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# Insurance Law Update

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## SUPREME COURT OF NOVA SCOTIA CONSIDERS LIABILITY OF CASINO OPERATOR FOR GAMBLING ADDICTION



In a landmark Canadian decision, the Supreme Court of Nova Scotia has released a decision considering the liability of a casino operator for gambling addiction. The court has concluded that, absent "exceptional circumstances", there is no duty of care owed by a casino operator to a casino patron.

In a written decision released January 13, 2010, Justice John D. Murphy considered a lawsuit brought by Paul Burrell against Metropolitan Entertainment Group, the Attorney General of Nova Scotia, and Nova Scotia Gaming Corporation. *2010 NSSC 476*. The Plaintiff is a resident of Sydney, Nova Scotia who claimed that he was addicted to gambling. The Defendant Metropolitan Entertainment Group "MEG" operates casinos in Nova Scotia pursuant to an agreement with the Nova Scotia Gaming Corporation.

In the lawsuit, Mr. Burrell sought to recover damages from the Defendants including damages for psychological, physical and emotional pain and suffering, depression, loss of amenities of life, indignity of impoverishment, loss of family unity and support, loss of personal integrity and hope, as well as special damages, punitive, aggravated and exemplary damages.

As described by the Court, *"the essence of his claim is that he was a patron who gambled at Casino Nova Scotia in Sydney and that the Defendants ... owed to him a duty of care to ensure that appropriate steps were taken by those Defendants to prevent, or at the very least to minimize, his gambling actions in order to avoid harm to him"*. He says the Defendants failed to take reasonable care to prevent gambling at the casino from becoming a negative issue for him. He claims that it was reasonably foreseeable to the Defendants that his gambling could develop into an addiction which would cause him substantial harm, that proper safeguards were not implemented and followed by the Defendants.



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The facts in this case, as described in the case, was that Mr. Burrell began gaming at Casino Nova Scotia in Sydney in 1995 and continued until 2004. He immediately became addicted to gambling. He was in consistent attendance and well known to casino employees, occasionally spending 48 hours at the casino. The Defendants allowed him to continue gambling and encouraged him by giving him small perks. He had access to funds from an ATM machine on the casino premises and was allowed to withdraw and spend large amounts of cash. He gambled away large amounts of money and was unable to make his mortgage payments, losing his house by foreclosure and he also lost his place and standing in the community. In 2004 the Plaintiff notified casino staff he was spending too much time and money there. After providing that advice, he was given a notice by the Defendant Metropolitan pursuant to the *Protection of Property Act, RSNS, 1989 c. 363*, to stay away from the casino. He gained access to the casino and gambled on one occasion after being given that notice and some extensions, and on that occasion he was asked to leave.

The Plaintiff claimed that there were five bases for liability against the defendants: first: negligent regulation and negligent promotion of gambling; secondly, breach of fiduciary duty; thirdly, failing to ensure the appropriate and sufficient governance and supervision of gambling industry in Nova Scotia; fourth, failure by the Defendant Province to ensure that the Defendant MEG completely discharged statutory duties which the Province delegated to it; and five, failure to detect that the Plaintiff was a gambling addict and to protect him from further harm once his addiction ought to have been known.

The court dismissed the Plaintiff's claim, finding that there is no "existence of a broad duty of care to problem gamblers".

Clearly, this decision is of great importance to casino operators and their insurers. The court definitely states that absent some "exceptional circumstance", there is simply no duty owed by a casino operator to a patron. What the court has not answered is what would constitute an "exceptional circumstances". Perhaps situations where a casino operator knowingly and repeatedly permits a patron subject to a self-exclusion system liability may arise, but this has not yet been answered by the courts.



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