

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001073-200

SUPERIOR COURT
(Class Actions)

ELISABETTA BERTUCCI, [REDACTED]

Representative Plaintiff

v.

SOCIÉTÉ DES LOTERIES DU QUÉBEC INC. (LOTO-QUÉBEC), having its head office at 500 Sherbrooke Street West, district of Montreal, Province of Quebec, H3A 3G6

and

LA SOCIÉTÉ DES CASINOS DU QUÉBEC INC., having its head office at 500 Sherbrooke Street West, district of Montreal, Province of Quebec, H3A 3G6

Defendants

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. The purpose of the present class action is to ensure that everyone playing poker on “OK Poker” – government operated by the Defendants – are on a level playing field and to obtain compensation for those who were not;
2. On February 10, 2021, the Honourable Justice Martin F. Sheehan, J.S.C., authorized the Representative Plaintiff to bring a class action for the benefit of the persons forming part of the following group:

All persons who, between July 9, 2019 and the date of publication of the notices to members of the judgment authorizing the class action, paid any sum of money to Loto-Quebec to play Texas Hold'em Poker on the OK Poker platform;	Toutes les personnes qui, entre le 9 juillet 2019 et la date de publication des avis aux membres du jugement autorisant l'action collective, ont payé un montant à Loto-Québec pour jouer au Poker Texas Hold'em sur la plateforme Ok Poker;
--	--

3. The Court appointed the status of Representative Plaintiff to Ms. Elisabetta Bertucci and identified the principal questions of law or fact to be dealt with collectively in the class action as follows:

English:

1. Between July 9, 2019 and May 18, 2020, was it possible for players to see the mucked pocket cards of the winners of uncontested hands (the “**Cards**”) in the hand history on the OK Poker platform?
2. If the answer to question 1 is that only certain players could see the Cards:
 - a. Did the Defendants have an obligation to inform Class Members that certain players could see the Cards in the hand history?
 - b. If so, did the Defendants fail to fulfill that obligation?
 - c. Did the Defendants fail to provide an equal playing field to Class Members?
 - d. If the answer to either questions 2b) or 2c) is yes, does that constitute a fault pursuant to the *Civil Code of Quebec*?
 - e. If the answer to either questions 2b) or 2c) is yes, did the Defendants violate sections 41, 221(g) or 228 of the *Consumer Protection Act* (“CPA”)?
3. If questions 2D and/or 2E are answered in the affirmative:
 - a. Are the Plaintiff and the Class Members entitled to claim compensatory damages under article 1407 of the *Civil code of Quebec* and/or article 272 of the CPA?
 - b. Are the Plaintiff and the Class members entitled to claim punitive damages pursuant to section 272 CPA?
 - c. Is collective recovery of compensatory and punitive damages appropriate and, if yes, on what basis should they be assessed?

- d. Should an injunction be issued to order the Defendants to change the nicknames of all users who paid any sum of money to Loto-Quebec to play Texas Hold'em Poker on the OK Poker platform?

French:

1. Entre le 9 juillet 2019 et le 18 mai 2020, les joueurs pouvaient-ils voir les cartes individuelles abandonnées des gagnants d'une main non contestée (les « Cartes ») dans l'historique des mains dans la plateforme OK Poker ?
2. Si la réponse à la question 2 est que seulement certains joueurs pouvaient voir les Cartes :
 - a. Les Défenderesses avaient-elles l'obligation d'aviser les Membres du groupe que certains joueurs pouvaient voir les Cartes dans l'historique des mains ?
 - b. Dans l'affirmative, les Défenderesses ont-elles manqué à cette obligation ?
 - c. Les Défenderesses ont-elles fait défaut d'offrir des conditions de jeu équitables à tous les Membres du groupe ?
 - d. Si la réponse à question 2b) ou à la question 2c) est oui, cela constitue-t-il une faute en vertu du *Code civil du Québec* ?
 - e. Si la réponse à la question 2b) ou à la question 2c) est oui, cela constitue-t-il une violation des articles 41, 221(g) ou 228 de la *Loi sur la protection du consommateur* (« *L.P.C.* ») ?
3. Si la réponse à la question 2d) et/ou à la question 2e) est « oui » :
 - a. La Demanderesse et les Membres du groupe peuvent-ils réclamer des dommages compensatoires en vertu de l'article 1407 du *Code civil du Québec* et (ou) de l'article 272 de la *L.P.C.* ?
 - b. La Demanderesse et les Membres du groupe peuvent-ils réclamer des dommages punitifs en vertu de l'article 272 de la *L.P.C.* ?
 - c. Une ordonnance de recouvrement collectif des dommages compensatoires et punitifs est-elle appropriée et, dans l'affirmative, comment les dommages doivent-ils être déterminés ?
 - d. Une injonction devrait-elle être émise pour ordonner aux Défenderesses de changer les pseudonymes (« nicknames ») de tous les utilisateurs qui ont payé un montant à Loto-Québec pour jouer au Poker Texas Hold'em sur la plateforme Ok Poker ?

