

Ombudsman Act Investigation Report
Case 2018-0457: Manitoba Liquor and Lotteries



June 2021

Manitoba  Ombudsman

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REPORT UNDER THE OMBUDSMAN ACT CASE 2018-0457 MANITOBA LIQUOR AND LOTTERIES

COMPLAINT

Manitoba Ombudsman received a complaint that Manitoba Liquor and Lotteries (MLL) is not adequately enforcing its Voluntary Self-Exclusion (VSE) program.

The complainant believed the self-exclusion program would keep her from gambling at Club Regent Casino, McPhillips Station Casino and Shark Club Gaming Centre. In September 2017 she signed up for the program, but later discovered she was still able to gamble at the casinos and ended up losing approximately \$10,000.

The complainant is concerned the program is not adequately enforced and questions why the program exists if she was able to gamble repeatedly during her exclusion term without being detected.

Partway through our investigation the complainant withdrew her complaint for personal reasons, but supported Manitoba Ombudsman continuing the investigation on its own initiative under section 15 of the Ombudsman Act.

OMBUDSMAN JURISDICTION AND ROLE

Under the Ombudsman Act, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, municipalities, and their officers and employees. Ombudsman investigations assess actions and decisions against a benchmark established by government.

Manitoba Ombudsman investigations review complaints to identify areas requiring administrative improvement. Improved administrative practices can enhance the relationship between government and the public, and reduce administrative complaints. Our reviews typically take a broad view that considers the fairness and reasonableness of government

actions and decisions. To help government bodies achieve better administration, our reports may include recommendations for administrative improvement.

ISSUE

This report reviews MLL's administration and delivery of VSE and considers whether MLL is clear with registrants about its ability to exclude them from the three gaming premises covered by VSE: Club Regent, McPhillips Station and the Shark Club.

BACKGROUND

The Complaint

The complainant states she developed a gambling habit in response to becoming depressed after losing a child. In September 2017, she identified that her gambling habit was significantly and negatively impacting her life. She approached MLL's security staff and indicated she wished to exclude herself under the VSE program from being able to enter the casinos.

Staff informed her the ban covered the Club Regent, McPhillips Station, Shark Club and PlayNow.com, and explained re-entry procedures. Staff provided a copy of the exclusion terms and VSE literature. She registered to self-exclude for the longest period available, a three-year term.

In September 2018, one year into her term, she experienced another personal hardship and returned to gaming at Regent and McPhillips casinos. In less than two weeks she lost \$10,000.

She contacted MLL in October 2018, indicating the toll this debt was taking on her personal life; her boyfriend and family had left her, she had no money for food and was unemployed. She indicated she had thoughts of self-harm and asked for her money back.

Corporate Responsibility directed her to several supports such as crisis and self-harm resources but indicated MLL could not refund her gambling losses. In response to her email, Corporate Security changed her status to "high risk," and on October 3, 2018, sent an alert email to casino operations managers, security and surveillance, which included her preferred type of gaming and location.

At the end of October 2018, she contacted Manitoba Ombudsman with a complaint against MLL for failing to stop her from entering a gaming facility or gambling.

On December 7, after Manitoba Ombudsman contacted MLL, a second "high risk" alert email was sent from Corporate Security to casino operations managers, security and surveillance, which again included her preferred type of gaming and location.

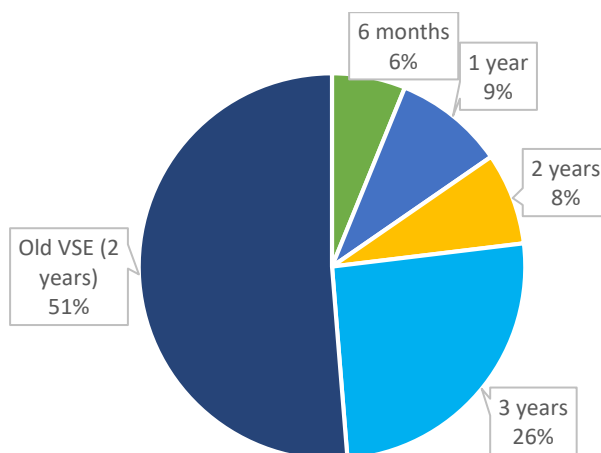
Nine days later on December 16, the complainant attended a gaming facility where she was identified by staff. Security approached her and confirmed her breach after which she left the premises.

