

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **STANDING COMMITTEE ON GOVERNMENT AGENCIES**

## **REPORT ON AGENCIES, BOARDS AND COMMISSIONS**

Ontario Racing Commission

1<sup>st</sup> Session, 39<sup>th</sup> Parliament  
58 Elizabeth II

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The Honourable Steve Peters, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report  
and commends it to the House.

A handwritten signature in black ink, appearing to read "Ernie Hardeman".

Ernie Hardeman, MPP  
Chair of the Committee

Queen's Park  
November 2009

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STANDING COMMITTEE ON GOVERNMENT AGENCIES  
COMITÉ PERMANENT DES ORGANISMES GOUVERNEMENTAUX  
Toronto, Ontario M7A 1A2

**STANDING COMMITTEE ON GOVERNMENT AGENCIES**  
**MEMBERSHIP LIST**

1<sup>st</sup> Session, 39<sup>th</sup> Parliament  
(as of September 29, 2009)

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MICHAEL A. BROWN

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RICK JOHNSON

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LEEANNA PENDERGAST

JIM WILSON

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DOUGLAS ARNOTT  
Clerk of the Committee

RAY MCLELLAN  
Research Officer

**STANDING COMMITTEE ON GOVERNMENT AGENCIES**  
**MEMBERSHIP LIST**

1<sup>st</sup> Session, 39<sup>th</sup> Parliament  
(as of December 12, 2007)

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DOUGLAS ARNOTT  
Clerk of the Committee

RAY MCLELLAN  
Research Officer

**STANDING COMMITTEE ON GOVERNMENT AGENCIES  
LIST OF CHANGES TO COMMITTEE MEMBERSHIP**

KEVIN DANIEL FLYNN was replaced by LOU RINALDI on February 19, 2009.

RANDY HILLIER was replaced by GERRY MARTINIUK on March 25, 2009.

FRANCE GÉLINAS was replaced by HOWARD HAMPTON on April 9, 2009.

MARIA VAN BOMMEL was replaced by RICK JOHNSON on April 9, 2009.

LOU RINALDI was replaced by LAURA ALBANESE on September 15, 2009.

JULIA MUNRO was replaced by ERNIE HARDEMAN on September 15, 2009.

DAVID RAMSAY was replaced by YASIR NAQVI on September 15, 2009.

LIZ SANDALS was replaced by LEEANNA PENDERGAST on September 15, 2009.

GERRY MARTINIUK was replaced by JIM WILSON on September 15, 2009.

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**LIST OF TEMPORARY SUBSTITUTIONS**

BRUCE CROZIER

PETER KORMOS

PHIL MCNEELY

SHAFIQ QAADRI

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## INTRODUCTION

Since the 1990s the horse racing industry in Ontario has experienced structural changes necessitating a reconsideration of the relationship between the Ontario Racing Commission (ORC) and industry participants. In accordance with its terms of reference under Standing Order 108(f), the Standing Committee on Government Agencies reviewed the Ontario Racing Commission on February 10, 2009. The Committee would like to take this opportunity to thank the witnesses who attended the hearings, and those individuals who provided written submissions.

Under the Standing Order, the Committee's mandate is to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee is empowered to make recommendations on such matters as the redundancy and overlap of ABCs, their accountability, the application of sunset provisions, and amending their mandate and roles.

The Committee's review of the Commission included presentations by witnesses and written submissions. Appearing before the Committee from the Commission were Mr. Rod Seiling, Chair, Mr. John Blakney, Executive Director, and Mr. Steve Lehman, Chief Administration Officer. The remaining deputations included the following:

- Ontario Harness Horse Association, represented by Mr. Bill O'Donnell, President, and Mr. Darryl MacArthur, First Vice-President;
- Racetracks of Ontario represented by Mr. Robert Locke, Chair, Dr. Ted Clarke, and Mr. Bruce Barbour (Mr. Locke is also General Manager of the Hiawatha Horse Park and Entertainment Centre);
- Ontario Horse Racing Industry Association, represented by Mr. Hector Clouthier, Executive Director and Mr. Bruce Barbour; and
- Standardbred Horse Owners Panel, represented by Mr. Lou Liebenau, President and Mr. Dave Drew, Executive Director.

Written submissions were received from Mr. Mervin Bud Burke, the Canadian Thoroughbred Horse Society, the Horsemen's Benevolence and Protective Association, the National Capital Region Harness Horse Association, and Mr. Eric Poteck (Shelcor Solutions Inc.).

Unless otherwise indicated, *Hansard* is the source for all statistics, quotations, and other information mentioned in this report. *Hansard* is available online at [http://www.ontla.on.ca/web/committee-proceedings/committee\\_transcripts\\_details.do?locale=en&Date=2009-02-10&ParlCommID=8859&BillID=&Business=Agency+review%3A+Ontario+Racing+Commission](http://www.ontla.on.ca/web/committee-proceedings/committee_transcripts_details.do?locale=en&Date=2009-02-10&ParlCommID=8859&BillID=&Business=Agency+review%3A+Ontario+Racing+Commission).

It would be appreciated if the response to the Committee's recommendations, indicating the actions to be taken and the timeline, could be provided to the Clerk of the Standing Committee on Government Agencies on a timely basis.