II. THE PARTIES

4. The Representative Plaintiff is a consumer within the meaning of the Civil Code and of Quebec's *Consumer Protection Act* (the "**CPA**");
5. The Defendant, the *Société des loteries du Québec* (also designated under the name "Loto-Québec"), is a joint-stock company constituted pursuant to the *Act respecting the Société des loteries du Québec*, chapter S-13.1;
6. The Defendant, La Société des Casinos du Québec Inc. (hereinafter "**SCQ**") is responsible for the daily management of Quebec's state-owned casinos, as it appears from an extract of the enterprise's information statement from the Quebec enterprise register for the SCQ communicated herewith as **Exhibit P-1**;

III. THE DEFENDANTS' ESPACEJEUX WEBSITE

7. On November 5, 2020, Mr. Charles Major, a representative of the SCQ, signed an affidavit as part of the Defendants' contestation of Ms. Bertucci's authorization application, a copy of which is communicated herewith as **Exhibit P-2**;
8. A copy of the transcript of Mr. Major's cross-examination is communicated herewith as **Exhibit P-3**;
9. Mr. Major declares that Espacejeux (<http://www.espacejeux.com/>) is the website launched by Loto-Québec in December 2010 that enables people to gamble online;
10. The SCQ is entrusted by Loto-Québec with the management of Espacejeux since March 2012;
11. Ever since the Espacejeux website was launched, it was possible to play, among other things, seven variants of poker, including Texas Hold'em Poker;

IV. TEXAS HOLD'EM POKER ON THE DEFENDANTS' WEBSITE

12. Mr. Major declares that the Defendants' online Texas Hold'em poker platform is operated by Loto-Québec through the SCQ;
13. According to the Defendants' website, Texas Hold'em is "*the most widely-played poker game in the world*", as it appears from the extract communicated herewith as **Exhibit P-4**;
14. The Defendants generate substantial revenues (which they qualify as "commissions" on their website) from their customers by collecting a "rake" from "Real-Play" Texas Hold'em (also known as "cash" games) and by charging a registration fee to "buy-in" to Texas Hold'em "tournaments", as it appears from an extract of the Espacejeux website's "commissions" section (<https://m.espacejeux.com/en/ok-poker/how-to-play/rake>), communicated herewith as **Exhibit P-5**;

15. On its website (<https://www.espacejeux.com/en/ok-poker/how-to-play/games/texas-holdem#object-of-the-game>), Loto-Québec describes the object of Texas Hold'em as follows, as it appears from an extract communicated herewith as **Exhibit P-6**:

“Using two of your own cards and five shared cards, form a five-card hand whose value is ranked higher than the hands of the other players in the game...

Starting with the first active player next to the puck, the dealer deals **two face down cards** one at a time to each player (the “pocket” cards)

V. THE FLAW ON “OK POKER” OPERATED BY THE DEFENDANTS

16. One of the rules of Texas Hold'em is that each player's two “pocket” cards are dealt **face down** and are “for their eyes only”, as it appears from the extract reproduced in the preceding paragraph and from the “Rules of Texas Hold'em” page of the Pokerstars.com website disclosed herewith as **Exhibit P-7**;
17. The Defendants do not and cannot deny that this is an essential rule of Texas Hold'em as they apply the same rules, that is that each user's “pocket” cards are for their eyes only and should never be shown to other players (even after a hand, unless a user voluntarily decides to show his/her pocket cards which is very rare);
18. The reason for this rule relates to the skilful element of the game and that a player who is “bluffing” in a given hand (or not bluffing) does not want the other players knowing whether he had bluffed or not;
19. In other words, seeing a player's “pocket” cards at the end of a hand can allow other players to take notes and track playing patterns/strategies and may give them an advantage against these players in future hands;
20. The Federal Court of Canada has already recognized that Texas Hold'em is a game in which skill clearly predominates over chance, where higher skilled players may come ahead at least 60% of the time as a result of variables related to strategy and game tactics (*Cohen v. Canada (Citizenship and Immigration)*, 2015 FC 1192, para. 16), a copy of the judgment is communicated herewith as **Exhibit P-8**;
21. Players who are registered and who contract with the Defendants to play “OK POKER” are identified by nicknames, which they are unable to change (and which remained the same as when they were imported from Espacejeux to OK Poker in July of 2019);
22. Up until the evening of May 18, 2020, the Defendants' the Texas Hold'em game contained a serious flaw unknown to the vast majority of the Defendants' customers;
23. The flaw was that users using iPads (and presumably any iOS device) could see

the two “pocket” cards of their opponent after a hand was over, even though the opponent did not want to show his/her cards. These users were acquiring information about other players without their knowledge and therefore gained an unfair advantage over users using non-iOS devices such as a laptop or desktop computer;

24. In brief, not everyone had access to the same information when looking at the “hand history” on OK Poker, and therefore were not on a level playing field;
25. The information in the “hand history” is important because more experienced poker players will take notes on their opponents, which helps them remember their opponent’s profile (i.e. whether they are aggressive, passive, do they bluff, do they really know how to play, etc.). In fact, OK Poker has a “note” component that allows players to take notes as they play. This aspect of the game has a significant impact on the strategy that a player will use to defeat his/her opponent;
26. Up until May 18, 2020 inclusively, any player using an iPad to play OK Poker was able to see the winner’s “pocket” cards by clicking on “hand history” at the end of the hand unbeknownst to the user, even when those players chose to “muck” (i.e. hide) their cards;
27. The Representative Plaintiff discovered this important flaw on May 13, 2020, when, for the first time, she used an iPad to play Texas Hold’em on OK Poker (she had previously been playing Texas Hold’em on OK Poker using her computer for years and therefore could not have known of this flaw before this date);
28. On May 13, 2020, the Representative Plaintiff took pictures of her iPad, showing the flaw on OK Poker in the context of a “tournament” game, as it appears from the pictures communicated herewith *en liasse* as **Exhibit P-9**;
29. The Representative Plaintiff’s nickname is “*uwill8me*” and Exhibit P-9 shows that she chose to fold on that hand. Exhibit P-9 also shows that the winner of that hand (whose nickname is *Greenlight*) had the following two “pocket” cards: ace of spades and king of hearts;
30. The issue underpinning the present class action is that the user going by the nickname “*Greenlight*” and all other users similarly situated, including the Representative Plaintiff when she was playing on her computer, had no idea that users using iPads can see his/her “pocket” cards. In fact, customers are gambling and spending money and time on OK Poker under the false belief that the regular rules of Texas Hold’em apply and that nobody can see their cards;
31. Immediately upon noticing the issue in tournament games, the Representative Plaintiff wanted to see if the same flaw existed in “Real-Play” (“cash”) games, and she was able to confirm that this was the case, as it appears from the pictures she took of her iPad on May 13, 2020 communicated herewith *en liasse* as **Exhibit P-10**;