Voluntary Self-Exclusion (VSE) Program

Under section 48 of the Manitoba Liquor and Lotteries Corporation Act, MLL is required to “conduct or fund initiatives that promote responsible gaming...including research and treatment programs.” VSE is part of MLL’s framework of Social Responsibility, which broadly includes: information and education, advisory services, risk and harm minimization, addictions services support, standards and accreditation, and research and evaluation.

VSE is marketed as a program whereby individuals exclude themselves for a period of time from PlayNow.com or gaming premises owned or managed by MLL.¹

VSE includes hundreds of people each year. For example, the 2018/19 year averaged 1,638 VSE participants. At a given point in time, participants are at various stages of their chosen exclusion time period. The graph below shows the fourth quarter of 2018/19.²



The primary communication format about VSE is the “Opt-Out” brochure. The Opt-Out brochure provides prospective participants with information about the components of the VSE program such as: preventing access to gaming premises through enforcement of the VSE contract, removal of club card incentives that encourage attendance, advising of problem gambling support, and an ability to end the VSE participation at the end of the self-declared exclusion period (see Appendix 1 for full details). Social Responsibility undertakes periodic

¹ Shark Club is not owned by MLL.

² At the time of the complaint there were recent changes to VSE providing for a new maximum term length of three years – prior to that “old” program had a maximum of two years. “Old VSE” are those people who were registered in the “old” program and who had not yet applied to return to gaming. This graph tells us that 51% of those who remained registered at that time are those who registered for a two-year term under the “old” system.

informal reviews comparing MLL's VSE to similar programs in other jurisdictions across in Canada.³

Voluntary Self-Exclusion Program Administration and Delivery

Registration

MLL's Social Responsibility department oversees the VSE program. Registration is completed in-person at a gaming premises or online.⁴ In-person registrants meet with an operations manager and member of security who explain the program and enrollment process. GameSense Info Centre staff then complete registrations during information centre hours. When the information centre is closed, casino directors or operations managers complete registrations.

At enrollment, registrants show government-issued photo identification, select their irrevocable VSE term (six months or one, two or three years), sign a VSE enrollment form, and have their photo taken for enforcement purposes. Participants are made aware of the program elements outlined in the Opt-Out brochure and are provided with a copy of their signed contract – see Appendix 3. Registration is effective immediately.

Training for all staff includes identifying potential gaming concerns and providing information regarding VSE in a way that is respectful, professional and supportive.

Incentive removal

At registration, casino staff will cancel Club Card membership to ensure the registrant does not receive further communications and incentives (collect and redeem points, promotional events, coupons).

Support

Social Responsibility administers the support feature of VSE, including selecting the material contained in the information package and the enrollment contract. It is delivered by casino staff involved in the VSE registration. Registration staff provide the registrant with an information package (paper format, memory stick or both) that includes resources to address problem gambling – see Appendix 2.⁵

³ Reviewing leading practice and benchmark reports published by organizations such as the Responsible Gambling Council and other researchers; receiving feedback from international experts on our social responsibility program (including VSE) during our World Lottery Association accreditation application every three years; consulting with our counterparts in other jurisdictions on a regular basis.

⁴ Those who sign up online are presented with the terms and conditions associated with the VSE program which they are required to read and acknowledge. MLL currently does not accept photo ID through the online registration process as they are unable to verify the photo. As a result, any online VSE registration is only applicable to the online gaming platform.

⁵ Online registrants are provided with information related to additional supports with a web link to contact information.

