out in Article 206:

> "***207.*** *(1) Notwithstanding any of the provisions of this Part relating to gaming and betting, it is lawful*

*(a) for the government of a province, either alone or in conjunction with the government of another province, to conduct and manage a lottery scheme in that province, or in that and the other province, in accordance with any law enacted by the legislature of that province;"*

**82**     Hence, it is legal for a province and in the case at hand, Loto-Québec, to create and operate lottery schemes.

**7.**
## HAS LOTO-QUÉBEC BREACHED THE CPA?

**7.1**              **The law**

**83**     What is the legal nature of the contract between Loto-Québec and the Plaintiffs?

**84**     The purchase of a lottery ticket is a gaming contract.[43] It is onerous and synallagmatic. It is also an adhesion[44] and a consumer[45] contract.[46]

**85**     Section 2 of the CPA provides that the Act applies to every contract for goods and services.[47]

**86**     Section 4 stipulates that government agencies, such as Loto-Québec in the present case, are subject to the Act.[48]

**87**     In the case of *Richard* v. *Time Inc.*[49], the Supreme Court of Canada explains that the CPA is an elaborate legal scheme that reflects the legislator's desire to regulate fraudulent business practices in relation to consumers.

**88**     Title II thereof, "*Business Practices*", identifies certain types of prohibited business conduct with an objective of ensuring that true information is provided to consumers. One of its main objectives is to protect them from false or misleading representations.

**89**     The authors Nicole L'Heureux and Marc Lacoursière point out that a consumer wants to know what he is buying:

> "[...] _le consommateur veut savoir ce qu'il achète_, ce qu'il mange, quelle sera la durée d'un produit, ce que le bien fait et ne fait pas, s'il est sécuritaire pour lui ou pour l'environnement; _il ne veut pas être manipulé, il veut la vérité_, non seulement en matière de crédit, d'emballage et d'étiquetage, mais pour tout ce qui se trouve sur le marché."[50]

     [our underlining]

**90**     The decision of a consumer to purchase a product or service must be taken:

"[...] *en connaissance de tous les éléments essentiels grâce à une information objective, totale et loyale.*"[51]

**91** To that end, Section 219 of the CPA provides that no merchant can make false or misleading representations to a consumer by any means whatsoever.[52]

**92** The word "*representation*" defined in Section 216 includes an affirmation, a behavior or an omission.[53]

**93** Section 218 of the CPA indicates that one must examine the general impression created by the representation to determine if it is misleading.[54]

**94** The author Claude Masse explains the logic behind this as follows:

> "*Le critère de l'impression générale et du sens littéral a été emprunté à l'article 52(4) de la Loi sur la concurrence. La publicité commerciale joue en effet souvent sur l'impression générale que peut laisser une publicité et même sur le sens littéral des mots employés. Les informations publicitaires sont transmises rapidement. On y mise sur l'image et l'impression du moment. C'est cette impression générale qui est souvent recherchée par la publicité. Le consommateur n'a pas, par définition, le temps de se livrer à de longues réflexions sur le sens véritable des messages qu'on lui communique ou sur la question de savoir si le sens des mots employés correspond ou non à leur sens littéral. Le droit de la consommation prend le contenu de la publicité au sérieux. Le consommateur n'a pas à se demander si les promesses qu'on lui fait ou les engagements que l'on prend sont ou non réalistes, sérieux ou vraisemblables. Le commerçant, le fabricant et le publicitaire sont donc liés par le contenu du message réellement communiqué aux consommateurs.*"[55]

**95** The representations made by a merchant must be examined *in abstracto* (without consideration of personal attributes of the Plaintiffs) from the perspective of the ordinary, hurried, credulous and inexperienced consumer.[56]

**96** The Supreme Court of Canada describes the two-step analysis to be conducted as follows:

> "*A court asked to assess the veracity of a commercial representation must* [...] *engage, under s. 218 C.P.A., in a two-step analysis that involves - having regard, provided that the representation lends itself to such an analysis, to the literal meaning of the words used by the merchant - (1) describing the general impression that the representation is likely to convey to a credulous and inexperienced consumer; and (2) determining whether that general impression is true to reality. If the answer at the second step is no, the merchant has engaged in a prohibited practice.*"[57]

## 7.2
### Analysis

### 7.2.1
#### Are the representations of Loto-Québec false or misleading?

**97**     Applying the said two-step analysis, the Court determines, for the reasons that follow, that Loto-Québec has not engaged in a prohibited practice. It has made no false or misleading representations with respect to the *Extra* lottery. The information given to consumers is accurate.