## **ONTARIO RACING COMMISSION'S MANDATE**

The Ontario Racing Commission is a self-funding agency operating under the authority of the *Ontario Racing Commission Act*. The Commission's mandate is to govern, direct, control and regulate horse racing in the province; its operating principles include "the protection of the health and welfare of the horse, the protection of the safety of participants and the protection of the public interest."

The ORC's mandate has two components as follows:

- As a governing board, it is responsible for setting industry policy and direction in Ontario.
- As a quasi-judicial body, it hears the appeals of licensees that arise from decisions made by ORC racing officials.

The Commission's annual budget of \$11 million, which includes program administration, has been reduced recently by \$2 million.

The Commission has approximately 28,000 licensees. As a regulator, the ORC administers the Horse Improvement Program (HIP) for the Ontario Sires Stakes, and makes "economic decisions primarily related to the allocation of race dates." The number of live race dates has increased by approximately 10% since the introduction of the Slots at Racetracks Program (Slots Program), from 1,457 in 1998 to 1,634 in 2007. Wagering has remained constant in recent years, at approximately \$1.2 billion.

The main industry and institutional challenges noted by the Commission, include

[the ORC's] difficulty in understanding the roles and responsibilities of the Commission that flow from the act [*Ontario Racing Commission Act*]. Adding to this difficulty is the division of responsibilities within the Commission, specifically between the governing board and the administration.

## **HORSE RACING INDUSTRY'S STRUCTURAL ISSUES**

### **Background**

The Commission noted "the varying and sometimes conflicting self-interests and subgroups within the racing industry" comprised of "its own constituency and its own agenda, which sometimes are in conflict." The Committee pointed out that the absence of consensus on the part of stakeholders has required that the Commission assume the role of arbitrator, settling industry matters and providing direction. The tensions within the industry can be traced to the introduction of the Slots at Racetracks Program approximately 10 years ago. The Commission provided the following context on this initiative:

The primary [conflict] revolves around the horse people's associations' and the racetracks' disagreements over the number of days of live racing. At the heart of the issue is that the two sides are operating on different business models. Horse people naturally want more racing. The tracks approach the matter, they claim, from more of a business perspective, matching customer demand with operating costs. Revenue split is not at the heart of the tension as it once was, pre-slots, but the issue now is mistrust. However, we are hopeful that that will soon change. There has been a very recent shift in the leadership of the major standardbred association, and we look to signs of improvement in the near future.

The Commission is in agreement with “the principles of the Slots-at-Racetrack Program to support live racing and enhance the rural economy.” However, the ORC noted that the horse people “see the Site Holder Agreements [OLG’s Prescribed Lottery Scheme Site Holder Facilities Agreement] as a possible opportunity for tracks to increase profits by focusing more on the slot partnership than on the partnership with horse people.”

The Commission attempts to act as a facilitator to achieve agreement between the competing business models of racetracks and horse people; however, to date, this has resulted in industry dysfunction and a confrontational environment. ORC is committed to resolving these differences in an agreed single business model, with common industry benchmarks to measure their respective businesses. For example, a single business model would establish an agreed reporting methodology and measuring formula for reporting on activities and statistical data, such as counting the supply of horses.

## **ORC’s Mandate–Regulation/Adjudication/Rules**

### *ORC as Regulator*

As a regulator, the Commission administers HIP and makes decisions on the allocation of race dates. Racing and racing-related participants are regulated/licensed by the ORC; racetrack owners and staff dealing with slots customers are regulated and licensed by the Ontario Lottery and Gaming Corporation (OLG). The Commission functions as a governing board with responsibility for setting industry policy and implementation, and as a quasi-judicial regulatory body hearing licensees’ appeals arising from the decisions of ORC racing officials.

The Commission’s strategic plan defines the agency’s direction as a regulator. The objectives are to maintain the “best-in-class level, and also ensure that our focus is really on the health and welfare of the horse, the integrity of the sport itself and the safety of participants . . . .” ORC has undertaken several key initiatives, as follows:

- the introduction of a collaborative consultation process for industry initiatives and the discussion of prevailing issues with racetracks, horsemen's groups, and other industry groups;
- implementation of Rules Restructuring (Phase II), Standardized Financial Reporting (Phase 11), and the Regulatory Health and Safety Measures 2008;
- ensuring collaborative efforts and involvement (e.g., HIP implementation);
- development of standardized financial reporting for racetracks with the objective of improved decision-making by the Board and racetracks; and
- implementation of regulatory health and safety measures.

Witnesses say the ORC's mandate as regulator requires redefinition, in part due to regulation "creep." In addition, the Committee has focused on the potential conflict within the mandate, that is operating as both a governing board responsible for setting industry policy and direction in Ontario, and as a quasi-judicial body hearing licensees' appeals that arise from the decisions of ORC racing officials.

Racetracks of Ontario (RO) is of the opinion that the industry is over-regulated, with betting being regulated by the Canadian Pari-Mutuel Agency, racing and racing-related participants regulated by the ORC, and racetrack owners and staff dealing with the OLG customers being regulated by the OLG. One example of over-regulation, it was submitted, is the licensing of dishwashers at racetracks.

