



COMMISSION HEARING

TORONTO, ONTARIO – JANUARY 24 & 26, 2011

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

**AND IN THE MATTER OF THE ONTARIO RACING PROGRAM 2011,  
NOTICE OF DECISION BY THE DIRECTOR;**

**AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY  
THE ONTARIO HARNESS HORSE ASSOCIATION, GREAT CANADIAN GAMING CORPORATION,  
AND THE NORTHERN HORSEMEN'S ASSOCIATION**

### **REASONS FOR DECISION**

1. This Appeal proceeded on January 24 and 26, 2011. The Decision was released on January 27, 2011, with Reasons to follow. These are the reasons.

#### **APPEALS**

- The Ontario Harness Horse Association (OHHA) appealed the Director's Decision of December 10, 2010, objecting to his reductions in race dates.
- Great Canadian Gaming Corporation (GCGC) appealed seeking reduction of Flamboro Downs race dates.

2. The common feature for the two Appeals was opposition to redistribution of purse money amongst tracks. Otherwise the Appeals were totally divergent representing the extreme poles of the spectrum of race date allotment (give us more – give us less).

- The Northern Horsemen's Association (NHA) appealed seeking race dates at Sudbury Downs in December 2011.

3. Windsor Raceway Inc., (Windsor) represented by counsel Chris Kruba, was granted status. Windsor supported the Director's authority to order redistribution of purse money (specifically transfers from Woodstock and Dresden to Windsor) as an integral component of Race Date Framework for 2011.

4. As indicated in the Reasons for Decision on the preliminary jurisdictional motion, upon consent, all Appeals proceeded in one Hearing.

5. Standardbred racing in Ontario is at a crossroads. The future direction of the industry will follow the result of the race dates issue which is now before this Panel.

6. Steve Lehman, CAO for the ORC testified setting the background for all Appeals.

#### **BACKGROUND**

7. The evolution of race date allotment has been:

- Through the booming racing popularity in the fifties and sixties, race dates became much sought after.



- Through the seventies and eighties, although racing appeal had gone somewhat off the boil, race dates were still the subject of some competition.
- With the arrival of the slots era in the nineties, tracks enjoyed a second and more prolific source of gaming funds.
- The slot funds contributed substantially to increased purses and racing had a two/three-year resurgence.
- This was followed by an unrelenting progressive decline in fan support and mutuel handle.
- Race dates having lost their lustre became to some tracks a burden. Absent a viable fan base, there was reduced enthusiasm for providing races.
- Tracks by way of cost constraint sought to reduce the number of live racing dates.
- Thereby, the battle lines were drawn; tracks contending for reduction of money-losing dates, horse people opposing any reduction on the grounds of loss of opportunity to work. Annually, the ORC dealt with that confrontational impasse, all the while recognizing the relative merit in each position. The stalemate acquired an unmanageable dimension with tracks requesting reduction of 150 live racing dates in 2009. This led to the race date moratorium whereby tracks were required to race the same number of days in 2010 as in 2009. That hiatus was intended to provide opportunity for industry soul-searching.

8. The situation then developing was discussed in the Windsor Raceway Reasons for Decision (003/2010)

*21. In September 2009, confronted with a significant decline in race dates applications, the Commission instructed the Executive Director to undertake a collaborative industry analysis leading to a fact based determination of the number and distribution of race dates. In order to avoid a race date onslaught during the process, the moratorium was imposed. The purpose was to ensure a principled industry approach and remedy. The intention was to preserve the status quo pending an industry-wide review of race date allotment and associated issues. The governing premise was that cutting race dates was a superficial, ineffective remedy.*

*22. Windsor's problems are centred upon purse structure and horse supply. The reality is that horse supply follows bountiful purse money. A full field of competitive horses attracts wagering which supports the money cycle. Accordingly, Windsor's relief must come from realignment of purse structures and with it, horse supply. The ORC regarded this as the correct remedial path.*

*23. During the course of the moratorium, the ORC organized the remedial process involving an advisory group, an industry consultation group, a working group, technical groups, general industry input and the ORC Administration. Founding principles were established. Concepts were explored. Components of a solution emerged with such as racetrack classification, classification of racing, management of horse supply, standardization of race conditions, purse management with distribution aligned with pari-mutuel markets, aligning horse supply with demand, a management system for live racing and simulcasting and greater accountability and oversight in the industry.*