32. Exhibit P-10 shows that the winner of that hand, an individual going by the nickname “MW1267”, had the following two pocket cards: ace of diamonds and queen of diamonds. Once again, “MW1267” has no idea that other users can see his/her cards, which in turn can allow them to gain an unfair advantage over him/her in future hands, something that no reasonable poker player would tolerate or agree to;
33. That same day (May 13, 2020), the Representative Plaintiff contacted Espacejeux by calling 1-866-611-5686 to report the problem to the company. The phone call lasted for more than 25 minutes. A technician followed-up by calling her back a few hours later and confirming that the flaw in question exists (i.e. that players using iPads can see the “pocket” cards of other players without their knowledge);
34. Seeing that the flaw had not been fixed by May 18, 2020, the Representative Plaintiff called Espacejeux again and asked to be transferred to a supervisor. The call lasted for more than 58 minutes and an agent named “Carlos” provided her with the reference #1373475;
35. By the evening of May 18, 2020, the Representative Plaintiff noticed that the Defendants fixed the flaw; however, the Defendants refused to allow the Representative Plaintiff and all of their other customers to change their nicknames after the flaw was fixed;
36. The problem with not changing all of the nicknames is that any notes that some players already took on other users during the time that the flaw existed means that certain players are still playing at a disadvantage. This is why an injunction is necessary, as more fully detailed at paragraphs 98 to 107 below;
37. On May 21, 2020, an agent from Loto-Quebec sent an email to the Representative Plaintiff admitting that there was a flaw on OK Poker, confirming that it had been fixed and offering the Representative Plaintiff a compensation in the form of a \$15.00 credit to her account, as it appears from **Exhibit P-11**:

“We wish to inform you that the **incident affecting the poker hand history on OK Poker** is now resolved.

As you can see in your Online Games account, we offered you \$15,00.

Thank you for having taken the time to inform us.

If ever you still encounter technical difficulties, we invite you to contact us.

We apologize for any inconvenience this issue may have caused and appreciate your understanding.”

38. Contrary to the agent’s assertion, the issue is not merely an “*incident affecting the poker hand history on OK Poker*”, rather a serious systemic flaw in OK Poker that

existed since July 9, 2019;

39. The Representative Plaintiff refused this offer because she does not believe that this amount is adequate given the importance of the issue, her actual losses and the time she wasted playing on a faulty and deceptive OK Poker game;
40. In light of the above, it is clear that the consent given by Class Members when contracting with the Defendants (i.e. by paying them to enter into Texas Hold'em tournaments and/or "Real-Play" games on Espacejeux) was vitiated by error relating to an essential element of the contract – an essential element being the integrity, security and privacy of OK Poker;

VI. THE DEFENDANTS' LACK OF INTEGRITY AND ACCOUNTABILITY

41. Espacejeux is the only website where Quebec residents are legally permitted to gamble online. In fact, the Defendants' position is that all online gambling sites accessible in Quebec are illegal and that the platform offered to the public by Loto-Quebec protects the security and integrity of the game; see *Association canadienne des télécommunications sans fil c. Procureure générale du Québec*, 2018 QCCS 3159, notably at paras. 33 & 88, under appeal, communicated as **Exhibit P-12**;
42. On their website (<https://m.espacejeux.com/en/ok-poker/download>), the Defendants boast as follows in their advertising for "OK Poker", as it appears from **Exhibit P-13**:

5 reasons you should play OK POKER

1. Compatible with all devices
2. Casino-bound tournaments, and many other events
3. English-speaking customer service available 24 hours

4. Priorities: Integrity, security and privacy protection

5. Only online poker software legal in Quebec

43. The above confirms that the Defendants acknowledge that "*integrity, security and privacy protection*" are important elements for poker players who they are trying to attract as customers and who they are contracting with and profiting from;
44. Poker players contracting with the Defendants had a reasonable expectation of the integrity of OK Poker, where they spend and risk their money, especially since it is run by a government corporation;
45. The Defendants' advertising concerning integrity, security and privacy protection reproduced above (Exhibit P-13) is false;

46. The issues concerning the integrity and security of the Defendants' gambling offerings are not new. In 2010, the Minister of Finance Raymond Bachand announced the creation of the *Working Group on Online Gambling* (the "**Working Group**") whose purpose was to closely monitor Loto-Quebec's new activities in the online gambling sector. The Working Group's mandate was to examine the evolution in online gambling since December 2010. The Working Group's report titled "*Online Gambling: When the Reality of the Virtual Catches Up With Us*" was published in December 2014 and is communicated herewith as **Exhibit P-14** (the "**Nadeau Report**");
47. The Nadeau Report mentions that "When Loto-Québec announced the establishment of a government-controlled online gambling website (Espacejeux), it was suggested that the creation of the website would have three consequences: (1) channel online gambling offerings into a controlled network; **(2) ensure the security and integrity of the online gambling offerings available to Quebecers**; and (3) ensure that Quebecers have access to responsible gambling offerings" (Exhibit P-14, page 35-PDF);
48. The Nadeau Report finds that "Three years later, the data do not corroborate the predictions of the socioeconomic hypothesis... Moreover, although Loto-Québec's gambling offerings appear to be secure and honest, certain limitations have been noted with respect to responsible gambling. The Working Group believes that it is inadequate, because Loto-Québec regulates itself, that it manages alone the assurance and control measures pertaining to the conformity of gambling from the standpoint of security, integrity and responsibility. This procedure does not conform to the best control practices observed in other jurisdictions" (page 35-PDF);
49. The Nadeau Report specifically addresses the problems of the Defendants' maintaining integrity of online gambling and the conflict of interest that their structure creates (page 39-PDF):

As for **problems linked to the integrity of the games on Espacejeux**, complaints have been recorded since the website was launched, of which one-quarter were subject to an investigation conducted by Loto-Québec employees. The corporation concluded that a very small minority of the complaints were well-founded (Finding SE-7.1).