### A.
#### The representations made

**98**     The inner workings of the *Extra* lottery and its prize structure are explained in the following document remitted to consumers by retailers from their lottery terminals upon request:[58]

## E✗tra

### HOW EXTRA WORKS

DRAW EVERY EVENING.

Each number is composed of 7 digits from 0 to 9. One digit can occur many times.

Cost of each number is $1.

*Extra* cannot be played alone. It is always linked to another lottery product.

All *Extra* numbers are generated by Loto-Québec's computers.

Up to 10 numbers may be played on the same ticket.

Draw:

The draw is conducted using 7 ball machines, each containing 10 balls numbered from 0 to 9. One ball is drawn from each ball machine, making up the winning number. The *Extra* number drawn for a given date is used for all lottery games it is linked to and whose draw took place on that same date.

## Prize structure

| Category | | Prize |
|---|---|---|
| 7 digits | : | $1,000,000 divisible |
| last 6 digits | : | $25,000 |
| last 5 digits | : | $500 |
| last 4 digits | : | $50 |
| last 3 digits | : | $20 |
| last 2 digits | : | $5 |
| the last digit | : | $2 |
| first 6 digits | : | $10,000 |
| first 5 digits | : | $500 |
| first 4 digits | : | $50 |
| first 3 digits | : | $20 |
| first 2 digits | : | $5 |

You can register your wagers every evening depending on the twinned product deadline for wagers.

For further details, refer to the selection slips offering *Extra*.

lotoquebec.com

### LOTO-QUÉBEC

**99**    The following is the backside of the *6/49*-Extra ticket purchased by the Plaintiffs on August 11, 2010:[59]

Nom/Name

Rue/Street

Ville/City

Code postal/Postal Code | Tél /Tel.

Ce billet est régi par le Règlement concernant les concours de pronostics et les jeux sur numéros ou le cas échéant, les Règlements relatifs aux loteries et billets de loterie de la Société de la loterie interprovenciale inc. ainsi que les règles du jeu, disponibles sur demande.
LE JEU N'EST PLUS UN DIVERTISSEMENT? 1 866 SOS-JEUX
La vente de billets de loterie aux mineurs est interdite par la loi.
RÉCLAMATION DES LOTS : Remplir le billet et le présenter à Loto-Québec dans l'année qui suit la date de tirage (pour Pari sportif, la date du dernier match sélectionné de la sélection gagnante). Loto-Québec se réserve le droit de publier les nom, adresse et photographie de tout gagnant. Procédure complète de réclamation d'un lot sur : lotoquebec.com/loteries/nav/fr/reclamer-un-lot
Les chances de gagner pour chacun des jeux sont disponibles sur demande chez un détaillant de Loto-Québec ou sur lotoquebec.com.

This ticket is governed by the Regulation respecting forecast contests and numbers games or if applicable, the Rules and regulations respecting lotteries and lottery tickets of the Interprovincial Lottery Corporation and also, the rules of the game, available upon request.
GAMBLING PROBLEM? 1 866 SOS-JEUX
The sale of lottery tickets to minors is forbidden by law.
PRIZE CLAIM. Fill this ticket and present it to Loto-Québec within the year following the drawing date (for Pari sportif, the date of the last match selected of the winning selection). Loto-Québec has the right to publish the name, address and photograph of any winner. For complete information on prize claim procedure lotoquebec.com/loteries/nav/en/claiming-a-prize
The odds of winning for each game are available, upon request, at any Loto-Québec retailer or at lotoquebec.com

Loto-Québec : par la poste (de préférence par courrier recommandé) C. P. 7777, succ. Centre-ville, Montréal (Québec) H3C 4L4; ou en personne au 500, rue Sherbrooke Ouest, Montréal, ou au 955, Grande Allée Ouest, Québec. (1 866 611-LOTO)

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6 C2001766-A 09/12/14(R 09-11) (V 09-12)

## SIGNEZ VOTRE BILLET / SIGN YOUR TICKET

Nom/Name

Rue/Street

Ville/City

Code postal/Postal Code | Tél./Tel.