The view was expressed that "the Commission needs to get back on track to its core purpose of regulation and enforcement of the rules of the game, and let the industry stakeholders run the industry." Other observations and recommendations we heard include:

- Standardbred Horse Owners Panel (SHOP) emphasized due diligence in the industry regulation of the industry. The Commission should focus on its core regulatory function with attention to the industry's integrity and viability.
- The Horsemen's Benevolent and Protective Association and Protective Association expressed the view that "the ORC has travelled down a path that is outside its intended mandate. The role of the regulator needs to be more specifically defined and articulated to all stakeholders."
- RO has endorsed the ORC's operating principles and the need for a strong and independent regulator, but is concerned that the ORC is not fulfilling its mandate effectively. The Commission requires refocusing to precisely define its role and purpose going forward in matters related to private property, private contracts and economic regulation.
- According to SHOP, the Ontario Racing Commission should focus on its mission and vision, not expanding its mandate beyond that of regulator.
- CTHS is concerned about the Commission's "desire to govern, direct, control and regulate sectors to which they are not mandated." For example, the industry (represented by CTHS, Horsemen's Benevolence and Protective

Association [HBPA], Woodbine Entertainment and Nordic Gaming) developed a unanimously endorsed Thoroughbred Improvement Program (TIP) which was accepted by the ORC. CTHS is of the opinion that ORC's micromanagement (e.g., marketing program) of this Program is unnecessary.

- HBPA's position is that ORC's expanding mandate has wasted resources. "The role of the regulator needs to be more specifically defined and articulated to all stakeholders."

The extent of ORC's non-compliance with its mandate was central to the hearings. SHOP summarized the industry's future requirements:

[T]he racing commission should be a regulator and should work very strongly in the public interest and do what's good for the actual racing of the horses. We do believe at this point that the Ontario Horse Racing Industry Association (OHRIA), or an umbrella organization like OHRIA, is the best vehicle to bring the industry together, and, for lack of a better word, the major players in the industry should have a much larger say in appointments and how the commercial part of the industry functions.

### *Judging and Stewards*

The Stewards and Judges have a responsibility to represent the Commission across the industry; however, according to RO, "customers have expressed their frustration in industry trade magazines over the manner in which ORC judges are enforcing the rules." HBPA questioned certain rulings and penalties, which it feels are "hampered by the pressure and the safety of going by 'the book'." The Association believes that the adjudicative process is becoming more complex and that these professionals require formal support through educational programs, for example.

Although significant resources have been allocated to investigations, adjudication has received less attention. According to RO, there is a need to improve judging: "Racetracks of Ontario would support a more direct focus on the traditional roles of the judges and stewards of the ORC, recognizing the significance for more support to people employed in this front-line position."

SHOP observed that, although the quality of officials is gradually improving "it will always be a work in progress for the racing Commission to better itself, through the judges." SHOP summed up the judging issue as follows:

The consistency of the judging, the fairness of the judging, is paramount, especially in situations where decisions are made that can be reversed on appeal. The bettors, whose numbers are shrinking, have lost their money on bad decisions. So proper decisions by the judges on a nightly basis are paramount to the future of the industry.

### *Application of Rules*

In addition to improved judging, stakeholders are calling for an overhaul of racing rules and their application. It was noted that a rules review committee has been established; however, the industry is concerned about the effectiveness of the consultation process generally, and in particular the “limited uptake of suggestions.”

According to the Ontario Harness Horse Association (OHHA), members of the industry have not received proper consideration in rule making, and in some instances, the ORC has implemented rules without the support of the entire industry. The OHHA recommended the adoption of

a clear and open process to discuss and implement any changes to the rules, policies and directives; a consistent set of rules and a transparent process that would ensure that rule violations and penalties are very clear to all; that would ensure that all ORC employees are accountable for any actions; that would leverage committees that have been formed to discuss rules and align on decisions; and that would ensure that people who volunteer for committees are treated with respect, and that their voice and experience provides weight to decision-making processes.

HBPA is supportive of the ORC and acknowledges its rule-making and regulatory role. However; “when there is unanimous consensus of the participants in our industry that a rule (proposed or existing) will not work, is unfair, is not needed or is just not practical, we believe that the stakeholders input should be considered with serious regard.”

According to SHOP, the essential rules of racing are in place, but require continuous refinement. The Panel indicated that an effective rules regime requires:

- transparency (i.e., a clear rationale for rules);
- decision-writing with clear reasoning; and
- an appeal mechanism.

### **Committee Recommendation**

#### **ORC’s Mandate—Regulation and Adjudication**

The Committee noted the concerns expressed by the industry’s stakeholders with respect to ORC’s interpretation of its mandate, particularly the scope of its authority. It was concluded that the industry’s regulatory framework requires clarification, and that the shortcomings in the application of rules and judging should be addressed.

