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# The Legal Siege on Deceptive Gaming

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# Deception

This presentation is not  
about problem gambling or  
problem gamblers.

**It is about deception.**



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# Overview

- NL Class- action
    - *Piercey v. Atlantic Lottery Corporation Inc.*
  - Citizen's Complaint to Competition Bureau
  - Citizens' complaints to AGCO
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# Elements of Deception

- Misrepresentation
    - Misrepresents a material fact
  - Concealed information
  - Creates false impressions
  - Person has good reason to rely on it
  - Causes a mistake in the mind of the player
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# Legal Framework

- Criminal Code, Section 207
- Provincial enabling Acts
  - Lotteries must “conduct & manage” EGMs
  - Regulators, where established
- Gambling monopolists
  - ALC, OLG, Lotto-Quebec, Western Canada Lottery, BCLC
  - Too much enmeshment between government, operator & regulator
    - Their primary focus is “economic”, not game fairness or safety

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# Consumer Legislation [Ches]

“... designed to equitably reconfigure the imbalance in bargaining power.... In order to inform consumers and protect them from unsafe products and fraudulent or deceptive practices, legislation was introduced to rectify consumer vulnerability resulting from ... common law principles.”

*Prebushewski*, 2005 SCC 28, para. 33

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# Elements of NL *TPA* Cause of Action

[Ches]

1. Consumer
2. Consumer transaction
3. Supplier
4. Unfair trade practice – a representation, conduct or failure to disclose material facts
  - ❑ that has the effect
  - ❑ or might reasonably have the effect
  - ❑ of deceiving or misleading the consumer
5. Consumer has suffered damages as a result

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# Proof of Individual Reliance [Ches]

- “Might reasonably have the effect” of deceiving or misleading a consumer means individual proof of reliance on a deception is not required
  - If an unfair trade practice might reasonably have deceived consumers, then the link between deception and damages is resolved as a common issue for all members of the class
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# NL Lawsuit - Harrigan Affidavit

- Conceals how the randomness is generated
  - ❑ Distorts players' perception of randomness
  - ❑ Doesn't "feel random" – teaching about randomness in general is ill-conceived and will not work
  - ❑ Education on randomness needs to be game specific
- Unbalanced (asymmetrical) Reels to create near misses
- Conceals the number of symbols per reel
- Conceals the weighting of symbols per reel
- Conceals the probability of winning each combination

# Odds of Winning



- Timmy discloses the odds [hold up Tim Horton contest rules]
  - Thirty Five 2009 Toyota Matrix vehicles: 1 in 8,071,228
  - One Hundred Bayliner Boat Packages: 1 in 2,824,930
  - One of Five Thousand Garmin GPSs: 1 in 56,499
  - Twenty Thousand \$50 Tim Cards: 1 in 14,125
  - A food prize: 1 in 9
- Why doesn't EGMs or their operators disclose the odds?
- What are they hiding?

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# Harrigan Affidavit - video slots

- Encourages maximum bet up to 45 times the minimum
- Plays asymmetric (unbalanced) reels to create near misses
- Contains deceptive animated spinning reels
- Displays a version of the game that may be different than the same game on other VLTs
- Not a true representation of the game
- Distorts the true odds of winning