**100**   One can see from the front[60] and back sides of the lottery ticket that it contains the information stated in subparagraphs 4. a), b), c), d) and e) of the By-law.[61]

**101**   Further, Loto-Québec's website has a section dealing with the *Extra* that explains the odds of winning.[62]

**102**   Finally, a Payoff Rate of 45.55% is publicized.[63]

**B.**

### The general impression given

**103**   The Court resumes the general impression of the representations of Loto-Québec as follows:

- there is a draw each day that provides a chance of winning up to $1M;
- selections are generated by Loto-Québec's computer system;
- a selection costs $1.00;
- it is an add-on lottery that can only be purchased with another lottery;
- the chances of winning the grand prize are one in 10M; and
- it is possible to purchase up to 10 selections.

**104**   As explained below, these representations and the general impression thereof are, in the Court's view, true to reality.

**105**   The hurried consumer in this case does not face a complicated decision when contemplating purchasing one or more *Extra* lottery selections. This is not a long term investment strategy. It does not require much analysis. One can spend $1.00 to obtain a chance of winning $1M. A purchase enables one to hope and dream until the draw. Mr. Amar confirmed this himself. He recalls how he stared at his ticket hoping to win $1M.[64]

**7.2.2**

### Has Loto-Québec failed to disclose important information?

**7.2.2.1**

### The law

**106**   Section 228 of the CPA stipulates that merchants must not fail to mention important facts in the representations made to consumers.[65]

**107**   According to Claude Masse, an important fact is one that will influence a consumer's choice to purchase a particular product or service for a given price. It is something that will vary from contract to contract:

> "[...] *une information qui, si elle avait été communiquée au consommateur en temps opportun, aurait été de nature à influer sur sa décision de contracter ou sur les conditions et modalités du contrat. Il s'agit là d'une situation qui peut varier d'un contrat à l'autre. Les tribunaux manifestent en pratique le désir de prendre en compte <u>tout ce qui peut influer sur la décision de contracter</u>, sur le prix du contrat ou sur les conditions de financement et les avantages secondaires comme la présence de bonis ou de primes. Ce que l'on doit comprendre comme*

*étant un "fait important" est donc très englobant* [...]."


[our underlining]


**7.2.2.2**
### The position of the parties

**108**    The Plaintiffs complain that Loto-Québec has failed to disclose the following information:

-     the *Extra* lottery is not random through the use of an algorithm that ensures the non-repetition of the first and last digits when more than one selection is purchased;
-     when 10 selections are purchased:


-     one is guaranteed to win $2.00;
-     one will win a maximum of two prizes;
-     eight selections are predetermined to lose;


-     duplicate selections are sold; and
-     the advertised Payoff Rate is inaccurate.

**109**    Loto-Québec insists that it has not failed to disclose any important information about the *Extra* lottery.


**7.2.2.3**
### Analysis

**110**    We will now examine, one by one, the undisclosed information.


**A.**
### The lack of randomness

**111**    The Court recognizes the fact that the non-repetition of the first and last digits of *Extra* selections is not disclosed by Loto-Québec. Nor is this pattern obvious for the ordinary consumer when he looks at his ticket hurriedly.

**112**    The credulous and inexperienced consumer is not aware that he is guaranteed to win $2.00 if he purchases 10 *Extra* selections unless he does so on a sufficiently long and regular basis that will

allow him to detect the pattern of constant winnings. Nor is he informed that if he purchases the maximum number of selections he will be limited to two prizes.

**113**     Failing to disclose information, however, is only a breach of the CPA if it is an important fact. It needs to be something sufficiently consequential that it will have an influence on the average consumers' decision to purchase an *Extra* selection.

**114**     The context behind this issue is that Loto-Québec has the legislative authority to create and administer lottery schemes.

**115**     The non-contradicted evidence reveals that the non-repetition of first and last digits was created purposely by Loto-Québec because it enables consumers to win more regularly.

**116**     Mrs. Thivierge makes it clear that Loto-Québec created the *Extra* to be popular with the general public. She says that the non-repetition parameter was selected to please consumers who prefer to have numbers that do not repeat. They also enjoy winning small amounts more often than not winning at all.