Detection and Enforcement

MLL's Security department is responsible for the detection and enforcement component of the program. This department works cooperatively with the Social Responsibility department, who registers the VSE participant, when registrants are flagged as high risk or there is an identified breach of a VSE contract. Security staff are responsible for identifying registrants who attempt to enter the facilities, and for removing participants from the premises. The following tools are used by security for detection and management:

- Staff are educated around identifying and addressing VSE breaches, including reinforcing support and encouraging the person towards success in the program. GameSense Info Centre staff are available outside regular hours to assist staff with potential gambling problem situations.
- The photo provided by the participant at the time of registration is the primary source of identification of a VSE participant. These photos are kept on file. Video loop constantly rolls photos of VSE registrants. Security staff at the three sites see the loop on their monitors during their shifts. One central monitoring room at a remote location also oversees all three sites alongside the video loop.
- Camera systems are in place and are live monitored at the casinos, which help security staff detect VSE registrants.
- Licence plate recognition systems are in place at the two casinos (not at the Shark Club, as there is no central parkade for that facility).
- If there is reason to believe a participant is at risk to breach, they may be identified as "high risk." High risk can be assigned if someone is a repeat offender or another source such as family informs MLL. To increase the likelihood that a high-risk participant is caught should they breach, when high risk is assigned security staff receive an email identifying that individual is considered high risk.
- MLL continues to work on enforcement tools. At the time of this investigation, MLL was
 - considered requiring patrons to produce identification, and
 - exploring the use of facial recognition software to determine its effectiveness in detecting exclusions and other security issues
- Tracking VSE metrics on a quarterly basis.⁶

⁶Statistics include new VSE Enrollments (by location), current active count of VSE customers, VSE customers by term length & category, number of VSE breaches detected at each location, number of individuals breaching.

We note that the Shark Club is operated, but not owned, by MLL. Differences in enforcement between the Shark Club and the other two casinos include that the Shark Club does not have the license plate recognition system and has its own security staff.

Structured Return

At the end of their self-exclusion period participants must complete a four hour, free-of-charge course. This is delivered by the Addictions Foundation of Manitoba either in person or online. Once completed, individuals submit a written confirmation to Social Responsibility indicating they wish to return to gaming.

ANALYSIS

Each year, hundreds of people are active VSE participants and each year, MLL identifies hundreds of breaches. MLL believes that 20 to 25 per cent of VSE participants will try to return to gambling at some point during VSE enrollment. The 2018/19 year averaged 1,638 VSE participants, and MLL detected 440 breaches.

MLL considers VSE as program to support those attempting to regain control of problem gambling and promotes VSE as providing a stronger degree of support than the online and GameSense Info Centres resources and tools.⁷

MLL does not consider VSE to be a guarantee to exclude registrants from gaming premises. MLL is of the view that its messaging communicates clearly the responsibilities of staff and registrants, including that MLL cannot ensure exclusion from gaming premises. MLL also feels that there is a logical understanding for participants that they have to be identified by casino staff in order for them to be removed.

MLL advises that expectations regarding exclusion and the limitations of MLL's capacity to enforce exclusion are communicated through the registration process and the Opt-Out brochure.

At registration, individuals are given:

- A verbal statement from casino staff that exclusion is not guaranteed and that they have to be identified in order for security to ask them to leave.
- A copy of the signed VSE contract which identifies that they will be asked to leave if found on excluded premises and that MLL is not responsible if the registrant fails to comply with the VSE program.
- A package with the Opt-Out brochure and various resources listed in Appendix 2.

⁷ "For customers who feel they need more support... advisors are able to quickly connect them with our own casino programs, such as the Voluntary Self-Exclusion program or with organizations such as the AFM." (2018/19 Corporate Responsibility Report p.25)

Information in the Opt-Out brochure identifies that registrants are responsible for self-excluding as follows:

- “It is your responsibility to honour the commitment you made to yourself.”
- MLL staff support participant “in any way they can...[and] may also provide support during [participants] enrolment.”⁸
- “[Those] who participate in counselling along with a Voluntary Self-Exclusion program have a much higher likelihood of successfully regaining control of their gambling problems” with contact for the problem gambling helpline.