The Committee therefore recommends that:

**1. The Ministry of Energy and Infrastructure should undertake a review of the scope of the Ontario Racing Commission’s mandate, with attention to industry regulation and adjudication. The Ministry should identify and resolve areas of conflict between these respective areas of responsibility. The review should account for the Commission’s mandate to ensure the safety of individuals and the welfare of horses, and to protect the interests of clients participating in wagering.**

### **ORC’s Mandate–Industry’s Commercial Interests**

Stakeholders suggested that the ORC has exceeded its mandate (“mandate creep”) to some degree, expanding its reach into the commercial activities of racetracks and horse people. RO indicated that the Committee’s challenge is to decide where regulation stops and the operation of private business starts. The OHRIA explained that this has been the case for approximately five years:

We in the industry believe that the industry itself should look after our own commercial aspects. . . . We think that the Ontario Racing Commission should, as we have specified their role, make the rules, regulate and be the regulator.

Several examples of how the ORC is gradually becoming involved in the industry’s business were addressed during the hearings:

- the Commission requires that trainers must have a contract with horse owners;
- racetrack gift shops require that salespeople be licensed under the *Racing Commission Act*, and
- issues related to contracts with horse people or with Pari-Mutuel people may entail the ORC’s involvement in mediation, resulting in the resumption of racing under the terms of a licence.

A representative of Great Canadian Gaming (who is also the director of Flamboro raceway and a director on the OHRIA board) explained that the absence of racing at Georgian Downs during the winter of 2007 was attributable to not having a contract with OHHA. RO explained the nature of the ORC’s involvement in the tracks’ commercial matters and noted that it is not an isolated case:

The Ontario Racing Commission called us to task . . . threatened our racing licence-and very strongly suggested that they mediate the deal between us and OHHA, which we chose not to do. We then chose an outside arbitrator, a retired justice, and we did get a deal done. In our opinion, it is not up to the ORC to interfere

with a private, commercial matter between us and, in this case, OHHA. It is up to the ORC, in my opinion, to regulate racing, not regulate the commercial aspects with which we deal.

According to RO, recent ORC policy decisions impinged on the business responsibilities of racetracks. Furthermore, these Board decisions are often not accompanied with explanation. RO says the Commission requires refocusing through a legislative amendment or other means to define its role and purpose in matters related to property, private contracts and economic regulation. OHRIA concluded that the commercial and economic aspects of the industry are not within the ORC's domain and that it should not be involved in commercial dealings between racetracks and respective horse people.

### **Committee Recommendation**

#### **ORC's Mandate—Commercial and Financial Involvement**

The industry's viability is dependent upon private contractual arrangements, based on financial decisions. The Committee noted that the ORC has a responsibility to protect the wider public interest, which includes the involvement of industry stakeholders.

The Committee concluded that responsibility for any oversight of commercial/financial dealings between racetracks and horse people needs to be redefined. At issue is whether the Commission's or another body's "oversight" is necessary. If oversight is required, the nature and extent of the involvement in property matters should be clearly defined, so as to avoid compromising market arrangements to the detriment of stakeholders.

The Committee therefore recommends that:

**2. The Ministry of Energy and Infrastructure's review of the scope of the Ontario Racing Commission's mandate should define the ORC's position with respect to private sector dealings, taking into account that the ORC's paramount responsibility is the protection of the public interest.**

## **LIVE RACE DATES AND THE SLOTS AT RACETRACKS PROGRAM**

### **Racing Dates**

The number of live race dates is important to the industry's viability and the wider provincial economy. According to the OHHA, there are 65,000 direct and indirect industry jobs in Ontario. "The multiplier effect of the horse racing industry [in Ontario] is approximately \$2.6 billion per year in estimated revenues." The industry has a secondary impact for industry suppliers (e.g., feed, transportation equipment, etc.). Investing in this industry is a long term prospect and a level of assurance is required that race opportunities will be available. The link between race dates and the Slots Program was noted by the OHHA:

[U]nder current practices, the reduction of race dates is an ongoing concern that we feel [OHHA] needs to be addressed. From the slot revenues, 4,100 jobs have been added to the rural economy, with an estimated annual payroll of \$154 million. This shows a direct impact that does generate down to the agricultural sector from slots.

The number of live race dates has increased since the introduction of the Slots Program. During this period, the annual figure rose from 1,457 in 1998 to 1,605 in 2008 (see appended tables), although wagering has been constant at approximately \$1.2 billion. The “approved” race dates for all breeds in 2009 is 1,644. In recent years, the ORC has required that race tracks conduct more races than the total number for which they applied.

The ORC says it approaches race dates through a “fair and transparent process,” and racetracks and stakeholders are involved in the establishment and allocation of race dates. The ORC explained the steps followed in the annual racetrack application process and the setting of race dates:

On an annual basis, we have each racetrack in Ontario make an application for a licence to operate its racetrack. Those racetracks must file certain information with their application—fire safety and protection plans, racetrack security plans, racetrack maintenance plans. They have to ensure that their track is surveyed. They have to submit the track rules that they operate under locally, audited financial statements. We require the racetracks now, in the last year or so—we're working toward [the] implementation of standardized financial reporting. Tracks have to provide backstretch improvement plans to back up their race date applications, their business plans, proposed race dates and so on.