*24. This industry realignment was broadly and strongly supported. At the conclusion of that process, on September 9, 2010, the Commission approved in principle a Framework for race date allocation. The moratorium ended with adoption of the Framework which becomes effective January 1, 2011. With that Framework having been identified, the revised race date model continues to develop and will be the basis for allotting 2011 race dates.*



25. *The Framework will be refined by the Administration and the industry through the 2011 race date allocation period. With continuing industry input, long term implementation will evolve. A September 10, 2010 News Release introduced the ORC approval of the Framework to the industry.*

26. *Given that massive industry realignment, all premised upon the conclusion that cutting race dates is too simplistic an approach, Windsor's application could not succeed. As matters progress, race dates may well be cut. If so the reductions will be premised upon a principled approach not on a random hit and miss basis.*

27. *The Framework for race dates is an industry-wide strategy. Its implementation will require participants to think beyond today and seek a glimpse of tomorrow. The individual vision should not be restricted to "what's in it for me" but should include "what's in it for the industry". For these reasons, Windsor's application was dismissed.*

9. Purse money funds the industry. Purses in turn are funded firstly by a share of pari-mutuel wagering and secondly by a share of slot profits.

10. The slot funds are dependent on Government. The stated Government resolve underlying the massive slot contribution to the industry is to support live racing and the large agricultural sector of the economy. The slot money is guaranteed for the term of current agreements with the Ontario Lottery Corporation (OLG). After expiration, no guarantee. Governments and Government policy change. Government policy could be influenced by factors such as:

- A predominantly slot dependent industry.
- An industry with neither a plan nor the collective will to rehabilitate itself.
- An industry permitting itself to become almost exclusively a mechanism for distributing the slot dollar.
- As a result of the nature of horse racing, large portions of the purse funding may be distributed to racing operations beyond Ontario borders.
- If the return on Government investment were to be below anticipated standards the effectiveness of the entire support program could be called into question.

11. There are two courses of action for the standardbred racing community.

#### **THE FIRST OPTION**

12. Continue the annual track by track battle over reducing live race dates. The historical fact is that inflexible adherence to a policy of seeking and opposing race date reductions is a failed policy. More is needed on the positive side of the ledger.

#### **THE SECOND OPTION**

13. The second option is for the industry to help itself. There are two sources of funding; firstly, the Government and secondly, a successful industry in terms of fan support at the turnstiles and at the mutuel windows. The objective is to revitalize that second revenue source.

14. The underlying ORC response has been to adopt option two by devising and implementing strategies to put a new face on the industry. The Moratorium Policy Directive of September 24, 2009 (No.6-2009)



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ordered the Director to “Work in a collaborative manner with the industry to assess and evaluate the situation and to determine a course of action optimizing the number of race dates in the Province of Ontario.” So came into being the ORC Race Date Framework.

15. The Framework shifted from the procedure of dealing with race dates at each track in isolation to strategic deployment of race dates in the context of a province- wide program.

16. The formative process was:

- October 8, 2009, a Policy Directive ordering a 2010 moratorium on race dates.
- Followed by Director Blakney and CAO Lehman circulating amongst industry participants and groups to create momentum for change.
- The existing Industry Consultation Group which gives advice to the Director was consulted. By that Group’s suggestion, came the Working and Advisory Groups.
- By January 2010, basic principles were evolving
- February 1, 2010, a first draft of the founding principles was distributed across the industry.

17. The Working Group comprised of horse people and tracks was:

Horse people

|        |                      |
|--------|----------------------|
| COSA   | Bill O’Donnell       |
| NCRHHA | Sharla Daley         |
| NHA    | Bob Bodkin           |
| OHHA   | Don Amos (President) |

Racetracks

|                       |                                  |
|-----------------------|----------------------------------|
| Border tracks         | Pat Soulliere, Windsor           |
| Not for profit tracks | Ted Clarke, Grand River          |
| For profit tracks     | Bruce Barbour, Georgian/Flamboro |
| WEG                   | Nick Eaves, WEG                  |

The Advisory Group

|                                |                          |
|--------------------------------|--------------------------|
| Randy Bennett                  | Counsel for COSA         |
| Clay Horner                    | WEG                      |
| Darryl Kaplan                  | Standardbred Canada/Trot |
| Raz MacKenzie & Paula Wellwood | career horse people      |

18. To this stage, consultation and collaboration were in progress through:

- The original industry input as promoted by Blakney, Lehman.
- ORC Chairman Seiling holding paddock meetings at Flamboro, Mohawk, Grand River, Woodstock, Hanover and Dresden, all without objection.
- The existing Industry Consultation Group.
- The newly formed Advisory Group.
- The newly formed Working Group



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- As well there was advice from technical groups, Government consultation and through input from the ORC Administration.