Based on the information provided, it appears registration is the only time when MLL communicates to registrants the limits of exclusion enforcement, regardless of the VSE term length. It is possible that some program participants may not interpret this information with the level of clarity MLL feels it has communicated.

As noted, our complainant believed MLL’s enforcement capacity would prevent her from accessing the casinos. She indicates that she was assured by MLL staff person registering her for VSE that she would not be able to access the casinos.

According to the Responsible Gambling Council, an independent, non-profit organization committed to problem gambling prevention, a VSE registrant’s understanding of the information provided at registration may be influenced by their state of mind and their trusting relationship with the gaming centre. For example, at the time of enrollment, VSE registrants are often in a state of pressure or distress.⁹ VSE participants may not objectively consider the logistics of MLL’s capacity to enforce the program and ability to exclude when registering for the program. Despite being verbally informed that exclusion cannot be guaranteed, the information in Opt-Out brochure may give the participant a different impression. The information under preventing access states that the Liquor, Gaming and Cannabis Authority security team will use photos to identify participants “in case you try to return to any of the gaming premises. They need to know what you look like to support your decision...If you enter the gaming premises...you will be asked to leave.”

As is the case with our complainant, participants may interpret the information provided in the brochure as an understanding they *will* be identified and that therefore they *will* be asked to leave. While MLL reports that individuals are advised verbally that exclusion cannot be guaranteed, the publicly available information may lead to different understandings of what was communicated and a potential misalignment of expectations between the program and participants.

⁸ Opt-Out brochure inside central panel

⁹ RGC 2008 report p. 46.

We do not question MLL's VSE program parameters, nor its position that it cannot guarantee exclusion given the number of registrants, the rate of breaches, and the limitations around enforcement as discussed above. However, we note that MLL's communication about exclusion enforcement is unclear:

- The Opt-Out VSE brochure identifies expectations regarding individual responsibility, but none of the messages state categorically that *MLL cannot guarantee enforcement*.
- Expectations of staff to verbally tell VSE participants categorically that *MLL cannot guarantee enforcement* without a method to ensure consistency nor verification of this messaging is not reliable – at this point there does not appear to be such a method and the complainant did not hear the information provided in this way.
- Although the VSE contract states that the registrant understands that MLL is not responsible if the registrant fails to comply, it does not clearly explain that *MLL cannot guarantee enforcement*.

CONCLUSION

Administrative fairness requires that public bodies provide the public clear with communication about their programs and services. Administrative fairness also includes ensuring that individuals can obtain information without unreasonable effort and that information is written in accessible and plain language that is easy for the general public to understand.

Our review identifies a gap exists between MLL's message about the VSE program parameters and limitation, and what is understood by the participant, particularly those in distress, seeking enforcement of their request for exclusion from gaming events and facilities under the program. Our review finds that:

- The information regarding expectations is only provided by MLL at registration, regardless of the length of term for which the participant has registered.
- Based on the information as it is currently provided, it is reasonable that individuals expect proactive prevention and enforcement by MLL.
- This communication gap can be bridged by incorporating the standards of administrative fairness, including providing information that is clear and readily available.

Further to our concerns about communication, we note that while MLL does direct registrants to online services, the web-based information about VSE is not easily found nor searchable on the current website.

Over the course of this review we noticed several administrative opportunities to strengthen communication around VSE. We offer the following suggestions for MLL's consideration:

- Create a script or checklist for staff to follow when individuals are inquiring about the VSE program.
- Provide options for additional, enhanced, personal accountability – for example, a way for participants who feel at risk of breaching their VSE to ask MLL to identify them as high risk.
- Identify a method and intervals for reconnection with participants throughout their VSE participation.

