



IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;

**AND IN THE MATTER OF THE APPEAL OF THE 2009 RACE DATES
APPROVED BY THE DIRECTOR FOR GEORGIAN DOWNS AND
WOODBINE RACETRACK (STANDARDTBRED)**

The Ontario Harness Horse Association (OHHA) appealed the Notice of Decision issued by the Director dated November 5, 2008 with respect to Georgian Downs and Woodbine Standardbred. A Notice of Intent to Appeal was also received by Woodbine Entertainment Group (WEG) with respect to the Woodbine Standardbred. The Notice of Decision detailed the Director's approval of the application to change its approved 2009 race date schedule from Great Canadian Gaming Corporation (GCGC) for Georgian Downs and the application to change its approved 2009 race dates from Woodbine Entertainment Group for Woodbine Racetrack (Standardbred), subject to the following:

Georgian Downs

1. GCGC submits a revised race date calendar to include 4 more race dates, bringing the total number of dates to 108, as approved in 2008.
2. The change in race date schedule is for one year only, the base year continuing to be 2008, and GCGC is required to reapply for the change in 2010 if it so desires.
3. To be considered, any submission for the cancellation of January and February 2010 must be accompanied by statistics and benchmarks, developed in cooperation with the Administration and the horsepeople's group to the satisfaction of the Director to demonstrate how the change has benefited live racing in Ontario.

This approval is subject to the Woodbine Standardbred 2009 race date schedule being conducted, as noted in Part 2 below.

Woodbine Standardbred

1. Cancellation of Sundays in January and February is not approved.
2. Cancellation of Sundays from November 15 through December 2009 is approved, subject to reconsideration by the Director in January 2009, following a review of the outcomes of racing in the fall of 2008.
3. WEG is to continue to provide the Director with statistics and analysis on a timely basis during the 2009 season, relating to the benchmarks outlined in the WEG business case.

On November 19, 2008, a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling, Vice Chair James Donnelly and Commissioner Brenda Walker convened to hear the appeal.

Maureen Harquail appeared as Counsel for the Administration. John Walzak and Brian Tropea appeared on behalf of (OHHA). Jamie Martin appeared on behalf of WEG and Chris Roberts appeared on behalf of GCGC.

Upon hearing the evidence of Wendy Hoogeveen, Director of Industry Development and Support for the Ontario Racing Commission, and horsepeople Terry Jackson, Michael Sinclair, Frank Cirillo, Stewart Quinlan, Anthony Haughan and Steve Byron, and upon reviewing the written submissions



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filled, and upon reviewing the evidence and hearing the submission of Counsel for the Administration, OHHA, GCGC and WEG, the panel denies the appeals.

The Panel's Reasons for Decision is attached to this Ruling.

DATED at Toronto, this 24th day of November 2008.

BY ORDER OF THE COMMISSION

John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. The Ontario Harness Horsemen's Association (OHHA) appealed the Director's decision regarding the 2009 live standardbred race dates for both Georgian Downs and Woodbine Racetrack. Woodbine Entertainment Group (WEG) appealed that same decision as it related to Woodbine's 2009 standardbred live race dates.

Background

2. Four parties participated in the hearing. They were the Ontario Racing Commission, (ORC) represented by legal counsel Maureen Harquail, the OHHA, represented by its Chief Operations Officer John Walzak and assisted by Brian Tropea, WEG, represented by its Senior Vice President of Racing Jamie Martin and Georgian Downs, represented by its Director of Racing, Chris Roberts. Pursuant to the ORC Rules of Procedure, Number 10.1 the parties agreed to combine the proceedings into one hearing.
3. Wendy Hoogeveen, Director of Industry Development and Support for the ORC, testified that the applications for 2009 race dates for both tracks conformed to Policy Directive No. 3-2007 (Ex. 2). That policy includes a number of indicators that are utilized for increasing or decreasing live race dates. Two vital considerations in the allocation of live race dates are providing racing opportunities for horse people and assessing the available horse supply to fill those allocated live race dates. Providing racing opportunities embraces more than scheduling dates sufficient to accommodate an unlimited and a potentially expanding horse population, many of which may be of sub-standard, quality wise. There is less reliance on those indicators for simply changing one date for another. The process for both applications included the circulation of the respective proposals, requests for additional information and the circulation of that information and comments from interested parties.
4. The 2009 race date allocation process resulted in the Director issuing a ruling on November 5, 2008 (Ex. 1, tab 3). This ruling allowed Georgian Downs to re-allocate its January/February live race dates to later in the year and required it to add four more days to bring its total live race days for 2009 to 108, the same number approved for 2008. The 2009 schedule was for a one-year trial period only. A number of benchmarks were to be jointly established to enable measurements of the experiment. The approval was also made conditional on the Woodbine 2009 standardbred live race dates going forward as approved. WEG had requested and was required via a previous ruling, to re-apply for 2009 to cancel Sunday live race dates for January, February, March, April and November 15 through to the end of December. The Director denied the application for the cancellation of the Sunday dates requiring the track to race Sundays in January and February leaving Woodbine with 128 live race dates for 2009 versus 120 for 2008.



