

2014 01H 0081, 2017 01H 0007, 2017 01H 0013 and 2017 01H 0021

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

**BETWEEN:**

ATLANTIC LOTTERY CORPORATION INC. –  
SOCIÉTÉ DES LOTTERIES DE L'ATLANTIQUE APPELLANT

**AND:**

DOUGLAS BABSTOCK AND FRED SMALL FIRST RESPONDENTS

**AND:**

VLC, INC. SECOND RESPONDENT

**AND:**

IGT-CANADA INC. THIRD RESPONDENT

**AND:**

INTERNATIONAL GAME TECHNOLOGY FOURTH RESPONDENT

**AND:**

SPIELO INTERNATIONAL CANADA ULC. FIFTH RESPONDENT

**AND:**

GTECH CORPORATION SIXTH RESPONDENT

**AND:**

TECHLINK INTERNATIONAL ENTERTAINMENT LTD. SEVENTH RESPONDENT

Filed	Jan. 24/19	GF
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*SW*  
*Jan. 24,*  
*2019*

**AND:**

HI-TECH GAMING.COM LTD.

EIGHTH RESPONDENT

**AND:**

BALLY GAMING CANADA LTD.  
AND BALLY GAMING INC.

NINTH RESPONDENTS/  
CROSS-APPELLANTS

**ORDER**

**BEFORE:** Green, Welsh and Harrington, JJ.A.

**WHEREAS** application was made by the appellant for leave to appeal;

**AND WHEREAS** the appellant appealed i) an order certifying the class action; and ii) an order dismissing the appellant's application to strike all or portions of the Statement of Claim;

**AND WHEREAS** the ninth respondents cross-appealed;

**AND WHEREAS** the appeal was heard on October 23, 24 and 25, 2017;

**AND WHEREAS** the Court heard submissions from counsel for the appellants, Daniel Simmons, Q.C., Julie Rosenthal and Benjamin Zarnett, counsel for the first respondents, Kirk Baert and Celeste Poltak, counsel for the second, third and fourth respondents, Ian Kelly, Q.C. and Daniel Glover, counsel for the fifth respondent, Daniel Boone, Q.C., counsel for the seventh respondent, Jorge Segovia and counsel for the ninth respondents/cross-appellants, Paul Dicks, Q.C.;



**AND WHEREAS** judgment of the Court was given with written reasons on December 10, 2018, with Welsh J.A. dissenting in part and in the result.

**ACCORDINGLY, IT IS ORDERED THAT:**


1. Leave to Appeal is granted.
2. The Appeal is allowed in part, namely:
  - a. paragraphs 41-45, 73(f) and 73(j) of the Statement of Claim, which assert a claim and seek remedies for breach of the *Competition Act*, are hereby struck;
  - b. paragraphs 53 and 54 and 73(h) of the Statement of Claim, which assert a claim and seek a remedy for breach of the *Statute of Anne, 1710*, are hereby struck;
  - c. the words “the *Statute of Anne*” and “the *Competition Act*” in paragraph 60 of the Statement of Claim are hereby struck; and
  - d. paragraph 73(i) of the Statement of Claim is hereby struck.
3. The Certification Order is hereby amended by:
  - a. Deleting the words “the *Competition Act* and the *Statute of Anne (Gaming Act) 1710*” from paragraph 4(b);
  - b. Deleting paragraphs 5(e), 5(g), 5(h) and 5(i);
  - c. Deleting paragraphs 6(d) and 6(h).
4. In all other respects the Appeal is dismissed and the matter may proceed as a class action.



5. Pursuant to section 37(1) of the *Class Actions Act* there is no order as to costs.

In dissenting reasons, Welsh J.A. would have allowed the appeal in its entirety, struck out the whole of the Statement of Claim and set aside the order of the applications judge certifying the class action, without any order as to costs.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 22 day of January 2019.

  
REGISTRAR