We have a process for reviewing at the executive director level with respect to stakeholders on race dates—the applicant and horsemen's groups normally, or anyone else who's interested in commenting. We submit those applications for race dates to the public for comment. Where the circumstances require, the executive director will meet with the relevant racetrack and the horsemen's groups to try to work out any kind of problems with respect to race dates. Taking all of that information in, and with considerable consideration given to the diversity of interests between the various groups—the racetrack interests in terms of their business and the desire of the horsemen to want to race—a decision is reached and . . . A

decision is reached and issued by the executive director. That decision is subject to a hearing before an independent panel of the commission board and is reviewed, if there is an agreed party.

### **Slots at Racetracks Program**

The Slots at Racetracks Program was established to help the horse racing industry prosper. The Commission is in agreement with “the principles of the Slots Program to support live racing and enhance the rural economy.” However, the ORC noted that the horse people “see the Site Holder Agreement as a possible opportunity for tracks to increase profits by focusing more on the slot partnership than on the partnership with horse people.” The OHHA’s concern is that, if race dates are no longer offered, the slots would continue to run, and that no live racing means horsemen are out of business. If this trend continues, it will present a significant challenge to ORC, which has a mandate to ensure that live racing continues.

The Commission plans to address this issue through the introduction of industry benchmarks that would, for example, establish a measuring formula or guidelines for horse supply. Benchmarks will be introduced under the Commission’s mandate, acting as a facilitator to achieve agreement.

### **ORC and OLG Responsibilities**

Several issues complicate the ORC’s relationship with track operations, most notably the relationship between horse racing and the OLG. The central issue, we believe, is that these entities (ORC and OLG) that are central to the success of the industry function independently. The OLG enforces Site Holder Agreements which are integral to the financial success of tracks today, and the ORC’s mandate does not provide for involvement in Site Holder Agreements. For example, the ORC does not have input in the decision to install slot machines at a given facility.

Racetracks of Ontario described the relationship between racetracks and the provincial government as one of partnering “through the Ontario Lottery and Gaming Corp. and the Slots Program.” The ORC described its commitment to this Program:

[W]e work and do all we can to ensure that the maximum return goes back to the industry; not just racetracks, but horse people and the breeding industry, because we recognize the chain that feeds through the whole agriculture community. We have done and will continue to do anything at all possible to make sure that happens. I think, as we said earlier, Mr. Blakney's extension of the license, which is, in my recollection, a first, bears witness to how far we will go . . . .

According to the OLG, the presence of slot machines at racetracks is tied to horse racing; therefore, if a racetrack ceases to offer racing, the OLG's obligation to provide the Slots Program ceases. Race dates are not addressed in Site Holder Agreements and the ORC is not party to these contractual arrangements. If racing does not occur (i.e., not licensed) at a given track, the OLG would decide on the status of the slots, not the ORC. The OHHA is of the opinion that this should be addressed, noting that the Slots Program was developed to promote live harness racing.

### *Allocation of Slot Revenues*

The Committee raised the option of providing assistance in the form of slot revenues to racetracks experiencing financial difficulties. The ORC explained that this would be a policy decision. At Fort Erie, for example, the ORC acted to secure slot revenues for horse people:

One of the things we have done is to ensure that the purse account money, the horseman's side of the slot money, is secured. . . . We've worked with the racetrack and we've worked for the horsemen group to secure those ongoing funds while the slot facility continues to operate, and it would continue to operate given its extended licence with the racetrack now, as the given in-year, because they're in off-season.

The Committee asked the question: "Was there ever any relationship between ORC and OLG that created a model for how many slot machines—if the slots are there only—to help support the track?" The Commission explained that it does not regulate economic viability, and that it recognizes this reality in its decisions. The Commission has never been a party to OLG Site Holder Agreements with the various site holders.

The OHRIA commented on the current slot-sharing agreement and concluded that the formula (20% evenly shared by track and horsemen of the net slots proceeds going to the industry) should be maintained. The majority of net revenues (75% of the revenue from the slots) flow to the OLG.

### *Stakeholders' Role and Oversight*

OHHA suggested that stakeholders should be directly involved in decision-making affecting operations. It proposed the following:

- racetracks that benefit from tax breaks and the Slots Program should continue to fulfill the mandate to support and promote live racing in the province of Ontario; and
- the Site Holder Agreement should be adhered to in terms of revenue sharing—"The Slot[s] Program at racetracks is intended to promote live harness racing in the province and subsequently benefit the agricultural sector in Ontario and the OLG supports this endeavour."

OHHA also concluded that a third-party evaluation of the economic impact of fewer race dates and a shorter season business model is required. The objective

is to define the financial impact of decisions affecting the industry within a defined accountability regime:

We're looking for transparent decision-making with economic impact tabled and aligned with each decision, annual audits of decisions to ensure accountability by each decision-making party and, ideally, we're going to have collaboration of the OLG, the ORC, OHHA, CPMA (Canadian Pari-Mutuel Agency), WEG (Woodbine Entertainment Group) and other key industry leaders to ensure decisions are transparent and potential economic impacts are understood.

### **Committee Recommendation**

Horse Racing and the Slots at Racetracks Program

The Committee concurs with OHRIA's position—"no horses, no slots." Furthermore, it is of the opinion that race dates should not be compromised, recognizing that slots now play an essential role promoting investment in the industry. Racing and slots are very different forms of gaming, joined in the Ontario race track model.