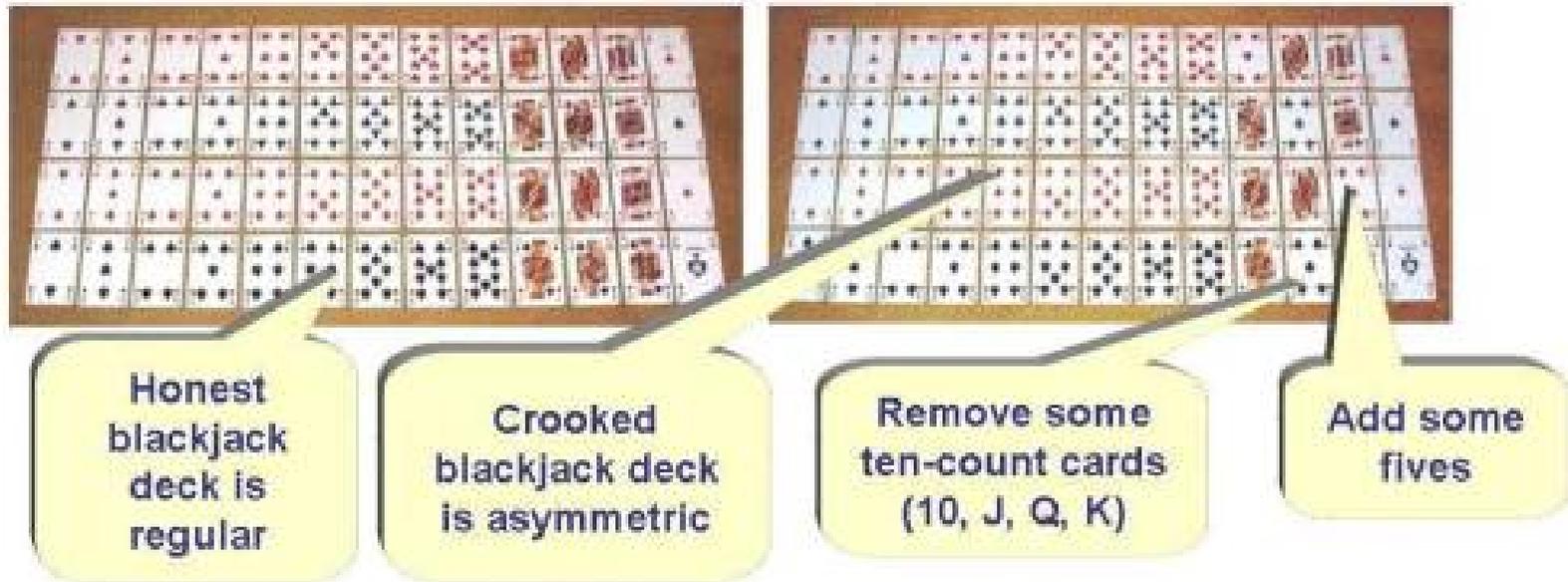
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# Deception: Seeing is Believing

- Where it began - Nevada crosses the line
- Slot Overview
- Everyone blindly follows Nevada & NJ
- Deceptive EGMs = increased profits and government revenues
- It's very simple – the more deceptive the game, the more profitable

# Unbalanced Reels - Asymmetrical Deception

## Crooked Blackjack



Scarne writes, *"The most common method used in crooked casinos when making use of four decks (208 cards) is to remove a number of ten-count cards and to replace them with five count cards."* (Scarne 1974, p. 388). In Blackjack the dealer sits on 17 and above so the dealer must draw on 16. Having more fives and less ten-count cards reduces the chance of the dealer busting and increases the casino's percentage. This is a percentage gaff. Like percentage dice it requires no skill on the part of the person cheating and the gaff remains in place indefinitely. Both percentage dice and crooked Blackjack decks still embody randomness. **The cheating arises out of the fact that the randomness is biased in a manner the player does not suspect.** - Except from: [Unbalanced Reel Gaming Machines](#), page 6.

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# Harrigan Affidavit

- Displays deceptive choice bonus modes giving illusion of control
- Displays bonus modes with concealed differential reels or selections
- Displays bonus modes with concealed limitations on winning combinations
- Dispenses wins in credits to create a churning paradox – payback percentage is misleading

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# Test for Certification

- Some evidence of deception
- Probable defenses
  - ALC exempt – crown does not need to comply with TPA
  - It's only entertainment
  - Disclosure of odds or how the games work would add to misconceptions and/or problem gambling
  - Regulator approved – can't be deceptive?
  - No precedents for bans – “everybody does it”
  - Responsible gaming program is world leader
    - This in itself is a deception (unconscionable conduct) because it focuses on players taking responsibility, while diverting from the inherent deceptive, addictive & dangerous nature of EGM
    - Professionals need to look at the ethics of unintentionally supporting such consumer exploitation

