

**ROBERT EDMONDS**  
Plaintiffs  
And

**PHYLLIS LAPLANTE, et al.**  
Defendants

Court File No: 02-CV-22628CM3

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AFFIDAVIT OF SERVICE**

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Ontario Lottery and Gaming Corporation

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ROBERT EDMONDS

Plaintiff

- and -

PHYLLIS LAPLANTE, SCOTT LAPLANTE,  
861039 ONTARIO LIMITED operating as COBY VARIETY  
and ONTARIO LOTTERY AND GAMING CORPORATION

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM  
OF THE DEFENDANT ONTARIO LOTTERY AND GAMING CORPORATION**

1. The defendant Ontario Lottery and Gaming Corporation ("the Corporation") admits the allegations contained in paragraphs 2 and 3, the first sentence of paragraph 4, paragraph 5 and paragraph 20 of the statement of claim.
2. The Corporation denies the allegations contained in paragraph 1, the second sentence of paragraph 4, the second sentence of paragraph 12, and paragraphs 14, 18 and 19 of the statement of claim.
3. The Corporation has no knowledge in respect of the allegations contained in paragraphs 6 to 11, the first sentence of paragraph 12, and paragraphs 13, 15, 16 and 17 of the statement of claim.

**Background**

4. The Government of Ontario created the Corporation on April 1, 2000. The Corporation is the product of a merger between the Ontario Casino Corporation, established in 1994, and the Ontario Lottery Corporation, established in 1975. The mandate of the Corporation is to deliver gaming entertainment, and to maximize

economic benefits for the people of Ontario in an efficient and socially responsible manner.

5. The defendant 861039 Ontario Limited, operating as Coby Variety ("861039"), was at all material times an independent retailer of the Corporation's lottery products.

6. The defendants, Phyllis LaPlante and Scott LaPlante (collectively referred to hereinafter as the "LaPlantes") were at all material times the owners, operators and/or employees of 861039.

### **The Lottery Games**

7. The Corporation operates a number of lottery games including the LOTTO SUPER 7, ENCORE and ONTARIO 49 lottery games.

8. The prizes issued for the games vary from free lottery game tickets for other lottery games to millions of dollars in money prizes.

9. LOTTO SUPER 7 is a national game marketed in Ontario by the Corporation. LOTTO SUPER 7 tickets may be purchased for two dollars for each set of three seven-number selections. The jackpot for LOTTO SUPER 7 is \$2.5 million, which grows until it is won. A draw is held each Friday.

10. ENCORE is a companion lottery game that can only be played together with certain host games, such as LOTTO SUPER 7 and ONTARIO 49. ENCORE numbers are valid only for the same dates as the host game.

11. ENCORE is played by either selecting ENCORE on a lottery game selection form, or alternatively, by asking a retailer to include ENCORE with the host game. For each ENCORE selected, a six-digit number is randomly generated by the Corporation's central computer system through the Corporation's on-line lottery terminals and printed below the number for the host game selected.

12. ENCORE draws are held daily for up to \$250,000.00. The cost of playing ENCORE is one dollar.

13. ONTARIO 49 is a provincial lottery game marketed by the Corporation. ONTARIO 49 tickets may be purchased for fifty cents each. The jackpot for the prize is \$1 million. Draws are held each Wednesday and Saturday.

#### **The Retailer Contract**

14. On or about September 2, 1999, 861039 and Mr. LaPlante entered into an agreement with the Corporation pursuant to which 861039 and Mr. LaPlante would sell lottery products authorized by the Corporation (the "Retailer Agreement"). The Retailer Agreement provides, *inter alia*, that:

- The Retailer is an independent contractor, and is not an agent, an employee nor a partner of the Corporation, and has no right to act for or to bind the Corporation in any manner whatsoever.
- The good faith and proper conduct of the Retailer are essential to the Corporation's good reputation, which is essential to the viability of the Corporation and the mandate conferred on it by law.
- The Retailer agrees to not do or fail to do anything which would diminish the sale of any of the Corporation's products or its reputation.
- The Retailer shall indemnify the Corporation from and against all claims, demands, losses, damages and costs in any manner based on, caused by or attributable to anything done or omitted to be done by the Retailer or its employees, agents, invitees, customers, patrons or game players.
- Where the Retailer is a partnership or corporation, each partner and shareholder is a party to the Retailer Agreement and is jointly and severally liable for the Retailer's obligations under it.

### **The Draw & The Win**

15. On Friday July 13, 2001, the weekly LOTTO SUPER 7 and daily ENCORE draws were held.

16. On or about July 30, 2001, the defendant Phyllis LaPlante attended at the Corporation's prize office on Bloor Street East in Toronto. Ms. LaPlante presented a LOTTO SUPER 7 ticket on which the ENCORE had been played. The numbers on the ticket for the ENCORE were the winning numbers for the July 13<sup>th</sup> draw.