5. It was the position of Mr. Walzak that neither application conformed to the Policy Directive No. 3-2007 and that both tracks should be forced by the Panel to race their previously approved race date schedules. In the case of Georgian, this would be their 2008 schedule and for Woodbine Standardbred, this would be their 2007 schedule.
6. With respect to Georgian Downs, Mr. Walzak admitted, as it relates to criteria #1 in the policy surrounding customer satisfaction and demand, that the pari-mutuel handle is lower in January/February. He referenced ORC Ruling GEN 002/2008 (September 12, 2009), regarding Western Fair Raceway application to cancel live race dates, as it related to the importance to remain in the marketplace. For Georgian, purse levels (criteria #2) were not an issue, nor was criteria #3, as he claimed there were adequate numbers of horses to fill the races. A number of Georgian Downs horsepeople testified as to the financial hardships the cancelled January/February dates would inflict on their respective stables. Mr. Walzak noted that the approved change would save the track money and wondered what was the financial status of the track (criteria #4). It was his position that the application did not address race date harmonization (criteria #5) and should be rejected on that basis alone. Regarding criteria # 6, motivation to conduct live racing, he suggested that this may be the first step to reducing live racing at the track.
7. Regarding the Woodbine application, Mr. Walzak argued that WEG should not abandon the Sunday dates, as it will facilitate the track's customers to move to some other product (criteria #1). Purse levels are not an issue (criteria #2) nor is horse supply (criteria #3) according to him. This position is dramatically opposed to WEG's position. The track's basis for its application was inadequate horse supply. Mr. Martin stated that WEG would gladly race the dates in question if there were horses available. WEG's horse supply difficulties are seasonal in nature but at times prevent it from offering full fields (minimum nine horse fields). Both OHHA (Ex. 4) and WEG (Ex. 7) supplied data that purported to prove their respective positions. WEG, as the recognized industry leader, places a premium on maintaining to a high quality of its racing product. Therefore, the track requires an adequate supply of horses that meet a certain quality standard so that they are competitive on the WEG circuit and be in the control by persons willing to race at WEG tracks. For reasons immaterial to this discussion, a substantial number of licensees prefer to race elsewhere where they perceive the competition to be less but still compete for sizeable purses. There were no other substantive matters raised related to the criteria related to the policy.
8. The Panel suggested that it was in the collective best interests of the parties that they should work together to develop an agreed set of criteria for determining horse supply data. Such information would be invaluable in determining answers to such critical matters.
9. Mr. Roberts asserted that cost was not an issue in the proposed re-allocation of the January/February dates. As per the application (Ex. 1, tab 9), the primary reasons for the change were issues of market fatigue, geographic location (winter) weather related stresses and the health and safety of staff, patrons and horsepeople. Mr. Walzak countered that there are other successful year round jurisdictions but Mr. Roberts noted



that those year round operations were not conducted at the same track. Georgian Downs provided information (Ex. 1, tab 7) that the change to three cards per week from two, will impact negatively on the average handle but that it will not have a material impact on racetrack revenues or purses.

10. Mr. Martin confirmed that the cancellation of the January/February dates at Georgian will impact positively on Woodbine horse supply, as it did in 2007 when Georgian was closed for those two months. He offered that the track could net about seven races per week. WEG focuses on the need to have betting pools that average a minimum of one million dollars or it risks losing customers to other competing products. That average is directly related to horse supply according to him.

Issue

11. Did the Director of the ORC follow the Commission's policy directive in awarding 2009 live race dates for Georgian Downs and Woodbine Racetrack (standardbred)? Is the decision by the Director to allow Georgian to re-allocate the January/February live race dates to later in the year and to have Woodbine race Sundays during January/February in the best interests of racing? Should tracks have the ability to respond to changing market conditions in a dynamic society?