19. In the course of consultation, all standardbred tracks and horse people's associations were invited to provide their model of how racing should be conducted. Their work product is found in Ex 1A (p. 56 – 59). This was presented to the Director about June 29, 2010. A revised version was presented to the Director about August.

20. Purse pooling amongst tracks was dealt with in that report from the industry. Purse pooling was seen as a method of getting away from the system of racing at small tracks where there was an abundant purse account but minimal fan support with racing conditions dictated by the amount of those purse funds. The preferred course in the best interest of the industry is to have the better class of horses redirected to places of customer interest – that is, send the money (and thereby the better horses) supply to the market demand. This would generate increased mutuel handle creating benefit across the industry. That increased mutuel handle benefiting both tracks and horse people is central to the Framework. The theme is a customer directed strategy. At the discussion stage, OHHA expressed qualified support for purse pooling between tracks which were under the control of the same entity, Ex 1A (p. 64).

21. Through the year, there were in excess of two dozen meetings with different consultation groups. Various communications went forward to the industry, a list of which comprises six pages.

**OHHA RE RACE DATES**

22. Mr. Lehman's evidence referencing the OHHA Race Dates Appeal was:

“They (OHHA) are basically still appealing - Woodbine, Flamboro, Western Fair, Windsor, Dresden and Woodstock, which is the bulk of the live date reductions, so to me, it kind of walked like a duck, quacked like a duck and still looked like they were asking for the moratorium back.”

23. Statistically, the “duck” analogy is supported as follows:

| Track        | Racing in 2010 | OHHA'S request For 2011 | Framework days For 2011 |
|--------------|----------------|-------------------------|-------------------------|
| Woodbine     | <u>135</u>     | <u>135</u>              | 129                     |
| Mohawk       | <u>108</u>     | <u>108</u>              | 98                      |
| Flamboro     | <u>225</u>     | <u>225</u>              | 199                     |
| Western Fair | <u>130</u>     | <u>130</u>              | 121                     |
| Windsor      | <u>111</u>     | <u>111</u>              | 92                      |
| Woodstock    | <u>27</u>      | <u>27</u>               | 23                      |
| Dresden      | <u>25</u>      | <u>25</u>               | 23                      |

24. For the eight tracks not appealed by OHHA there was a reduction of race dates as follows: (Rideau – 4), (Georgian – 3), (Kawartha – 8), (Grand River – 0), (Sudbury – 2), (Hiawatha – 6), (Hanover -1), (Clinton – 0).



25. Lehman testified that the Ontario Racing program, constructed on Framework principles, being introduced for the first time in 2011 is comprised of inter-related initiatives.

Management of purse money is integral to that race date model. By way of example, he cited Windsor, Dresden, Woodstock model (which tracks are under common ownership). The number of race dates awarded to those tracks under the Framework was dependent upon the availability of purses. A redistribution of purse monies amongst those three tracks was necessary to move the horse supply to the customer demand provided at Windsor.

26. If the purse redistribution is struck down, the validity of the race date allotment structure is destroyed. Further, the Framework concept involves reducing competition for horses by tracks having different purses for the same class on the same day. The tracks from which the money is moved are compensated by having fewer race days and hence larger purses.

27 The opening and closing of tracks in a certain region has been dovetailed by the Framework. That harmonization provides no gaps and reduced overlaps in the racing schedule. The allotment of race dates no longer is on a track by track basis. The allotment will be part of a province-wide racing network with an inevitable domino process if any significant adjustment is made. Mr. Lehman closed that analysis with this comment:

“This is a huge thing that they are asking us to do (reversing purse pooling and then readjusting race dates). To grant this approval we almost go back to square one and say we are going to have to redo everyone’s schedule.”