It should be noted that Loto-Québec collected, analyzed and assessed the justification for the complaints received **without, to our knowledge, the support of an independent ombudsman**, appointed by and reporting directly to the board of directors. As a result of the lack of independent analysis in the execution of these duties, **it is hard for the Working Group to conclude whether, from the standpoint of the security and integrity of gambling, the government corporation is achieving the objectives that it has set for itself.**

In the final analysis, even if the government corporation has adopted rules and standards respecting security and integrity, it alone ensures follow-up to them. Loto-Québec carries out the self-regulation measures governing online gambling and their implementation in a context where the government corporation also assumes a mandate centred on marketing and profitability. While none of the data presented allows us to conclude that Loto-Québec does not offer honest, secure gambling, it remains that the government corporation is self-regulating. **No external monitoring and control mechanism or device exists in respect of online gambling. Consequently, the data presented earlier might be called into question by anyone interested in the topic.**

[...]

In comparison with what the Working Group observed elsewhere in Canada and in other regions of the world, **Québec is noteworthy in that it is one of the rare jurisdictions (and the only one in Canada) that allows its online gambling operator to self-regulate itself with respect to security, integrity and responsible gambling. Outside Québec, the operations of government-controlled or private legal online gambling websites are mainly overseen by independent government regulatory agencies.** In Canada, in order to offer online gambling, government corporations in British Columbia and Manitoba must both operate under the aegis of their independent provincial regulatory body, the British Columbia Gaming Policy and Enforcement Branch (GPEB) and the Manitoba Gaming Control Commission. Ontario, which is about to allow its government corporation to offer online gambling also plans to empower the Alcohol and Gaming Commission of Ontario (AGCO) to regulate the new gambling offering. In France, online gambling falls under the authority of the Autorité de régulation des jeux en ligne (ARJEL). Other States that grant licences, e.g. Denmark, Italy, the United Kingdom, Australia and the state of Nevada, oblige all of their operators to satisfy the requirements of their regulatory bodies, which have legal authority over all aspects of online gambling offerings. **Indeed, at the international level, regulatory bodies usually have a mandate to make sure of the integrity and compliance of online gambling and to oversee the protection of gamblers.** Secondly, the absence of an independent regulatory body creates the perception of a **conflict of interest between the government corporation's regulatory responsibilities and its marketing and profitability objectives.** What is more, the fact that the government corporation represents Québec in associations such as the North American Gaming Regulators Association (NAGRA) and the International Association of Gaming Regulators (IAGR) raises eyebrows among certain members of the associations. What is more surprising is that the Québec body that regulates land-based

gambling, the Régie des alcools, des courses et des jeux (RACJ), does not maintain a presence in these associations.

50. The above citations are relevant because the Defendants have already announced that their intention is to exercise a recourse in warranty against their supplier, IGT Canada Solutions ULC (“IGT”) and it is clear from Mr. Major’s affidavit (Exhibit P-2), that the Defendants take no accountability for the flaw on OK Poker brought to their attention by the Representative Plaintiff on May 13, 2020;
51. For instance, at paragraph 18 of his affidavit, Mr. Major alleges that he was informed by the Defendants’ supplier that “...entre le 9 juillet 2019 et le 18 mai 2020 (la « Période »), la Nouvelle Plateforme permettait à tous les joueurs d’avoir accès à la même information concernant l’historique d’une main, et ce, peu importe le type d’appareil utilisé pour jouer (ordinateur, tablette ou téléphone cellulaire)”. This information that was supposedly provided to the Defendants’ by their supplier is **false**;
52. What is also concerning is that the Defendants – who are government corporations – appear to be shifting all of the blame on IGT, a publicly traded company (NYSE: IGT) based in the United Kingdom, and are solely relying on IGT’s “word”;
53. For instance, when asked if he performed tests with respect to his affirmation at paragraph 17 of his affidavit, Mr. Major initially replied “oui” and even added how (i.e. “*en faisant des tests sur la plateforme*” (Exhibit P-3, at page 37). It was only after his attorney interrupted him that he corrected these answers and all of sudden declared that he did not perform any tests;
54. The Defendants conduct is lax and negligent, even after the flaw was exposed to them and even after this class action was filed;
55. Again, the reason why the the Representative Plaintiff called Espacejeux’s customer service (as alleged at paras. 33-34 above), was because she personally witnessed that when she used an iPad she could see the other players’ pocket cards, but that this same information was hidden when she used a computer. She witnessed this hundreds of times between May 13-18, 2020 (both on her iPad and computer). Seeing this again on **May 16, 2020**, the Applicant took a picture of her iPad and hereby confirms that at the same time she was able to compare the iPad “view” with the computer “view” and that they were different (i.e. she could not see the pocket cards when using her computer). Although she did not take pictures of her computer on May 16, 2020, she was able to access the hand history of that same May 16, 2020 hand using her computer at a later date, on September 30, 2020;
56. The Representative Plaintiff communicates herewith as **Exhibit P-15** the pictures that she took of her iPad on May 16, 2020 (the picture to the right of P-15) and the picture that she took of her computer of the hand history on September 30, 2020 (picture to the left), for the exact same hand that was played on **May 16, 2020** on OK Poker and that she saw on her computer on May 16. Exhibit P-15 shows that

the pocket cards are not displayed in her computer view, but that they were visible on her iPad view;