17. In accordance with the Corporation's policy, Ms. LaPlante was questioned about how she came into possession of the winning ticket and she was asked to sign a direction indicating that she was the only person having any beneficial interest in the winning ticket. Ms. LaPlante revealed that she was an employee of 861039 and as a result, the Corporation applied its "Insider Win Policy" to investigate her claim to the July 13<sup>th</sup> ENCORE prize.

18. On or about August 1, 2001, an investigator for the Corporation visited Coby Variety in Coboconk to meet with Ms. LaPlante and obtain full details regarding her purchase of the winning ticket. Ms. LaPlante produced a ticket for the July 28, 2001 ONTARIO 49. A LOTTO SUPER 7 ticket for the July 6, 2001 draw resulted in a prize consisting of a free LOTTO SUPER 7/ENCORE ticket for the July 13, 2001 draw. It was this last, gratuitous LOTTO SUPER 7/ENCORE ticket that resulted in the \$250,000 prize. All six numbers on one line of the ONTARIO 49 ticket produced by Mrs. LaPlante were identical to those on the July 13<sup>th</sup> LOTTO SUPER 7 – ENCORE ticket she presented at the Corporation's prize office.

19. On or about August 8, 2001, Ms. LaPlante signed a statutory declaration indicating that she was the sole owner of the LOTTO SUPER 7 – ENCORE ticket for the July 13, 2001 draw.

20. On or about August 24, 2001, the Corporation issued a cheque to Ms. LaPlante in the amount of \$250,000.00 in respect of the July 13<sup>th</sup> ENCORE draw.

**The Corporation unaware of the plaintiff's claim**

21. During September 2001, the plaintiff sent two faxes to the Corporation regarding investing in a promotion and enclosing a diagram and a page from a calendar. However these faxes failed to disclose that the plaintiff was making a claim to an interest in any lottery prize.

22. Four months later, in January 2002, the plaintiff's son, Don Edmonds, contacted the Corporation. The Corporation asked Mr. Edmonds to provide particulars regarding his father's alleged purchase and validation of a winning lottery ticket.

23. On or about January 9, 2002, the Corporation was contacted by an officer of the Ontario Provincial Police and advised that the LaPlantes were under investigation for theft from the plaintiff of the July 13<sup>th</sup> winning ENCORE ticket.

24. At no time prior to January 2002 was the Corporation put on notice that there was any irregularity regarding Ms. LaPlante's claim to the July 13<sup>th</sup> ENCORE prize.

**The Corporation is not liable for the plaintiff's alleged loss**

25. The Corporation is in no way liable for the alleged loss suffered by the plaintiff.

26. The Corporation is not liable for the plaintiff's alleged loss as any such loss, which is not admitted, but expressly denied, is as a result of the plaintiff's own failure to protect his interest, if any, in the July 13<sup>th</sup> ENCORE prize.

27. Further, or in the alternative, the Corporation is not liable for the plaintiff's alleged loss as any such loss, which is not admitted, but expressly denied, is as a result of Ms. LaPlante's claim of the July 13<sup>th</sup> ENCORE prize.

28. Further, or in the alternative, the Corporation is not liable for the plaintiff's alleged loss as any such loss, which is not admitted, but expressly denied, is as result of the wrongdoing of the LaPlantes and/or 861039, none of whom are agents

of the Corporation, and if they are found to be the Corporation's agents, then they acted outside the scope of their authority.

29. Further, or in the alternative, the Corporation is not liable for the plaintiff's alleged damages as the damages claimed are not recoverable at law and the plaintiff has failed to mitigate his damages.

30. The Corporation asks that the plaintiff's claim be dismissed with costs on a substantial indemnity basis.

### **CROSSCLAIM**

31. The Corporation claims against the defendants Phyllis LaPlante, Scott LaPlante, and 861039 Ontario Limited operating as Coby Variety:

- a) judgment for contribution and indemnity of any amount found to be due to the plaintiff in the event and to the extent that there is any such amount found due;
- b) judgment upon the indemnity in the amount of \$250,000.00;
- c) pre-judgment and post-judgment interest on all monetary sums awarded in accordance with the provisions of the Courts of Justice Act, as amended; and
- d) its costs on a substantial indemnity basis.

32. The Corporation repeats and relies upon the allegations in the Statement of Defence.

33. The Corporation relies upon the provisions of the Retailer Agreement between it and Scott LaPlante and 861039 Ontario dated September 2, 1999.

34. If the Corporation is found liable to the plaintiff, then such liability is a result of the actions of any or all of Phyllis LaPlante, Scott LaPlante, and 861039 Ontario

Limited operating as Coby Variety, none of which were authorized or sanctioned by the Corporation.

April 16, 2002

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