28 The Framework was approved by the ORC Board on September 9, 2010. On the preceding day, the Administration met with representatives of the standardbred racetracks in the morning and of the four standardbred horse people’s associations in the afternoon, OHHA was represented by President Don Amos and Executive Member, Paul Lindsay, and OHHA’s industry Liaison and Policy Advisor, Brian Tropea (as he then was – now Manager). Mr. Lehman’s notes made during the meeting refer to statements by Mr. Amos that OHHA had directly participated in the Framework process and agreed with the objectives. According to those notes, Mr. Amos went on to state:

- “That decisions should be based on facts and we don’t know all the facts.
- There is a need to work together and be more transparent in determining race dates.
- That horse people should have a constructive voice, not destructive.
- Each level must support each other. It is all part of one industry. Industry participants must work together and gain trust.”

29. Mr. Tropea is noted as having said that the Framework was a “tremendous start”.

30. Paul Lindsay is noted as having commented on a significant annual decline in the standardbred mutuel handle and that wagering was shifting to the thoroughbreds. He made the point that if the purses are “right” there will be “lots of horses”. That issue was addressed through Framework purse management.

31. At that stage, one day before Board approval, the ORC was getting signals from OHHA that it was supportive of the collaborative industry approach and the province-wide objectives of the Framework.



32. Following those statements by OHHA's Leadership, Director John Blakney advised that the implementation phase would commence immediately upon Board approval (given the following day). Mr. Lehman concluded with:

"I guess in a nutshell, OHHA's position, nobody was telling us to stop. They certainly were at least going along with and openly saying they were accepting the objectives."

33. Adoption of the Framework for fixing 2011 race dates ended the 2010 race date moratorium. A scheduling forum was organized with all tracks, the four horse people's group, breeders and others. OHHA participated in the day and a half meeting as the Group attempted to develop a racing schedule on Framework principles. The meeting continued about a month later with a specific schedule proposed to the ORC Administration by the entire Industry Group. That proposal was given general industry circulation. The Administration considered the resulting opinions and feedback, all of which became elements in the Director's decision on race dates. Implementation of the Framework involved identification of performance indicators and ORC collaboration with track operators and race secretaries. The ORC follow-up includes quarterly meetings with tracks and horse people's associations. An ORC committee has been set up to deal promptly with concerns as they are identified. 2011 will be a transitional year. As difficulties are identified, modifications will be made.

34. Immense Administration resources have been committed:

- To devise the program.
- To do so in a fully collaborative manner.
- To make the program known industry-wide.
- To implement the changes.
- To monitor and correct and improve again relying on full industry participation continuing through this stage.

35. The Appeal by OHHA was not anticipated. OHHA, of course, has a right to change, even reverse policy or opinion. That may happen with a change in leadership.

36. Under the OHHA format horse people are racing essentially for purse money provided by the Government. No plan has been disclosed to revive the fan base and mutuel handle for live racing.

37. The public interest in standardbred racing requires departure from fixation on the failed strategy of refusing to cancel a race date. The fallout from excessive race dates with supply grossly exceeding customer demand is a downward spiral. Race dates operate at a loss, tracks confronted with chronic loss have reduced amenities and customer relations suffer.

38. The industry peril is that Government may devise better ways to support the agricultural sector in terms of funds arriving at the intended destination. The industry stance of confrontation followed by confrontation has a self-destructive component and may hasten that policy change. The cohesive momentum achieved through a long series of Framework consultations will be eroded by indecision and delay. Since the early bloom following introduction of the Slots Program in 1997, there has been a relentless progressive deterioration in facilities offered to horse people and patrons. Backstretches have closed with consequences on stabling availability and cost, training facilities and costs in terms of travel, convenience and manpower. Tracks have closed for training in the off season. Dining rooms have disappeared; facilities for food and beverage have diminished in number, declined in quality or disappeared. With little or no amenities, patrons are shuffled off the premises with the last race. Close



at hand are the Casinos, all user friendly, quality food available at all hours at reasonable prices, free coffee and soft drinks, the premises clean, well managed and secure, courtesy of the Ontario Lottery Corporation standards.

39. In some cases, little or no attempt has been made on the horse racing side to compete for customers. Whatever the intent has been, the effect is to herd racing patrons to the slots parlours. The slot dollars abundance and ease of acquisition have degraded the racing industry. Consequent on that degradation, tracks aggressively pursue cancellation of race dates because race dates operating at a loss reduce slot profits.

40. The foregoing comments deal with a general situation. There are exceptions. Certain tracks have maintained and improved standards (such as WEG tracks, and Grand River).