57. The allegations above and Exhibit P-15 leave no doubt that, up until May 18, 2020, certain players could see the pocket cards of others only if they were using an iPad, but not if they were using a computer. For clarity, the Representative Plaintiff witnessed this flaw on OK Poker (i.e. the mucked cards being visible on the iPad but not on the computer) hundreds of times from May 13 to May 18, 2020, and Exhibit P-15 is a simple illustration of one of the many comparisons. She also showed this flaw to her husband multiple times between May 13 and May 18, 2020, who witnessed the situation described above;
58. As government corporations and the exclusive providers of gambling in the province, the Defendants are held to a higher standard and cannot simply point the finger to their supplier and rely blindly on what their supplier tells them, without even performing the tests for themselves;
59. By failing to provide Class members with a secure platform that respects the integrity and rules of Texas Hold'em Poker, the Class members were deceived and their consent at the time they agreed to contract with the Defendants was vitiated;
60. As such, Class members have a right to claim damages collectively pursuant to article 1407 C.C.Q. (i.e. had Class members known that other players can see their two "pocket" cards they would have never contracted, or, alternatively, would have used an iPad so that all players are on an equal playing field);
61. Moreover, by failing to inform all of the Class members of the serious flaw on OK Poker and by not changing all of the nicknames of the users on OK Poker – thereby causing the damages to be ongoing since some users have taken notes of the strategies of other users who are still identified by the same nicknames – the Defendants continue to deceive Class members and also continue to violate sections 41, 221(g) and 228 of the CPA;
62. For clarity, the reason why the prejudice to Class members is ongoing – until such time that all nicknames on OK Poker are changed – is because users that took notes on Class members while the flaw existed on OK Poker still have access to these notes, which in poker is valuable information about the other player's style of play. The players who have this information on other players are more likely to defeat their opponents than if they did not have access to this information (which they would not have once all the nicknames are changed);
63. The flaw in question compromises the integrity of the game because when one player has an advantage even against only one other player at the table, the game is not proceeding as it would normally have had this player not had this information. In other words, the other players at the table suffer a damage as a result of the flaw because the game is tainted, even if the other players don't have notes on them directly;

64. To show how crucial the ongoing issue of unfairness is, the Representative Plaintiff communicates herewith an article titled "*The importance of Taking Notes in Poker*" as **Exhibit P-16**;
65. As of the filing the present Application, the Defendants have failed to advise all Class members of the ongoing disadvantage they are playing at on OK Poker and refuse to allow them to change their nicknames;
66. For all of the reasons above, this class action seeks:
 - i) the reimbursement of the aggregate of the sums paid to play Texas Hold'em poker on OK Poker up until – at least – the date of publication of the notices to members of the judgment authorizing the class action;
 - ii) punitive damages in the amount of \$300 per Class member; and
 - iii) an order forcing the Defendants to change the nicknames of all users who paid any sum of money to Loto-Quebec to play Texas Hold'em Poker on OK Poker, so that everyone is on the same playing field.

VII. THE REPRESENTATIVE PLAINTIFF'S PERSONAL EXPERIENCE

67. The Representative Plaintiff has been playing Texas Hold'em poker on espacejeux and OK Poker under the username "*uwill8me*" since November 30, 2010. In July 2019, the Defendants transferred all of their customers from Espacejeux to a new platform called OK Poker (all players were forced to keep the same nicknames);
68. The Representative Plaintiff considers that Texas Hold'em poker is primarily a game of skill, of course with some element of chance involved;
69. The reason why the Representative Plaintiff contracted with the Defendants is so that she can play Texas Hold'em poker on a "safe", reliable and fair platform, with the objective of winning money;
70. Each time that she contracted with the Defendants and added funds to her account, the Representative Plaintiff was under the impression that the playing field was equal for all users;
71. Had she been aware that some players using iPads can see her two "pocket" cards, she would have never contracted with the Defendants or played on OK Poker;
72. Prior to May 13, 2020, the Representative Plaintiff always used a computer to play Texas Hold'em poker on OK Poker;
73. On May 13, 2020, the Representative Plaintiff used an iPad to play Texas Hold'em poker on OK Poker and discovered that iPad users can see the two "pocket" cards of all other users without them ever knowing about it;

74. The Representative Plaintiff is aware and is certain that other Class members were also able to see her two “pocket” cards without her knowledge;
75. This means that since July 9, 2019, the Representative Plaintiff was deceived because other players had an advantage over her when playing Texas Hold'em poker on OK Poker, which was completely unknown to her;
76. Knowing one's opponent is an important element of playing poker, since the more one plays against another, the more one learns about the other's strategies, reactions and playing styles. In fact, this is precisely the reason why the Defendants do not let their customers ever change their nicknames (i.e. because other players have taken notes and acquired knowledge about their opponents that becomes an asset to them over time);
77. Since the Representative Plaintiff always played on the computer, her opponents using iPads were able to see her “pocket” cards, which gave them an advantage over her, because they gained knowledge about her strategies and playing styles. For instance, these players could know that the Representative Plaintiff may have a tendency to go “all-in” even though she does not have a good hand, which means that the next time she goes “all-in” the other players – having acquired this knowledge – would “call” (i.e. match) her bet instead of folding, causing the Representative Plaintiff to lose a hand she would have won had her opponent not acquired this knowledge as result of the flaw on OK Poker;
78. The Applicant estimates that she has lost \$1,905.00 during the Class period playing Texas Hold'em on OK Poker;
79. Had the Representative Plaintiff been aware that other users can see her two “pocket” cards and that they had obtained an unfair advantage over her, she would have never contracted with the Defendants to play Texas Hold'em poker;