The Committee therefore recommends that:

**3. All racetracks participating in the Slots Program should be required to provide live horse racing, given that they are complementary and inseparable entertainment venues, and acknowledged to be mutually dependent. In the event that a facility is not in a position to offer horse racing, the Minister should review the Prescribed Lottery Scheme Site Holder Facilities Agreement and decide on the racetrack's gaming option(s).**

## **ONTARIO HORSE RACING'S COMMERCIAL CHALLENGES**

### **Background**

The horse racing industry in Ontario has been confronted with challenging economic circumstances, even prior to the current global recession. As noted, it is the ORC's responsibility to keep tracks viable, relying on the revenues from the Slots Program. On the other hand, the ORC pointed out that it is not an economic regulator, and as such should not be directly involved in the business side of the industry:

Even though the Ontario Racing Commission has never really declared itself an economic regulator of the industry—it hasn't expanded its authority to get into the business of the industry in any way other than through regulation—we know that what we do [have] every day impacts

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on individuals, groups, associations and racetrack associations.

Current industry problems are attributable to various factors. The international and provincial economic circumstances have a bearing, in conjunction with regional marketing concerns. For example, the proximity of tracks to provincial borders, competing OLG gaming sites within the market area in Quebec and the United States (e.g., casinos), a decreasing customer base, and finite discretionary funds for recreational spending have had an impact on the recent fortunes of the industry.

On a secondary level, several operational factors have had an impact on the industry:

- the financial success achieved by tracks in addressing ORC operational conditions or criteria (e.g., addressing operational cost overruns) related to applications for race dates;
- facilities participating in the Slots Program with approved race dates that did not take place without sanctions (penalties) being levied against the track operator;
- facilities operating without a signed live racing contract;
- the Slots Program operating without live racing;
- erosion of the industry's customer base which is attributable to such factors as post 9/11, fluctuating exchange rates, competition from competing facilities including Buffalo, Gananoque, and Gatineau, Quebec, etc.;
- the industry's evolving operational environment (e.g., online wagering through unlicensed offshore betting); and
- additional government regulation in the licensing process (tracks are required to submit audited financial statements to prove their financial strength to maintain race dates).

### **Border Racetracks**

The Committee focused on tracks located in close proximity to the provincial borders with Quebec and the United States. These facilities have experienced unique financial and marketing challenges, in addition to the macro economic issues identified. For example, in the case of Fort Erie, the ORC is aware of the track's financial circumstances and has informed the Minister of Energy and Infrastructure of certain matters related to this facility. ORC's direct involvement has been limited to providing assistance in ensuring that the purse account money (the horseman's portion of slot money) is secured.

## Committee Recommendation

### Border Racetracks–Financial Challenges

While the Committee is concerned that all Ontario racetracks remain viable, the evidence indicates that there are unique financial circumstances confronting tracks in close proximity to provincial borders. The Committee concluded that these facilities warrant special attention to ensure their long term viability, offering both live racing with the Slots Program.

The Committee therefore recommends that:

**4. As part of the province’s proposed gaming strategy, the Ministry of Energy and Infrastructure should consider the financial circumstances confronting Ontario racetracks located in close proximity to provincial and international borders. These tracks should be reviewed as a distinct group, with the objective of developing a long term initiative to enhance their viability.**

## PROVINCIAL GAMING STRATEGY

### Strategic Planning Panel (Sadinsky Report, 2008)

The Committee enquired as to the status of the Strategic Planning Panel’s June 2008 report, chaired by Stanley Sadinsky, for the Minister of Government and Consumer Services, entitled “It’s All About Leadership: Strategic Vision and Direction for the Ontario Horse Racing and Breeding Industry.” The ORC acted as a resource to the panel and says it is awaiting the government’s response and policy directions.

During the hearings, the Committee heard from witnesses who said they were encouraged by an industry review that would consider various options, including the introduction of a Gaming Secretariat representing the horse racing industry, the government and the OLG; a more equitable distribution of resources; and certain remedies that would be discussed in consultation with industry representatives.

It is the Committee’s expectation that the Ministry of Energy and Infrastructure will address the fundamental issues confronting the industry to ensure

- the long term sustainability of the horse racing industry in Ontario;
- the integration of the Slots Program with horse racing at tracks across Ontario in a mutually supportive venue; and
- the development of a comprehensive provincial gaming strategy.

A timeline for the completion and implementation of the provincial gaming strategy has not been established. The Ministry provided the following update in March 2009:

The government is carefully assessing the Panel's recommendations to determine how best to promote and support the horse racing industry going forward. My ministry is developing a new, comprehensive gaming strategy that will provide policy direction for all sectors of the gaming industry in Ontario. Any policy decisions pertaining to the horse racing sector will be integrated into the upcoming provincial gaming strategy.

## **Stakeholders' Long Term Issues**

As a result of our hearings, numerous matters were raised by stakeholders who are of central importance to the Ministry's current industry review. As noted, some require immediate attention, whereas others may be considered in longer term restructuring remedies. This list is not meant to be exhaustive, and in some instances, matters addressed previously in this report have been revisited in the list.