41. If the rank and file in the industry simply look around, only willful blindness could prevent observation that customer service is in shambles. That rank and file has a two-fold stake in what has befallen the industry. Firstly, in their own interest to embrace a long-term rehabilitation program secondly, in the industry interest. Children are absorbed into the family racing operation. They come to love the horses, the sport, the business, the lifestyle and the people. Unless this generation acts wisely, promptly, and resolutely, there will be nothing but bare bones for the next generation.

42. The 2010 race date applications were down by 150 days. The 2011 race date applications were down by nine more days, to 159. There could be a further onslaught on race dates:

- The proposed Georgian/Flamboro six-month circuit would be for 160 days in total for both tracks.
- Based on projected available purse funds, Windsor could be reduced to 66 days.

43. Those aggregate reductions would be:

|                         |             |
|-------------------------|-------------|
| Flamboro from 195 to 80 | = 115       |
| Georgian from 109 to 80 | = 39        |
| Windsor from 84 to 66   | = <u>18</u> |
|                         | 172         |

44. A lifeline has been thrown to the industry in the form of the ORC “Framework” which provides a “revised race date model for horse racing in Ontario.” The principles underlying the Framework are:

1. Enhance live racing and provide benefit to the agricultural sector in Ontario.
2. Provide a fair return on investment over the short term while protecting value for owners and communities over the long term.
3. Provide customer-focused competitive racing by recognizing both supply and demand.
4. Take a self-sustaining approach, using funds raised through public policy to enhance this self-sustaining economic model for horse racing.
5. Encourage and provide incentives for live racing.
6. Be simple and objective.

45. The parameters developed through application of Framework principles are:

- Community-based tracks should operate from May until Labour Day weekend.





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- Conflicting dates within reason should be resolved wherever possible.
- Seasonal start and end dates should be coordinated between tracks to reduce or remove overlaps and gaps.
- Certain longer term proposed structural changes could be tested through the use of “pilot programs” incorporated in this schedule.
- Accepting that a phased-in approach is being used. Under year 1 the staff assumed purse monies would move between race tracks in certain limited circumstances.

46. Financial standing is incorporated in principle number two. As will be later discussed, Flamboro contends for a ratio between slot revenue and race dates. Such an approach is too simplistic in that it ignores other five valid principles.

47. The twin pillars underlying the Framework are:

- Movement of purse funds to active wagering markets thereby attracting more and better horses.
- Uniform province-wide race conditions to place the horses in the class to which they belong. The best horses should race against each other. To have them drop down to a regional track to easily win a comparable purse over lower class horses has several downsides. Others are deprived of reasonable opportunity to race for that first place purse. It will be a disincentive to other horses to fill the card racing for second money. It inhibits mutuel activity by the favourite going off the board at one to nine or thereabouts. Full fields of competitive racing promote wagering.

48. The Framework introduces preference for Ontario based horses designed to create more racing opportunities for that class of horse. Tracks will not be classified. Races will be three categories designated as Premier, Signature and Grassroots, all differentiated by the purse structure. The Premier Class is designed to support the international status of top flight Ontario racing.

49. **The race dates assigned by the Director’s application of Framework principles are:**

| Track           | 2010  | 2011  | Decrease | Increase |
|-----------------|-------|-------|----------|----------|
| Clinton         | 20    | 20    |          |          |
| Dresden         | 25    | 23    | 2        |          |
| Flamboro        | 225   | 199   | 26       |          |
| Georgian        | 106   | 105   | 1        |          |
| Grand River     | 68    | 69    |          | 1        |
| Hanover         | 31    | 32    |          | 1        |
| Hiawatha        | 53    | 47    | 6        |          |
| Kawartha        | 104   | 96    | 8        |          |
| Rideau          | 155   | 158   |          | 3        |
| Sudbury         | 65    | 66    |          | 1        |
| Western Fair    | 130   | 121   | 9        |          |
| Windsor         | 110   | 92    | 18       |          |
| Woodstock       | 27    | 23    | 4        |          |
| Woodbine/Mohawk | 241   | 227   | 14       |          |
|                 | 1,360 | 1,278 | 88       | 6        |

Total reduction - 1,360 - 1,278 = 82



**50. The race date calendar proposed by the ORC at the November 2 & 3, 2010 Race Date Scheduling Forum was:**

| <b>Track</b>    | <b>2010 Dates</b> | <b>2011 Proposed</b> |
|-----------------|-------------------|----------------------|
| Clinton         | 20                | 18                   |
| Dresden         | 25                | 23                   |
| Flamboro        | 225               | 195                  |
| Georgian        | 106               | 109                  |
| Grand River     | 68                | 69                   |
| Hanover         | 31                | 32                   |
| Hiawatha        | 53                | 46                   |
| Kawartha        | 104               | 96                   |
| Rideau          | 155               | 158                  |
| Sudbury         | 65                | 66                   |
| Western Fair    | 130               | 121                  |
| Windsor         | 110               | 84                   |
| Woodstock       | 27                | 22                   |
| Woodbine/Mohawk | 241               | 226                  |
|                 | 1,360             | 1,265                |

Total reduction – 95.