VIII. THE DEFENDANTS' LIABILITY

80. The Defendants participate in, advertise for, collect payment and profit from the commission of an illegal practice;
81. The Defendants are very well aware that OK Poker contained a flaw and even admitted this in its email to the Representative Plaintiff on May 21, 2020 by stating “*that the incident affecting the poker hand history on OK Poker is now resolved*” (Exhibit P-11);
82. The Defendants' conduct, including its ongoing denials and concealment of the flaw on OK Poker, causes the consent of the Class members to be vitiated by error, giving rise to the remedy provided for by article 1407 C.C.Q.;
83. The Defendants also failed to fulfill the obligations imposed on them by the CPA, namely sections 41, 221(g) and 228, and are thus liable to Class members pursuant to section 272 CPA;

IX. REMEDIES SOUGHT

a) Articles 1399, 1400 and 1407 C.C.Q.

84. Given that her consent was vitiated due to error relating to an essential element of the contract (i.e. the Defendants did not offer a fair and level playing field to all customers on OK Poker), the Representative Plaintiff claims damages in the amount of \$1,905.00 pursuant to article 1407 C.C.Q.;

b) Sections 41, 221(g), 228 and Punitive Damages pursuant to s. 272 CPA

85. The Representative Plaintiff relied on the representations and statements made by the Defendants, including the statements made on their website concerning the “integrity, security and privacy protection” of OK Poker, Exhibit P-13, which turned out to be false;

86. Consequently, the Representative Plaintiff claims punitive damages in the amount of \$300.00 per Class member pursuant to s. 272 CPA, for breaches of ss. 41, 221(g) and 228. This amount is justified given that the Defendants’ conduct before and after the violations can only be qualified as lax, passive and ignorant with respect to consumers’ rights and to their own obligations under the CPA;

87. Indeed, the Defendants continue violating sections 41, 221(g) and 228 CPA, even after being sued, as they have not modified their advertising and still have not informed all of their users and the flaw on OK Poker;

88. Worse yet, the Defendants continue to deny – publicly in the Court record – that a flaw ever existed on OK Poker;

89. Considering the whole of the Defendants’ conduct prior to, at the time of and after the violations (as more detailed herein), the record shows that the Defendants:

1. willfully violate sections 41, 221(g) and 228 CPA from July 2019 until the present date; and
2. were careless and negligent overall with respect to their obligations and consumers’ rights under the CPA;

90. One example of the Defendants’ willful blindness to its obligations under the CPA is that Mr. Major’s affidavit claims that there is nothing wrong with the OK Platform (Exhibit P-2 at paras. 18 to 23) and Mr. Major testified that he never performed any tests to verify the Representative Plaintiff’s claims concerning the flaw on OK Poker (Exhibit P-3);

91. The punitive damages provided for in section 272 CPA has a preventive objective, that is to discourage the repetition of such undesirable conduct;

92. The duration of the Defendants’ violation (since July 2019), the vulnerability of their

victims (unsuspecting consumers on the only legal gambling website in Quebec), the scope (the entire province of Quebec) and the singularity (the Defendants being the only poker website with such an issue and who refuse to change the nicknames to stop the damage) are all important reasons for this Court to penalize the Defendants, as well as deter and dissuade other entities from engaging in similar reprehensible conduct to the detriment of Quebec consumers;

93. At this point of the proceedings, the Defendants violations must be qualified as intentional and malicious, given that they refuse to fix the problem, continue to conceal the issue from their customers and refuse to admit the flaw to anyone else other than to the Representative Plaintiff (by email on May 21, 2020, Exhibit P-11);
94. The Defendants demonstrate through their behavior that they are more concerned about their bottom line and not scaring off customers by admitting to the flaw and asking them to change their nicknames voluntarily, than about their legal obligations towards consumers under the CPA;
95. In these circumstances, the Representative Plaintiff requests that this Honorable Court condemn the Defendants to pay each Class member the sum of \$300.00 on account of punitive damages for ongoing violations of obligations imposed by the CPA, pursuant to section 272 CPA;
96. The Defendants are government corporations and their patrimonial situation is significant enough that the foregoing amount of punitive damages is both appropriate and necessary in the circumstances;
97. It is also worth mentioning that the Defendants' initial offer to the Representative Plaintiff of \$15.00 not only is not commensurate with her actual losses, but was meaningless given that this is the very same amount that they offer to people for free to attract them to gamble on their website, as it appears from **Exhibit P-17**:

“Inscrivez-vous à lotoquebec.com en trois étapes faciles, puis **recez 15 \$** en entrant le code ACED4151. Vous pourrez jouer à vos jeux préférés sur Casino en direct, où que vous soyez au Québec.”

c) Injunctive relief (art. 509 C.C.P.)