**117**     The following is an excerpt of her testimony on this issue:

> *"MA : Alors pourquoi, si c'est le cas, qu'on ne peut pas obtenir sur un billet deux sélections parmi les 10 qui commencent avec le numéro 1, par exemple?*
>
> *ET : C'est un paramètre qu'on a mis en place, la non-répétition des numéros, pour plaire à la majorité des consommateurs. Quand on a des jeux qui offrent des mises éclairs, on a souvent des appels de consommateurs qui se plaignent parce que les numéros se répètent trop dans leurs sélections. Quand on a développé l'Extra, il fallait décider si on voulait que les numéros se répètent à la fin ou pas et on a pris la décision en fonction du goût des consommateurs d'avoir des numéros plus différents sur leurs billets. Si vous avez deux numéros d'Extra qui finissent par 3, vous regardez votre billet et vous dites, j'ai juste une chance de gagner et il faut que le numéro gagnant finisse par 3. Si vous avez 2 numéros d'Extra sur votre billet, un qui finit par 3 et l'autre par 5, ah, là vous avez deux chances de gagner. C'est une perception de gagner juste avec le dernier chiffre, mais la majorité des consommateurs c'est ce qu'ils préfèrent. C'est pour ça qu'on a mis cette contrainte-là dans le développement du jeu Extra.*
>
> *MA : Je vais vous demander, comment avez-vous obtenu cette information des consommateurs? Par quel moyen?*
>
> *ET : On a beaucoup d'appels. On a un service de consommateurs où les gens peuvent téléphoner et on a beaucoup beaucoup d'appels tous les jours. Au-dessus*

*de 1 000 appels qui rentrent de gens qui se plaignent de choses qu'ils n'aiment pas. Et nous, au marketing, quand les gens appellent, les gens en bas nous appellent pour nous dire : "Ça, les gens n'aiment pas ça! Quand ils reçoivent leurs sélections de 6/49 puis qu'il y a trois fois le numéro 6 qui se répète dans leurs sélections, pouvez-vous faire quelque chose pour ça? On dit, non, c'est le hasard". Mais quand c'est le temps de fixer les paramètres, et bien on se fit aux appels qu'on a pour essayer de rendre ça le plus agréable possible pour la majorité des joueurs.*

*Me Kott : Pourquoi vous avez fait ça? Choisir d'avoir des paramètres qui empêchent la répétition du 1er et dernier chiffre? Y avait-il juste une raison ou il y avait plusieurs raisons?*

*ET : La répétition du dernier chiffre, dans le fond, je l'ai dit tantôt, je vais le répéter, c'est vraiment une question d'offrir, je vais dire, des plus belles sélections aux consommateurs. Les gens perçoivent souvent les chances de gagner avec des numéros différents. C'est vraiment une question de perception et on a beaucoup d'appels quand les gens ne sont pas contents des numéros qu'ils ont eus dans leur mises éclairs au Loto 6/49, même si c'est le hasard qui va faire qu'ils vont gagner ou pas. Et on sait que les gens préfèrent beaucoup quand ils ont plusieurs options. On fait souvent aussi des recherches sur différents jeux. Ça fait 30 ans que je travaille à Loto-Québec, j'en ai vu beaucoup des consommateurs dans différents groupes de discussions sur différents produits et à chaque fois ce que les gens nous disent, entre deux options, c'est qu'ils aiment avoir plus de chances différentes que d'avoir des chances de perdre puis des changes de gagner ensemble. Donc, ils préfèrent ce qu'on a fait. C'est vraiment pour répondre à la majorité des consommateurs. C'est vraiment basé sur ça."[66]*

**118** The evidence is convincing with respect to the fact that the non-repetition of the first and last digits has no impact whatsoever on chances of winning.

**119** Mr. Plante opines as follows:

"*Le fait qu'une sélection générée par Loto-Québec évite les répétitions pour le premier et le dernier chiffres n'a [...] aucun effet sur les nombres moyens de fois où le participant gagnera un lot donné.*"[67]

**120** The Plaintiffs' expert, Mrs. Morin, agreed with the fact that each selection has the same chance of winning a prize.

**121** The Court determines that Loto-Québec has not breached the CPA. The existence of this

parameter is not important information that should have been divulged to consumers.

**B.**
## The guaranteed win of $2.00

**122** The Court concludes that the failure to disclose this information is not a contravention of the CPA in the present circumstances.

**123** Certainly, this is valuable information. It would be nice to know. Especially for those who purchase more than one selection. It is particularly significant for those who are tempted to purchase seven, eight or nine selections. If they knew that by spending a few more dollars, they were guaranteed to win $2.00, they may be tempted to purchase one or more further selections.

**124** It is noted however that this information is only truly useful for a small group of *Extra* customers. It is not necessarily important for the vast majority, that is, the 95% of them who purchase only one or two *Extra* selections.[68]

**125** The case at hand is not about that small group of consumers. Instead, it is about the Plaintiffs who claim to have been misled to purchase *Extra* selections without this knowledge.