### **Industry Management**

- Clarification of ORC and OLG mandate at racetracks (e.g., OLG's enforcement of Site Holder Agreements and ORC's role in ensuring funds are effectively invested in racetracks).
- Consideration of a new "single voice/facilitator" for the industry (i.e., a Gaming Secretariat acting as a conduit between the industry, government and the OLG) to provide a forum for discussions.
- The appointment of ORC commissioners by the government and an opportunity for industry stakeholders to participate in the selection of these candidates.
- Improved communication between stakeholders and the ORC, providing a dialogue between the regulator and the regulated.
- Decisions affecting the industry should require due diligence to ensure positive results (e.g., race dates and trading of horses).
- The need for improved decorum by participants and capital reinvestment in track facilities.

### Financial Accountability and Benchmarks

- The promotion of the economic growth of harness racing, addressing the following:
  - the reduction of overhead costs by offering fewer race dates or shorter racing seasons;
  - tracks not fulfilling contracted racing obligations (racing dates) and renegotiating with the regulator for reductions in race dates;
  - tracks requesting that horse people pay a larger percentage or take less commission from wagers, thereby transferring revenues from horse people to racetracks; and
  - limited capital reinvestment at some facilities, and tracks not investing in marketing and publicity.
- Industry's need for enhanced benchmarks (i.e., performance standards) for investments and improvements in live racing. In contrast, the slots side of the operation does not have similar problems, as the agreement requires on-site racing investment to enhance the sport.
- Pooling of slot funds for equitable redistributing among tracks.
- Introduction of standardized accountability measurements to assist the ORC in evaluating track business plans and race date applications.
- Introduction of a compliance accountability process evaluating track improvements.
- The ORC participates in the business plan review, but is not party to Site Holder Agreements (ORC's mandate does not include addressing deficiencies and the execution of plans).
- The industry requires track accountability support to promote the economic growth of Ontario harness racing (e.g., tracks not fulfilling racing obligations with regard to dates contractually agreed to, and resorting to the regulator for reductions in race dates).

### Business Planning and Industry Model

- Establish a single business model for stakeholders to resolve differences across the industry, thereby avoiding the conflicts experienced with multiple models. The ORC has committed to provide a facilitator to develop a common industry business model to provide stakeholders with a commonly accepted business approach and reporting methodology, which would cover such matters as reporting on industry activities and statistical data (e.g., methodology for establishing the availability of horses).
- Encourage economic growth within the industry through a long-term business plan engaging all stakeholders.

- Develop a long-term plan for standardbred harness racing within defined benchmarks.
- Redefinition of the ORC's role with respect to evaluating business plans for tracks and the application of race dates.
- The ORC needs to:
  - recognize the role of horse people as significant stakeholders in both operations and planning;
  - redefine the rules of the game, and consistently and stringently enforce such rules; and
  - provide transparency with regard to the rationale for and the enforcement of the rules.

### **Committee Recommendation**

#### Proposed Provincial Gaming Strategy

The Committee concluded that the horse racing industry requires a comprehensive review to ensure its long term success. As noted in the introduction to this report, since the 1990s the horse racing industry in Ontario has experienced structural changes necessitating a reconsideration of the relationship between the Ontario Racing Commission and industry participants. The development of a gaming strategy will provide this opportunity.

The Committee therefore recommends that:

**5. The Ministry of Energy and Infrastructure should complete its consideration of the Strategic Planning Panel's report (Sadinsky Report) of June 2008, in conjunction with the preparation of the proposed provincial Gaming Strategy, on a priority basis during 2009-2010. As part of this process, the Ministry should address the matters identified by stakeholders and summarized in this report.**

## **LIST OF COMMITTEE RECOMMENDATIONS**

### **ORC's Mandate—Regulation and Adjudication (pp. 3-7)**

1. The Ministry of Energy and Infrastructure should undertake a review of the scope of the Ontario Racing Commission's mandate, with attention to industry regulation and adjudication. The Ministry should identify and resolve areas of conflict between these respective areas of responsibility. The review should account for the Commission's mandate to ensure the safety of individuals and the welfare of horses, and to protect the interests of clients participating in wagering.

### **ORC's Mandate—Commercial and Financial Involvement (pp. 7-9)**

2. The Ministry of Energy and Infrastructure's review of the scope of the Ontario Racing Commission's mandate should define the ORC's position with respect to private sector dealings, taking into account that the ORC's paramount responsibility is the protection of the public interest.

### **Horse Racing and the Slots at Racetracks Program (pp. 10-13)**

3. All racetracks participating in the Slots Program should be required to provide live horse racing, given that they are complementary and inseparable entertainment venues, and acknowledged to be mutually dependent. In the event that a facility is not in a position to offer horse racing, the Minister should review the Prescribed Lottery Scheme Site Holder Facilities Agreement and decide on the racetrack's gaming option(s).

### **Border Racetracks—Financial Challenges (pp. 14-15)**

4. As part of the province's proposed gaming strategy, the Ministry of Energy and Infrastructure should consider the financial circumstances confronting Ontario racetracks located in close proximity to provincial and international borders. These tracks should be reviewed as a distinct group, with the objective of developing a long term initiative to enhance their viability.