98. Given that the damage is ongoing because certain players were able to take notes on the playing patterns/strategies of other players, the Representative Plaintiff respectfully asks the Court to order the Defendants to change the nicknames of all users who paid any sum of money to Loto-Quebec to play Texas Hold'em Poker on OK Poker;
99. For clarity, this change of nicknames could be effected by the Defendants asking their customers to change their nicknames the next time that they sign-on to OK Poker;
100. There is a precedent for the remedy requested that the Defendants can easily

implement;

101. For instance, when “*partypoker*”(one of the websites mentioned in the Nadeau Report, Exhibit P-14 at pages 41, 129, 130, 132, 134, 136, 137, 139, 141, 166, and 169 of the PDF) recently had an issue compromising the integrity of its poker platform, it immediately remedied the situation by changing the usernames/nicknames of all its users, as it appears from a copy of the notice on partypoker’s website titled “*partypoker enforces player name change with latest software update*” **Exhibit P-18**:

“Most importantly, the update requires all players to select a new alias (player name). From today, June 17, 2019, **players will be presented with a pop-up window when they log into the client, prompting them to select a new alias...**

[...]

...All the changes are designed to **level the playing field** at partypoker following player feedback, allowing players of all levels to start afresh with a ‘clean slate’ in an effort to make the site a **safer, fairer place to play**.

partypoker Player Panel member Patrick Leonard said: “partypoker is constantly listening to the poker community and continues to act upon feedback provided by its players. I welcome the latest changes, which serve to underscore partypoker’s commitment to improving the playing experience and will help to **make the site a fairer** and more enjoyable place to play poker.”

partypoker managing director, Tom Waters, said: “This client update is one of a number of initiatives that we are working on in order to provide players with a safe environment where they can play online poker.

“With this release, we are making changes to our software that will prevent third-party tracking tools from working. **We want our players to have a fresh start and therefore we are asking all players to select a new alias so that all third-party tool tracking is lost for all our players...** [our emphasis in bold]

102. A news article published on June 17, 2019 titled “*partypoker Software Update Forces Players To Change Their Alias*” reported on the reasons why partypoker forced its customers to change their nicknames, as it appears from a copy of the article communicated herewith as **Exhibit P-19**:

The policy shift has been made to protect users from having automated data collected on their playing habits as well as attempting to stop the buying and selling of accumulated data for import into a

third-party HUD. The changing of the username, which is forced the next time users log in, **will essentially reset the playing field with all players getting a fresh start.**

“This client update is one of a number of initiatives that we are working on in order to provide players with a **safe environment** where they can play online poker,” said Tom Waters, partypoker Managing Director. “With this release, we will be making changes to our software that will prevent third-party tracking tools from working. **We want our players to have a fresh start and therefore we are asking all players to select a new alias so that all third-party tool tracking is lost for all our players...**

103. The purpose of Exhibits P-18 and P-19 is notably to reinforce the fact that the notes taken by some players on others play a crucial role in the game of poker;
104. The requested injunctive relief is the only way to ensure that all players are on an equal field and treated fairly and equally on OK Poker, and so that some users do not have an unfair advantage over others, including the advantage they obtained by tracking other players and taking notes on their playing habits;
105. This order is also necessary because – as the Defendants rightfully claim – OK Poker is the “only online poker software legal in Quebec” (Exhibit P-13, point #5 under the heading “*5 reasons you should play OK POKER*”);
106. This matter is all the more pressing given that Loto-Quebec’s online platform has generated \$105 million of revenue last year and it is reported that 30% of Loto-Quebec’s clients are using a mobile device, as it appears from **Exhibit P-20**;
107. To date, the Defendants have refused the Representative Plaintiff’s multiple requests to change their customers’ nicknames;

X. THE PERSONAL CLAIMS OF EACH OF THE CLASS MEMBERS AGAINST THE DEFENDANTS

108. All Class members are in the same position as the Representative Plaintiff vis-à-vis the Defendants;
109. Every Class member contracted with the Defendants under the false impression that the OK Poker was safe, reliable and fair;
110. As such, all Class members have a common interest both in proving that there was a flaw on OK Poker that gave other players an advantage and in claiming the aggregate of the amounts that they paid to the Defendants up until – at least – the date of publication of the notices to members of the judgment authorizing the class action;
111. The Representative Plaintiff’s and Class members’ damages are a direct and

proximate result of the flaw in OK Poker (that the Defendants profit from and which they are ultimately responsible for), which they may collectively claim against the Defendants;

112. The Representative Plaintiff is accordingly entitled to claim and does hereby claim from the Defendants the following as damages on behalf of each Class member:

1. Reimbursement of the amounts paid to the Defendants until – at least – the date of publication of the notices to members of the judgment authorizing the class action; and
2. The sum of \$300.00 per Class member on account of punitive damages.

FOR THESE REASONS, MAY IT PLEASE THE COURT	POUR CES MOTIFS, PLAISE AU TRIBUNAL :
1. ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendants;	ACCORDER la demande de la Demanderesse pour le compte de tous les Membres du groupe;
2. ORDER the Defendants to change the nicknames of all users who paid any sum of money to Loto-Quebec to play Texas Hold'em Poker on the OK Poker platform;	ORDONNER aux défenderesses de changer les pseudonymes (« nicknames ») de tous les utilisateurs qui ont payé un montant à Loto-Québec pour jouer au Poker Texas Hold'em sur la plateforme Ok Poker;
3. CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff damages in the amount of \$1,905.00;	CONDAMNER les Défenderesses solidairement de payer à la Demanderesse le montant de 1 905,00 \$ à titre de dommages;
4. CONDEMN the Defendants, solidarily, to pay the Class members the amounts that they paid to play Texas Hold'em poker on the OK Poker platform until and including the date of publication of the notices to members of the judgment authorizing the class action and ORDER that this condemnation be subject to collective recovery;	CONDAMNER les Défenderesses, solidairement, à payer aux Membres du groupe les montants que ces derniers ont payé pour jouer au Texas Hold'Em Poker sur la plateforme OK Poker jusqu'à la date de publication des avis aux membres concernant l'autorisation de l'action collective (inclusivement) et ORDONNER le recouvrement collectif de ces sommes;
5. CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and Class members the sum of \$300 each, subject to adjustment, in punitive damages and ORDER that this	CONDAMNER les Défenderesses, solidairement, à payer à chaque Membre du groupe des dommages punitifs de 300,00 \$, sous réserve d'un ajustement, et