**126** The guaranteed win is a fact that will normally incite a consumer to purchase more selections. Not less. It is not negative information, such as a hidden defect or flaw, that necessarily has a serious impact on the decision making process.

**C.**
## Limit of two prizes

**127** The Plaintiffs complain about the fact that one can only win two prizes when purchasing 10 *Extra* selections, that is, the same number as one selection. They explain that without the parameter controlling the non-repetition of the first and last digits, a customer could gain up to 20 prizes when he purchases 10 selections.

**128** They ask: "*why spend $10.00 if you are limited to two prizes?*"

**129** The Court considers that Loto-Québec made no representations on the number of prizes that can be won when one purchases more than one *Extra* selection.

**130** Further, the failure to inform consumers of this fact is not consequential. This is not important information when one closely examines the mathematics of the issue.

**131** The possibility of winning 20 prizes with the purchase of 10 *Extra* selections touted by the Plaintiffs is extremely improbable. In fact, is it one chance in "*1 000 000 000 000 000 000 000 000*

*000".*[69] That's 27 zeros! An unlikely event.

**132**     Over and above that, Mr. Plante has done a computer simulation using 10,000 selections in order to study the differences and similarities when 10 selections are purchased with or without parameters. The results can be seen on the graphs below that illustrate the number of prizes that are won in each case:[70]
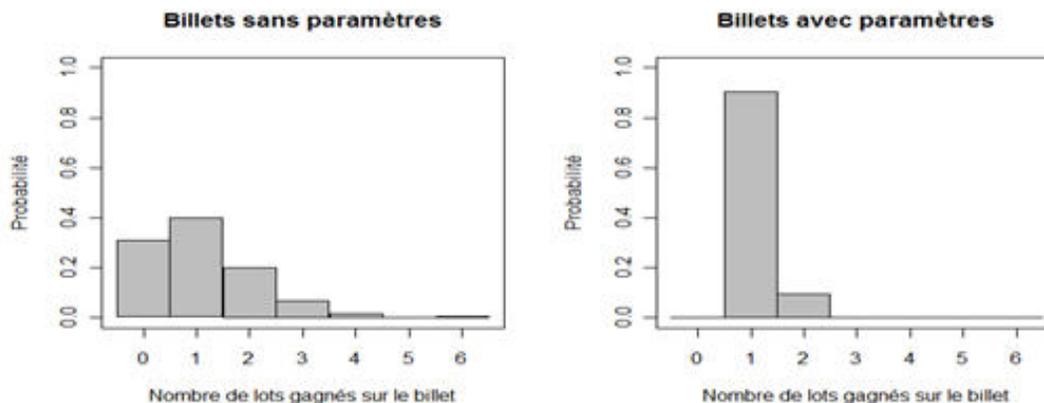


**133**     These illustrate that when 10 selections are purchased with Loto-Québec's parameters, a prize will be secured. Moreover, 90% collect one prize and 10% get two. Without this algorithm, 39% win nothing, 40% net one prize, 20% obtain two and 9% pick up more then two prizes.

**134**     The simulation reveals that the parameters used in the *Extra* lottery enables a consumer to win small prizes more regularly. They have no influence on the odds of winning any of the prizes.

**135**     Most telling, however, is the fact that the average number of prizes won in both cases is exactly the same, that is, 1.09.[71]

**136**     If on average, the number of prizes obtained is the same and less than two, what is the advantage for a consumer to be told that he won't win more than two prizes?

**137**     This information is not likely to influence the average consumers' decision to purchase the *Extra* lottery.

**D.**
                    **Eight predetermined losing tickets**

**138**     The Plaintiffs say that Loto-Québec is not disclosing that it is selling eight losing combinations to those who purchase 10 selections.

**139**     The Court considers that this argument is without merit. Loto-Québec does not disclose this

because it is not true. As stated, each dollar spent by a consumer provides a chance to win that remains in place until the draw.

**140** Loto-Québec publicizes the odds of winning a prize to be one in nine. Consequently, it is no secret that one has eight chances out of nine of losing.

**E.**
### Duplicate selections are sold

**141** The Plaintiffs decry the fact that Loto-Québec permits the sale of duplicate selections. They point out that the *Encore* lottery, administered by the OLG, does not do so until all 10M possible combinations are sold.

**142** They claim that:

      a)    Loto-Québec fails to mention this important fact; and
      b)    the word "*divisible*" is ambiguous and misleading.