**RESULT OF THE LONG COLLABORATIVE PROCESS**

51. At conclusion of the 2011 race date process, when the time came to stand up and be counted the following resulted:

**Accepting or acquiescing in the Framework Tracks**

- Clinton
- Dresden
- Georgian (opposed purse pooling)
- Grand River
- Hanover
- Hiawatha
- Kawartha
- Rideau Carleton
- Sudbury (appeal unrelated to Framework deals with shortening the winter “dark” season)
- Western Fair
- Windsor
- Mohawk
- Woodbine
- Woodstock



### **Horse people's Associations**

- COSA
- NHA
- NCRHHA

### **Dissidents**

- The only appeal against the allotment of race dates pursuant to the Framework is this by OHHA.
- Rideau Carleton has reserved its right to appeal pending a watching brief on this Appeal and assessment of the impact of racetrack licensing conditions.
- Hiawatha appealed on grounds of financial hardship. The Appeal is in abeyance pending assessment or intervention by the Director.

### **Expression of support**

- Mr. Barbour, speaking for Flamboro, indicated that Georgian and Flamboro have temporarily shelved their request for a six-month and six-month circuit. The reason being that: "We think Mr. Lehman is on the right track." (with the Framework).
- In the NHA presentation, Cheryl Danyluk endorsed "The diligence of the Director in applying the Framework to Sudbury Downs."
- Reg Ash, speaking on behalf of Western Fair which was granted status on the Hearing, made insightful commented:
  - WFR supported the call for a new model for racing in Ontario, endorsing a collaborative approach.
  - Without change, the chronic ailments continue. Too much product, declining wagering.
  - Change is inevitable.
  - The solution cannot be all things to all people.
  - The consultative process was thorough, all inclusive and provided multiple opportunities for support or dissent.
  - WFR supports the 2011 race date model with a harmonized calendar. Meshing with neighbouring tracks, purse parity which will drive horses to where they belong and increase racing quality.
  - "It is our view that the industry needs to take ownership of the model and through ORC facilitation work on monitoring and amending the model within principles established as deemed necessary through continued collaboration with all stakeholders."
- WEG, also granted status, was represented by Jamie Martin who reported emergence of encouraging statistics at Woodbine in 2011. WEG endorsed the Framework. In demonstration thereof, it moved to a three-race condition sheet and in context of the Framework introduced on a trial basis, a guaranteed Starter's Fee for standardbreds. Somewhat off topic but of interest and impact, he reported that the Grassroots Final would be showcased at Mohawk in the fall, which can only be for the good of the industry.

- WEG described current progress on the Framework as a “good start”. This statement followed WEG’s full and active participation through the 14-month evolution of the Framework.

52. Strategy is dictated by circumstances. Racing circumstances have been subject to gross revision in the last ten years. Has the time come to rethink and react to existing circumstances? If the industry is to elevate itself beyond current status, the industry rank and file will be the cause. Education and recruitment of that rank and file could be accomplished through OHHA. What better result than a unified industry taking the long view. For example, “yes, we will race for less money now but we do so in order to build for the future of ourselves and our families.” OHHA has had monumental impact for the good of racing. It retains that potential. OHHA support for the Framework would be decisive.

### **PURSE MANAGEMENT (THE PURPOSE)**

53. With abundant slot funds, purse levels at Woodstock and Dresden are high. The mutuel handle is low. The strategy is simply to move some of the abundant Woodstock and Dresden purse money to the Windsor market. Move the supply to demand. The horses will follow. The three tracks are in common ownership.

54. The advantage of directing horse supply to the proper market can be demonstrated at Woodbine where per race wagering may be \$110,000. That same horse could race in a lower class at Woodstock for a slightly reduced purse. The wagering handle for the entire race card may be \$10,000. Bringing the horse supply to the proper market is in the best interest of the industry.

