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Court opens door to extending liability to gamblers

Scott Rollwagen speaks on *Paton Estate v. Ontario Lottery and Gaming Corporation* in the Law Times article *Court opens door to extending liability to gamblers* on October 10, 2016.

“Courts have to realize that by refusing to strike the cause of action they have already allocated risk and given plaintiffs something they didn’t have before — a cause of settlement action,” says Scott Rollwagen, research partner at Lenczner Slaght Royce Smith Griffin LLP, of Toronto. “This opens the door to claims by third parties against the people the plaintiff is dealing with.”

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“Pleading motions focus on what the plaintiff says about the duty of the OLG, not the corresponding side of the question,” points out Rollwagen, who remains critical of the decision. “From what source do you derive a right to a fidelity insurance policy from a casino with which the gambler is dealing?”

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Rollwagen considers that it will be difficult for similar actions to get struck now. “Once you refuse to strike, the court creates rights that many people will be surprised exist. When a person is defrauded, you can now look in the pockets of anyone with whom they are dealing,” he says.

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Rollwagen considers this approach to be inappropriate.

“The commercial host rule deals with physical damage. The court zealously guards the sanctity of the person and the right not to be physically harmed. There is some duty to prevent a person I served leaving and hurting others. It is easy to predict the consequences. . .,” he says.

“It is harder to see the consequences in economic negligence cases. For decades, the courts have treated economic loss differently because indeterminate liability can arise. The systematic consequences should be considered before recognizing a duty.”

Rollwagen is concerned that the court should look out for the interests of people dealing with the plaintiff.

“They don’t know who the defendants are or how many there

are or how they might have exposed themselves to losing the money,” he says.

He gives the example of a person who is in the business of selling luxury cars. “If there is a certain brand that criminals like to buy, is there a duty to find out if anyone who buys one is squeaky clean and do a criminal record check?” he asks.

The fact that a casino is involved in this case is relevant, says Rollwagen.

“There is a perception that a social good is being served, but the dissenting judgment recognized that it’s a legal business. The court needs to reflect on the consequences,” he says. “If I’m conducting a legal gambling business and someone brings money in the door to purchase my services, do I now have to make enquiries? Because of this decision, a perfectly honest person with a lot of money who wants to gamble can’t enjoy themselves. There will be questions at every turn. When you apply it at a systematic level, there are inconveniences and consequences.”

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