**143** The Court is satisfied that this is not worthy of serious consideration for several reasons.

**144** Firstly, as stated, Loto-Québec has the legislative authority and discretion to administer lottery schemes and to issue duplicate selections if it wishes to do so. It has no obligation to copy the *Encore* lottery.

**145** Secondly, Loto-Québec discloses the fact that duplicate numbers are a possibility when it announces that the grand prize of $1M is divisible.[72] The correlation of having the prize divisible is necessarily the fact that selections can be duplicated. There is nothing misleading or ambiguous about that.

**146** The Plaintiffs further complain about the fact that the duplication of selections has an impact on their chances of collecting prizes.

**147** Once again, this is not a significant concern.

**148** The evidence shows that the chances of getting a duplicate selection are very slight. The $1M grand prize has not yet been shared since it became divisible more then three and half years ago, in May 2010.

**149** The Plaintiffs' own expert, Mrs. Morin, testifies that the chances of having a duplicate copy are very low: 1/10M2.

**150** Mr. Plante explains that, a consumer purchasing a selection has one chance in 255M to win the grand prize and having to share it.[73]

**F.**
## The Payoff Rate

**151**     The Plaintiffs allege that the Payoff Rate of 45.55% advertized by Loto-Québec[74] is false and misleading.[75]

**152**     Loto-Québec admits that the publicized Payoff Rate is a theoretical figure which is not the same as the actual payout.

**153**     The theoretical rate corresponds to the expected winnings when all 10M possible selections are sold. In such an event, $4.555M is to be returned to customers. In other words, on average, about 45.5 cents of every dollar spent on the *Extra* is paid out in various prizes.

**154**     As for the actual Payoff Rate, it is determined in light of the confirmed sales and prizes awarded. It will vary from day-to-day and year-to-year.

**155**     During the process of litigation, Loto-Québec divulged the actual Payoff Rate for the past eight years as shown in paragraph [62] hereof.

**156**     It has varied between a high of 51.11% in the year 2010-2011 and a low of 41.8% in the year 2012-2013.

**157**     The Court is of the view that given that it varies from draw-to-draw, on a daily basis, publicizing a maximum annual rate of 45.55% is reasonable given that it reflects rather closely the average annual Payoff Rate for the past eight years, that is, 45.33%. The difference between the theoretical and the average real rate of return is a negligible sum.

**158**     Loto-Québec has not violated the CPA in respect to this issue.

**159**     In view of all of the above conclusions, it will not be necessary to deal with the last issue, being the consideration of the damages to be awarded.

**8.**
## CONCLUSION

**160**     The Plaintiffs accuse Loto-Québec of making false and misleading representations about the *Extra* lottery. They ask: "*if you can't trust your government, who can you trust?*"

**161**     When dealing with matters such as this one in which allegations of fraud are raised, the credibility of the parties is important.

**162**     Unfortunately for the Plaintiffs, their integrity suffered serious blows during the trial process

from which they cannot recover.

**163**    Having had the benefit of hearing all of the evidence, the Court is struck by the fact that it is the Plaintiffs who make false, misleading and amplified allegations.

**164**    There are several judicial admissions by the Plaintiffs or their expert that demonstrate that a number of their allegations were false or exaggerated. There is a glaring lack of evidence to substantiate a number of others.

**165**    The following are a few examples that illustrate this.

**166**    Throughout their Re-Amended Motion, the Plaintiffs allege that Loto-Québec deliberately and knowingly engaged in a number of deceitful prohibited practices.

**167**    Good faith is presumed.[76] There is no evidence of such a monumental plot to defraud consumers. It is not probable that Loto-Québec would concoct a plan to defraud 1.6% of its customers who purchase 10 *Extra* selections. Rather, the evidence shows that Loto-Québec created parameters for the issuance of selections in order to make the *Extra* popular with customers.

**168**    In paragraphs 3, 5, 19, 21 and 23 of the Re-Amended Motion, the Plaintiffs allege having purchased hundreds, if not thousands and innumerable *Extra* lottery tickets. They also state that they always purchased the maximum number of selections per lottery ticket.

**169**    These allegations are false. The Plaintiffs knew this when they drafted their Motion. They have submitted no documented proof of this. The only tickets they have filed into the record are the lottery tickets for the draws of August 4th, 6th and 11, 2010.[77]

**170**    The evidence shows that they did not "*always*" purchase the maximum number of *Extra* selections. Under cross-examination, Mr. Ullah admits that he bought the maximum number of selections approximately 90% of time. As for Mr. Amar, he concedes that he purchased 10 selections approximately 50% of the time.