RECOMMENDATIONS

The challenges for MLL in communicating clearly to VSE registrants are consistent with challenges highlighted by experts in these types of programs. Manitoba Ombudsman encourages MLL to identify opportunities to enhance VSE program planning and delivery. Our recommendations focus on administrative improvements to further these efforts:

- Assess all written communication about VSE with a plain language style guide to ensure communication is consistent, clear and easily understandable.
- Ensure written communication about VSE clearly articulates the limitations of MLL's VSE program as it relates to detection and enforcement.
- Ensure information available online is accessible and current.

RESPONSE FROM MLL

After reviewing a draft of this report, MLL provided the following response:

We are in agreement that the report is complete and accurate, and furthermore that we will look to proceed with the implementation of the recommendations.

Manitoba Ombudsman is pleased MLL has accepted the recommendations and believes the measures will provide greater clarity and understanding for VSE participants.

MANITOBA OMBUDSMAN

APPENDIX 1

Opt-Out brochure

https://www.mbl.ca/sites/mbl_corporate_2/files/pamphlets/pdf/25607_gamesense_brochure_11_voluntaryselfexclusion_eng_1_19-51183.pdf

APPENDIX 2

Resources provided to registrants upon enrollment:

- MLL “Opt-Out” Voluntary Self-Exclusion brochure – see Appendix 1
- MLL GameSense enrollment information for “Pause and Plan,” a mandatory course for those wishing to end their VSE once their self-selected time period ends.
- AFM Problem Gambling Helpline contact information, brochure for problem gambling services, and general education brochure outlining signs of problem gambling and facts about gambling and losing money
- Community Financial Counselling Services – program and services brochures including information about free consultation with financial counsellors who specialize in gambling-related debt
- List of relevant resources, “Manitoba Community Resources Contact Information” for various community support services in Manitoba, including problem gambling assistance, legal counselling, seniors support, emergency resources and shelters and emergency food.
- VSE customer support video in two formats, encouraging the problem gambler to seek out counselling and support groups so they stop gambling.

APPENDIX 3

MLL Enrollment Form – see page 12-13.

VOLUNTARY SELF-EXCLUSION



I, PRINT NAME

confirm that I wish to voluntarily self-exclude myself from:

1. Premises owned or managed by Manitoba Liquor and Lotteries Corporation where Manitoba Liquor and Lotteries Corporation conducts and manages lottery schemes (the "Excluded Premises"); and
2. Websites owned or managed by Manitoba Liquor and Lotteries Corporation where Manitoba Liquor and Lotteries Corporation conducts and manages lottery schemes (the "Excluded Website").

Currently the *Excluded Premises* are Club Regent Casino, McPhillips Station Casino, and the Gaming Centre located in *cityplace*. Any premises owned or managed by Manitoba Liquor and Lotteries Corporation where Manitoba Liquor and Lotteries Corporation conducts and manages lottery schemes in the future would also be included.

Currently the *Excluded Website* is PlayNow.com. Any websites owned or managed by Manitoba Liquor and Lotteries Corporation where Manitoba Liquor and Lotteries Corporation conducts and manages lottery schemes in the future would also be included.

NATURE OF THE VOLUNTARY SELF-EXCLUSION PROGRAM

I acknowledge that the Voluntary Self-Exclusion Program is a voluntary program offered by Manitoba Liquor and Lotteries Corporation to assist individuals who feel that it is in their best interest not to participate in gambling. I also acknowledge that Manitoba Liquor and Lotteries Corporation and its officers, directors, agents, and employees are not responsible in the event that I should fail to comply with the Voluntary Self-Exclusion Program and that Manitoba Liquor and Lotteries Corporation has no responsibility for any past or future losses due to gambling.

I hereby release and discharge Manitoba Liquor and Lotteries Corporation and its officers, directors, agents, and employees from any liability or claims including claims for financial loss related to the Voluntary Self-Exclusion Program (including my failure to comply with the Voluntary Self-Exclusion Program).