Decision

12. After careful review of the testimony, the submissions and the evidence, the Panel denies the appeals of both OHHA and WEG.

Reasons for Decision

13. The over-riding consideration by the Panel is the good of racing generally. Inherent in this statement is the fact that this Commission remains committed to live racing. It embraces the objectives of the Slots at Racetrack Program wherein the MOU is clear that the program is to enhance live racing and the rural economy in Ontario. The term live racing can and does have a different meaning for different individuals. It is not the intent of this Panel to define it but simply recognize the variance. In the view of this Panel, live racing must be more than a means to distribute the revenues flowing from the Slot Program to horse owners. Live racing is a business as well and therefore must be guided by the realities of the business world for all the partners. Its raison d'être is entertainment. Therefore, the value (demand) the public places on the product horse racing offers versus competing offerings will determine its future.
14. The Director did comply with Policy Directive No. 3-2007. There was no breach. OHHA's submission, refined to its essence, is that under the policy directive, any change must be beneficial to horsepeople, fans and tracks. The Panel interprets the directive as to the greater good of the industry.



15. The Panel accepts the premise of the Administration that the 2009 approved live racing schedule for Georgian Downs should be viewed as an experiment for one year and that the change is not just a cost cutting measure. Georgian Downs should be given the opportunity, in this instance, to try something other than the status quo in an attempt to improve business for all the stakeholders (customer demand). It does not affect the track's baseline for establishing future live race dates. The track must apply to continue with the dates in 2010. The Administration, as well as both the track and horsepeople, will have the benefit of the benchmarks to measure the results of the experiment. In conducting this experiment, horsepeople will not lose any racing opportunities. In fact, with the Director's decision to link this experiment with Woodbine's Sunday live racing for January and February, more racing opportunities are available. The Panel does not see this move as a step to reducing live racing. The Director's ruling therefore, based on the aforementioned factors, is demonstrated to be in the best interests of racing.
16. As the testimony of the horsepeople vividly demonstrated, there will be a negative impact in a variety of areas, interruption of income for some, additional travel expenses and the like. The larger view relates to the welfare of the industry as a whole. In determining this issue, there must be an awareness of being immobilized, trapped by tunnel vision, and fixated on race dates, not as entertainment opportunities, but as a pipeline channelling money to horsepeople. The linkage (harmonization) between Georgian Downs and Woodbine with the net result an increase in live race dates reduces the negative impacts of the loss of the January/February racing at Georgian Downs.
17. Is there merit to a defined "season" versus year round racing at the same facility? This is a question that has broad implications for tracks other than just Georgian Downs. Horseracing faces a very competitive environment. It needs to come to grips as an industry as to how much product to offer, when best to offer it and what type of product the customer wants. The Panel recognizes the inability of the partners (tracks/horse people) to reach some agreement on these basic principles. Horseracing is not Wal-Mart but that is not to say it cannot learn from it. A good starting point would be for the respective sides to agree on the business model.
18. There is a substantial element of business decision in the race date issue. What is good for WEG is also good for the industry is beyond question, as indicated in the hearing. Mr. Martin admits that the Woodbine horse supply will benefit when Georgian is not racing in January/February. The data from 2007 supports this. The Panel authorizes the Director to monitor this situation and take action if necessary. If OHHA is correct that there is ample horse supply, there will be no issue for these two months or the other Sundays as the directive indicates.
19. The Panel directs the Administration to involve the parties in identifying benchmarks that will allow meaningful measurement of the changes and other pertinent data at both tracks. This is to include an agreed formula for identifying horse supply. This type of information is necessary to properly assess these changes and any other that may come forward in the



future. Horse racing cannot afford the luxury of being rooted in the past, it must adapt, but that is not to say the baby should be thrown out with the bath water.

20. With respect to the Western Fair decision, which relates back to criteria #1 of the policy surrounding customer satisfaction and demand, the evidence clearly showed that the dates the racetrack was attempting to drop were some of the best attended. Georgian Downs is not applying to drop dates but to transfer them to what they hope will be a better timeframe and in the process allow them to positively address the issues laid out in their application, i.e. customer fatigue, etc.. As well, Woodbine, thirty-five minutes from Georgian Downs, is still in the market on an expanded basis due to the linkage (criteria # 5 harmonization).

DATED this 24th day of November 2008.

Rod Seiling
Chair