**171**    The Plaintiffs also admit that their claim of $20,000 each in damages for lottery tickets purchased is greatly exaggerated. They did not buy anywhere close to 20,000 selections each. During his testimony, Mr. Amar explains that he purchased *Extra* selections approximately twice a week over a period of four years, that is, if we are to take his word for it, some 400 times. Given that he admits purchasing the maximum selections only half the time, his cost is in the $2,000 to $3,000 range. When confronted with this fact, Mr. Amar acknowledges that the sum of $20,000 is an arbitrary figure. Furthermore, in arriving at that sum, no deduction is made of the prizes won that they estimate were impossible to quantify.

**172**    There is no need of an in depth legal analysis to conclude that the claim for $1M in compensatory damages is without any merit whatsoever: it is exaggerated and unreasonable. A

judgement is not the draw of a lottery. The same goes for the sum of $20M in punitive damages.

**173** In paragraphs 9 and 48 of their Re-Amended Motion, the Plaintiffs allege that Loto-Québec's sale agents aggressively and repeatedly promoted the purchase of the *Extra* lottery and that they were encouraged to purchase 10 selections on each lottery ticket. These allegations are false. The Plaintiffs admit as much during their cross-examinations.

**174** In paragraph 42 of their Re-Amended Motion, the Plaintiffs allege that Loto-Québec purposefully and with forethought applied a software program created and designed to sell losing tickets. This allegation is false. Each selection has the same chance of winning. The Plaintiffs' own expert admitted as much.

**175** These examples lead the Court to conclude that the Plaintiffs credibility is severely tainted. They lack the good faith and the seriousness necessary to pursue the judicial debate they have raised.

### FOR THESE REASONS, THE COURT:

**176** **DISMISSES** the Plaintiffs' Re-Amended Introductory Motion in damages;

**177** **WITH COSTS**, including the costs of the expert witness of the Defendants.

PAUL MAYER, J.S.C.

cp/e/qlspt

1 Plaintiffs Re-Amended Motion Introductory in damages, par. 3 and 143.

2 *Id.*, par. 146.

3 *Id.*, par. 151-152.

4 R.S.Q. c. S-13.1, r. 2.

5 R.S.C., 1985, c. C-46.

6 R.S.Q. c. P-40.1.

7 *Supra* note 1, par. 145.

8 *Supra* note 1, par. 146.

9 R.S.Q. c. S-13.1, s. 13.

10 **16.** *The functions of the company are to conduct and administer lottery schemes and to operate businesses which are incidental to the operation of a State casino. The company may also offer, for consideration, consulting and implementation services in matters within its competence.*

11 **4.** *The company has the rights and obligations of a mandatary of the State. The property of the company forms part of the domain of the State, but the performance of the obligations of the company may be levied against its property. The company binds none but itself when it acts in its own name.*

12 **6.2** *The Government appoints the members of the board of directors, other than the chair of the board and the president and chief executive officer, based on the expertise and experience profiles established by the board. Board members are appointed for a term of up to four years.*

13 **23.** *The dividends paid by the company are fixed by the Minister of Finance and not by the directors.*

14 **6.** *The shares of the company form part of the domain of the State and are allotted to the Minister of Finance; they are issued to him in consideration of the remittance of the assets received by the company under section 32.*

15 **13.** *The board of directors of the company determines by by-law the general standards and conditions relating to the nature and holding of the lottery schemes it conducts and administers. The by-law shall be submitted to the Government for approval; if it relates to State casino lottery schemes or video lotteries, the Régie des alcools, des courses et des jeux must give notice of it. Such notice must be published in the Gazette officielle du Québec at the time of the publication provided for in section 8 of the Regulations Act (chapter R-18.1) or, in the absence of such publication, at the time of the publication provided for in section 15 of the said Act.*

16 **24.** *The books and accounts of the company are audited jointly every year by the Auditor General and an external auditor appointed by the Government. The remuneration of the external auditor is paid out of the revenues of the company. The joint report must accompany the company's annual report.*

17 2013 Annual Report, p. 2.

18 *Id.*, p. 37.

19 Exhibit P-72.

20 Exhibit D-2.

21 Exhibit P-3.

22 Exhibit P-96.

23 *Supra* note 17.