condemnation be subject to collective recovery;	ORDONNER le recouvrement collectif de ces sommes;
6. CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and ORDER that this condemnation be subject to collective recovery;	CONDAMNER les Défenderesses, solidairement, à payer les intérêts au taux légal et l'indemnité additionnelle prévue par la loi sur les sommes précitées à compter de la date de signification de la demande en autorisation d'exercer une action collective et ORDONNER le recouvrement collectif de ces sommes;
7. ORDER the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;	ORDONNER aux Défenderesses, solidairement, de déposer au greffe de la Cour la totalité des montants du recouvrement collectif, avec intérêts et frais de justice;
8. ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;	ORDONNER la liquidation collective des réclamations de chacun des Membres du groupe si la preuve le permet et alternativement, par liquidation individuelle;
9. CONDEMN the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders, if any;	CONDAMNER les Défenderesses à payer les frais de justice encourus dans la présente instance, y compris les coûts relatifs aux pièces, aux avis et à la gestion des réclamations, ainsi que les frais liés aux interventions d'experts, le cas échéant, incluant pour établir le montant de l'ordonnance du recouvrement collectif;
10. THE WHOLE with legal costs and all publication and dissemination fees.	LE TOUT avec frais de justice et les frais de publication et de diffusion des avis.

Montreal, February 15, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

276, rue Saint-Jacques, suite 801

Montréal, Québec, H2Y 1N3

T: (514) 379-1572 / F: (514) 221-4441

Email: jzukran@lpclex.com

Counsel for the Representative Plaintiff

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Representative Plaintiff has filed this Originating Application in the office of the Superior Court in the judicial district of **Montreal**.

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Representative Plaintiff's lawyer or, if the Representative Plaintiff is not represented, to the Representative Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Representative Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Representative Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the Representative Plaintiff intends to use the following exhibits:

- EXHIBIT P-1:** Extract of enterprise's information statement from the enterprise register (CIDREQ) for the Société des Casinos du Québec Inc.;
- EXHIBIT P-2:** Affidavit sworn by Mr. Charles Major on November 5, 2020;
- EXHIBIT P-3:** Copy of the transcript of Mr. Major's cross-examination of November 30, 2020;
- EXHIBIT P-4:** Screen capture of the Defendants' website;
- EXHIBIT P-5:** Extract of the espacejeux website's "commissions" section;
- EXHIBIT P-6:** Extract of the Defendants' website: <https://www.espacejeux.com/en/ok-poker/how-to-play/games/texas-holdem#object-of-the-game>;
- EXHIBIT P-7:** Copy of the Rules of Texas Hold'em" page from the Pokerstars.com website;
- EXHIBIT P-8:** Copy of the judgment in *Cohen v. Canada (Citizenship and Immigration)*,

2015 FC 1192;

- EXHIBIT P-9:** *En liasse*, copies of pictures taken by the Plaintiff on May 13, 2020, showing the problem on OK Poker in the context of a “tournament” game;
- EXHIBIT P-10:** *En liasse*, copies of pictures taken by the Plaintiff on May 13, 2020, showing the problem on OK Poker in the context of a “Real-Play” game;
- EXHIBIT P-11:** Copy of the email sent to the Plaintiff by Loto-Quebec on May 21, 2020;
- EXHIBIT P-12:** Copy of the judgment in *Association canadienne des télécommunications sans fil c. Procureure générale du Québec*, 2018 QCCS 3159;
- EXHIBIT P-13:** Extract of the website: <https://m.espacejeux.com/en/ok-poker/download>;
- EXHIBIT P-14:** Copy of the Nadeau Report;
- EXHIBIT P-15:** *En liasse*, pictures taken by the Plaintiff of her iPad on May 16, 2020 (the picture to the right) and of her computer of the hand history on September 30, 2020 (picture to the left);
- EXHIBIT P-16:** Copy of the article titled “The importance of Taking Notes in Poker”;
- EXHIBIT P-17:** Screen capture of the Defendants’ webpage titled “Nouvelles inscriptions Recevez 15 \$ d’essai”;
- EXHIBIT P-18:** Copy of the notice on partypoker’s website titled “*partypoker enforces player name change with latest software update*”;
- EXHIBIT P-19:** Copy of June 17, 2019 article titled “*partypoker Software Update Forces Players To Change Their Alias*”;
- EXHIBIT P-20:** Copy of May 7, 2019, article titled “*Jeux en ligne: des revenus de 300 M\$ qui échappent à Loto-Québec*”.

The exhibits in support of the application are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, February 15, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

276, rue Saint-Jacques, suite 801

Montréal, Québec, H2Y 1N3

Office: (514) 379-1572

Fax: (514) 221-4441

Email: jzukran@lpclex.com

Counsel for the Representative Plaintiff

500-06-001073-200

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ELISABETTA BERTUCCI

Representative Plaintiff

v.

SOCIÉTÉ DES LOTERIES DU QUÉBEC INC. (LOTO-QUÉBEC)

and

LA SOCIÉTÉ DES CASINOS DU QUÉBEC INC.

Defendants

ORIGINATING APPLICATION

(Articles 141 and 583 C.C.P.)

Nature of Suit: Damages and Injunction

ORIGINAL

Mtre Joey Zukran
LPC AVOCAT INC.
Avocats • Attorneys
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572 • Fax: (514) 221-4441
Email: jzukran@jplex.com

BL 6059

N/D: JZ-214