### **Proposed Provincial Gaming Strategy (pp. 15-18)**

5. The Ministry of Energy and Infrastructure should complete its consideration of the Strategic Planning Panel's report (Sadinsky Report) of June 2008, in conjunction with the preparation of the proposed provincial Gaming Strategy, on a priority basis during 2009-2010. As part of this process, the Ministry should address the matters identified by stakeholders and summarized in this report.

## APPENDIX No. 1

### Comparison of 2009 Proposed Race Dates to Previous Year

Track	Approved 2009	Actual 2008
<b>Thoroughbred</b>		
Woodbine	167	167
Fort Erie	78	80
<b>Total Thoroughbred</b>	<b>245</b>	<b>247</b>
<b>Standardbred</b>		
Woodbine	128	115
Mohawk	115	116
<b>Total WEG Standardbred</b>	<b>243</b>	<b>231</b>
Flamboro Downs	225	218
Windsor	110	110
Rideau Carleton	153	149
Western Fair	130	127
Georgian Downs (Barrie)	108	105
Kawartha	104	102
Sudbury Downs	67	67
Hiawatha	52	52
Grand River (Elmira)	69	65
Hanover	31	31
Quinte (Belleville)		
Dresden	25	24
Clinton	20	20
Woodstock	27	27
<b>Standardbred Non WEG</b>	<b>1,121</b>	<b>1,097</b>
<b>Total Standardbred</b>	<b>1,364</b>	<b>1,328</b>
<b>Quarterhorse</b>		
Ajax Downs (Picov Downs)	35	30
<b>Total Quarterhorse</b>	<b>35</b>	<b>30</b>
<b>Grand Total</b>	<b>1,644</b>	<b>1,605</b>

Source: E-mail correspondence from the Ontario Racing Commission, Toronto, ON., 25 March 2009.

## APPENDIX No. 2

### Live Race Dates (1998-2007)

#### Ten Year Comparison of Live Race Dates

Track	Actual Raced									
	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
<b>Thoroughbred</b>										
Woodbine	169	162	164	167	163	166	165	160	165	171
Fort Erie	84	101	104	81	115	116	118	107	107	75
<b>Total Thoroughbred</b>	<b>253</b>	<b>263</b>	<b>268</b>	<b>248</b>	<b>278</b>	<b>282</b>	<b>281</b>	<b>267</b>	<b>272</b>	<b>246</b>
<b>Quarterhorse</b>										
Picov Downs	30	25	21	25	27	22	20	19	19	19
<b>Total Quarterhorse</b>	<b>30</b>	<b>25</b>	<b>21</b>	<b>25</b>	<b>27</b>	<b>22</b>	<b>20</b>	<b>19</b>	<b>19</b>	<b>19</b>
<b>Standardbred</b>										
Woodbine	148	179	177	184	146	157	155	108	133	159
Mohawk	105	80	80	74	110	103	102	154	123	100
<b>Total WEG Standardbred</b>	<b>253</b>	<b>259</b>	<b>257</b>	<b>258</b>	<b>256</b>	<b>260</b>	<b>257</b>	<b>260</b>	<b>256</b>	<b>259</b>
Flamboro Downs	223	258	258	259	257	259	259	260	255	255
Windsor	110	127	131	130	153	156	171	184	193	188
Rideau Carleton	154	150	149	129	125	141	155	118	95	74
Western Fair	129	125	117	120	99	99	98	98	87	92
Georgian Downs (Barrie)	93	117	117	118	102	101	25	48	50	52
Kawartha	105	104	111	103	107	79	87	54	50	50
Sudbury Downs	64	66	50	65	71	74	78	78	53	55
Hiawatha	52	50	61	67	61	65	73	78	57	50
Grand River (Elmira)	65	61	56	53	39	50	50	49	51	51
Hanover	31	30	31	31	31	31	31	17	21	21
Quinte (Belleville)	-	25	26	26	26	26	28	25	25	25
Dresden	25	24	22	21	20	20	20	18	18	15
Clinton	20	20	20	17	18	17	17	12	12	12
Woodstock	27	24	25	29	17	18	18	12	16	15
<b>Standardbred Non WEG</b>	<b>1,098</b>	<b>1,181</b>	<b>1,174</b>	<b>1,168</b>	<b>1,126</b>	<b>1,136</b>	<b>1,106</b>	<b>1,047</b>	<b>981</b>	<b>933</b>
<b>Total Standardbred</b>	<b>1,351</b>	<b>1,440</b>	<b>1,431</b>	<b>1,426</b>	<b>1,382</b>	<b>1,396</b>	<b>1,363</b>	<b>1,307</b>	<b>1,237</b>	<b>1,192</b>
<b>Grand Total</b>	<b>1,634</b>	<b>1,728</b>	<b>1,720</b>	<b>1,699</b>	<b>1,687</b>	<b>1,700</b>	<b>1,664</b>	<b>1,593</b>	<b>1,528</b>	<b>1,457</b>

Source: E-mail correspondence from the Ontario Racing Commission, Toronto, ON., 19 March 2009