24 *Supra* note 17.

25 Exhibit P-86.

26 *Supra* note 1, par. 21.

27 Exhibit D-5 - Examination before plea of Mr. Amar, p. 29-30.

28 Exhibit P-7.

29 R.S.Q. c. A-2.1.

30 Exhibit P-37.

31 *Supra* note 1, par. 109.

32 *Supra* note 1, par. 107.

33 Exhibit P-40.

34 Exhibit P-39.

35 *Supra* note 1, par. 118.

36 Exhibit P-48.

37 Exhibits P-49 and P-50.

38 Exhibit P-54.

39 *Supra* note 1, par. 84-104 - Section 10 of the By-law reads as follows: "***10. Value of prizes:*** *The annual value of the prizes offered may not be less than 35% or more than 75% of the aggregate amount of the wagers staked for each lottery scheme.*"

40 Exhibit P-95.

41 Exhibit P-109 - Analysis of the Extra Lottery, by Danielle Morin, Ph.D. and Jamshid Etezadi, Ph.D., dated April 1, 2012, p. 11.

42 Exhibit D-3 - *Analyse de l'impact des paramètres établis pour la génération des sélections de l'Extra,* by Jean-François Plante, Ph.D., stat ASSQ, dated May 2, 2012, p. 18 and 27.

43 *2629. Gaming and wagering contracts are valid in the cases expressly authorized by law. They are also valid where related to lawful activities and games requiring only skill or bodily exercises on the part of the parties, unless the amount at stake is immoderate according to the circumstances and in view of the condition and means of the parties.*

44 *1379. A contract of adhesion is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable. Any contract that is not a contract of adhesion is a contract by mutual agreement.* See *Société d'exploitation des loteries et courses du Québec* v. *Anctil*, J.E. 85-339 (C.A.).

45 *1384. A consumer contract is a contract whose field of application is delimited by legislation respecting consumer protection whereby one of the parties, being a natural person, the consumer, acquires, leases, borrows or obtains in any other manner, for personal, family or domestic purposes, property or services from the other party, who offers such property and services as part of an enterprise which he carries on.*

46 *Ifergan* v. *Société des loteries du Québec*, 2012, QCCS 5600, par. 49-51; *Parent* v. *Société des loteries du Québec*, 2008, QCCS 4716, par. 34-40.

47 *2. This Act applies to every contract for goods or services entered into between a consumer and a merchant in the course of his business.*

48 *4. The Government and the Government departments and agencies are subject to the application of this Act.*

49 2012 SCC 8, par. 41. See Léo DUCHARME, "*Attention au gros lot!*", *Richard* v. *Time inc.*, Revue du Barreau, 2012, Éditions Yvon Blais, 2012 RDB 118.

50 Nicole L'HEUREUX and Marc LACOURSIÈRE, *Droit de la consommation*, 6th Ed., Éditions Yvon Blais, Cowansville, 2011, p. 4.

51 *Id.*, p. 445.

52 *219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.*

53 *216. For the purposes of this title, representation includes an affirmation, a behaviour or an omission.*

54 *218. To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account.*

55 Clause MASSE, *Loi sur la protection du consommateur* : analyse et commentaires, Cowansville, Éditions Yvon Blais, 1999, art. 218, p. 828.

56 *Supra* note 49, par. 49, 67 and 69.

57 *Supra* note 49, par. 78.

58 Exhibit P-1.

59 Exhibit P-7A.

60 See paragraph [41] hereof.

61 *4. Content: The conditions regarding the appropriate lottery scheme must appear on the ticket together with: (a) the name of the lottery scheme; (b) the date of the awarding of prizes; (c) the selection and wager of the participant; (d) a verification number; and (e) the period during which holders of winning tickets must claim their prizes.*

62 See paragraph [28] hereof.

63 Exhibit P-86.

64 See paragraph [40] hereof.

65 *228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.*

66 Mrs. Thivierge's testimony of September 3, 2013.

67 Exhibit D-3, p. 10-11.

68 See paragraph [27] hereof.

69 Exhibit D-3, p. 16.

70 Exhibit D-3, p. 6.

71 Exhibit D-3, p. 17.

72 See paragraphs [28] and [98] hereof.

73 Exhibit D-3, p. 15.

74 Exhibit P-86.

75 *Supra* note 1, par. 102.

76 **2805.** *Good faith is always presumed, unless the law expressly requires that it be proved.*

77 Exhibit P-7.