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# Previous Class Actions

- Poulos v. Caesars World
  - Filed under the civil enforcement provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) and under common law theories of fraud and deceit.
  - Alleged suppliers conspired with casinos and their respective distributors with the intent to defraud the public
  - Alleged all EGMs were deceptive

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# Why Poulos v. Caesars World Failed

- Too ambitious
    - Filed their complaint against entire industry
      - manufacturers, distributors, operators and owners of electronic slot machines and video poker machines and owners and operators of casinos and cruise ships
  - Proof of reliance?
  - Wrong venue
    - No specific machine or game named
  - Expert understanding has evolved
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# Why *Piercey* may succeed

- ❑ Narrow focus in NL
  - ❑ NL judge
  - ❑ Regulator is conflicted
    - Standards do not consider fairness or deception
  - ❑ Deception is now better understood
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# What's at Stake?

- 36,000 VLT gamblers in NL
- \$60-70 million per year in VLT profits
- If deceptive in NL, then deceptive in other ALC provinces
- Canada wide impact
- Expect more class actions based on deception

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# Complaint to Competition Bureau?

- Complaint has merit – but filed incorrectly
  - Needs more evidence & specific targets of complaint
  - Bureau has limited resources – must prioritize
  - Priority level depends of volume of complaints
    - But EGM players don't know they're being deceived
  - Priority level depends on impact on Canadians
    - But everyone who plays most EGMs are being deceived
  - Complaint needs to be refilled correctly
  - Delay was good – more evidence is now available
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# Competition Act

- Manufacturers, suppliers, advertisers and merchants who run games of chance must:

...provide a short list of the contest rules. The consumer should not have to buy the product or tamper with it to read these rules. This short list should contain the following information: (i) the number and value of prizes, (ii) any regional allocation of prizes, (iii) the skill testing question requirement, (iv) **details as to the chances of winning (a chart may simplify explanation of the chances)**, (v) the contest closing date and (vi) any other fact known to the person that materially affects the chances to winning.

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# Citizens' Complaints

- Lotteries & regulators consistently ignore complaints
  - OPP/AGCO investigation was launched last year after complaints from Gambling Watch
  - Complaints dismissed even after the AGCO received expert opinion in comments to their new gaming machine standards
    - EGM are deceptive
    - Deceptive features are harmful
  - AGCO say they are not responsible for enforcing the Criminal Code, Competition Act or Ontario Consumer Protection Act
  - Minister responsible for Ontario Consumer protection told me to go to AGCO
  - So, who enforces?
  - NO ONE!
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# Citizens' Complaints

- Gambling Watch has asked Ontario's Ombudsman, Andre Marin to investigate why AGCO will not respond to complaints that new technical standards are an attempt to legitimize deceptive feature
  - Ombudsman reviewing & considering case
  - Gambling Watch demands that Ontario Consumer Protection Act should be enforced in relation to all gambling
  - It appears government policy is to not apply the Criminal Code or consumer protection laws to gambling?
  - Why?
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# The Monkey Trap?

- Monkey is trapped only by greed
- No statute of limitations [Ches]
- Consumer protection laws supercedes government policy that allows cheating techniques in EGMs
- What should be disclosed?
- How should VLT programming change?



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# Safer Practices Needed

- Let go of the banana
  - Clean up the machines
  - Recognize that EGMs are inherently deceptive
  - Implications for:
    - Research
    - Treatment &
    - Prevent
  - Comprehensive Player Protection System ready to implement
  - Would certainly lower liability exposure
  - Internet gambling can pave the way for more fair, safe & honest gambling
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# Internet Gaming Opportunities

- Elevated duty-of-care
  - Intimate knowledge of gaming behaviours
  - Potential for meaningful, proactive involvement with those exhibiting risky behaviours
  - Opportunity for Canada to to shape proactive safe Internet regulatory framework
  - Alberta Gaming Institute in 2009 or 2010?
    - Show how the Canadian Internet model has been successfully exported to the world?
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