PERIOD OF EXCLUSION & PROCESS FOR RE-ENTRY

I have selected the following minimum time period for my self-exclusion:

	Initial (of individual enrolling)
<input type="checkbox"/> Six (6) months	_____
<input type="checkbox"/> One (1) year	_____
<input type="checkbox"/> Two (2) years	_____
<input type="checkbox"/> Three (3) years	_____

I acknowledge that the period of self-exclusion begins immediately and that I cannot modify, revoke, withdraw or rescind this exclusion prior to its expiry.

I understand that I will need to complete the Manitoba Liquor and Lotteries Corporation's Voluntary Self-Exclusion Program re-entry requirements prior to returning to the *Excluded Premises* or opening an account on the *Excluded Website*.

I understand that if I am found on any *Excluded Premises*, I will be asked to leave. I understand that if am found to have opened an account on any *Excluded Website*, that account will be canceled.

over →

PERSONAL INFORMATION | I acknowledge that Manitoba Liquor and Lotteries Corporation requires a photograph and the following personal information about me in order to enroll me in the Voluntary Self-Exclusion Program.

PERSONAL INFORMATION		
Last Name:	First Name:	Middle Name(s):
Date of Birth:	Height:	Weight:
Street Address:		
City:	Province:	Postal Code:
Vehicle License Plate No.(s):		Preferred Game:

I assume that the personal information collected is limited to the minimum amount of information necessary for the purpose for which it is collected (subsection 36(2) of FIPPA).

PRIVACY NOTICE | Manitoba Liquor and Lotteries Corporation is authorized to collect your personal information on this by section 36(1)(b) of *The Freedom of Information and Protection of Privacy Act (FIPPA)*, as we need this information to administer, enforce and evaluate the Voluntary Self-Exclusion Program (which includes Manitoba Liquor and Lotteries Corporation possibly contacting you about the program). We have limited the personal information we are collecting to the minimum amount necessary for these purposes.

Your personal information is protected by FIPPA. We cannot use or disclose it for any other purpose, unless you consent or we are authorized or required to do so by FIPPA.

Any questions about the collection or use of personal information may be directed to Manitoba Liquor and Lotteries Corporation's Privacy Compliance Officer, 1390 Pacific Avenue, Winnipeg, MB R3E 3R9, and phone 204-957-2500 ext. 2552.

FORM OF CONSENT | I understand that Manitoba Liquor and Lotteries Corporation may need to obtain personal information about me, such as my name and address, for the following purposes:

- administering, enforcing and evaluating the Voluntary Self-Exclusion Program;
- facilitating my participation in the Voluntary Self-Exclusion Program; and
- verifying my completion of Voluntary Self-Exclusion Program requirements.

By signing this form below, I consent to the disclosure of my personal information by third party service partners, including the Addictions Foundation of Manitoba, to Manitoba Liquor and Lotteries Corporation for these purposes. I also consent to Manitoba Liquor and Lotteries Corporation collecting my personal information from these third party service partners, and to Manitoba Liquor and Lotteries Corporation providing such personal information to the third party service partners as it may be necessary to obtain the information Manitoba Liquor and Lotteries Corporation requires from them.

OPTIONAL CONSENT | I consent to Manitoba Liquor and Lotteries Corporation contacting me to offer the opportunity to participate in optional research and/or program evaluation projects related to responsible gaming.

YES NO INITIAL OF INDIVIDUAL ENROLLING:

SIGNATURE | I have read and understood this form.

[signature of individual enrolling]

[signature of witness]

[date]

[date]

QUESTIONS ABOUT THE PROGRAM?

Any questions about the Voluntary Self-Exclusion Program may be directed to Manitoba Liquor and Lotteries Corporation's Corporate Security Programs, 1390 Pacific Avenue, Winnipeg, MB R3E 3R9, and phone 204-957-2500 ext.8468.