### **THE FLAMBORO APPEAL SEEKING A REDUCTION IN RACE DATES**

55. The Flamboro Appeal is framed as a denial of natural justice and procedural fairness in that the Director:

- Failed to consider relevant evidence of Flamboro’s financial situation.
- Failed to apply ORC policy as provided by the Framework.
- Failed to provide adequate reasons for his decision.

56. The relief claimed is approval of its application for 2011 race dates (185 days over ten months). In fallback that the race dates awarded by the Director should be over 10 months and not 11 months. The essential thrust of the Flamboro submission was:

- Revenues from slots and racing do not cover the cost of operation. Financial statements record a substantial annual loss.
- A more sustainable financial performance would be achieved if less horse racing were to be offered thus matching supply to demand.
- Tracks with greater slot revenue than Flamboro provide fewer race dates. This places a disproportionate economic burden on Flamboro. There should be a defined and predictable relationship between the amount of slot revenues and the number of live race dates.

57. The starting point or determination of the Flamboro issue is that there must be a commitment to live racing. The ORC’s commitment is inherent in the statutory obligation, “To govern, direct, control and regulate horse racing in Ontario.” The track’s commitment is imposed by the terms of the Slots at Racetracks Program and Siteholder’s Agreement.



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58. That the horse racing industry may require support was contemplated by both parties at the time of the Site Holder’s Agreement as evidenced by the “promote” provision in the contract. Because horse racing has not been self-sustaining, this partnership with Government came into being.

59. The Government foresaw that circumstances may unfold so that racing requires support. That time is now. Recipients of the slot beneficence must not turn their backs on racing. Nor should racing stand at Government’s door, hat in hand, seeking a perpetual series of handouts.

60. General acceptance across the industry is that the current racing model is obsolete. Racing must move beyond dysfunctional trench warfare over race dates.

61. Flamboro financial statements reviewed by the Deloitte accounting firm disclosed losses:

|      |           |
|------|-----------|
| 2009 | 759,000   |
| 2008 | 2,959,000 |
| 2007 | 771,000   |

62. Based on those losses, a substantial reduction in race dates is claimed. Those figures were accepted by the ORC Administration as accurate. However, analysis mitigates their impact.

63. Flamboro is a wholly owned subsidiary of Great Canadian Gaming Corporation (GCGC). These losses are for Flamboro, not GCGC. The March to Profitability by Flamboro is controlled by the legitimate business activity of GCGC.

- On July 2, 2005, GCGC purchased Georgian for \$50,000,000 and on October 19, 2005, Flamboro for \$79,800,000, both fully leveraged. In Flamboro’s case, the funds were provided solely by GCGC. Interest on that loan is charged at 8% per annum. Amortization charges as disclosed by Flamboro financial statements have been 2009 (\$4,846,000), 2008 (\$4,986,000), 2007 (\$4,865,000).
- The Flamboro purchase was \$22,199,000 for hard assets with the balance of \$47,000,000 essentially for the slot operation. (intangible assets)
- Management fees are charged against Flamboro by GCGC 2009 (\$1,086,000), 2008 (\$1,098,000) 1007, (\$418,000). The management or service fee includes 15% markup above the stated head office costs.

64. Those transactions represent a substantial transfer of cash from subsidiary to parent, all perfectly legitimate, and undoubtedly governed by corporate policy. For strategic reasons, there may be no rush to achieve black ink status at Flamboro.

65. There are three revenue streams a Flamboro all of which are predominantly stable:

|                                     |               |               |               |
|-------------------------------------|---------------|---------------|---------------|
| • <b>Slots</b>                      | <b>2009</b>   | <b>2008</b>   | <b>2007</b>   |
|                                     | \$12,439,000  | \$12,998,000  | \$12,091,000  |
| • <b>Track</b>                      | <b>2009</b>   | <b>2008</b>   | <b>2007</b>   |
|                                     | (\$3,607,000) | (\$3,890,000) | (\$3,988,000) |
| • <b>Food, beverage &amp; other</b> | <b>2009</b>   | <b>2008</b>   | <b>2007</b>   |
|                                     | \$3,650,000   | \$4,184,000   | \$4,128,000   |



66. The parent company, being devoted primarily to gaming, may see the slots operation as a more attractive enterprise than racing. The breakdown of the purchase price would certainly so indicate. In that event, a reduction in race dates may be seen as a legitimate corporate objective. In that scenario, although the revenue stream at Flamboro is vigorous, a black bottom line may not be today's first priority.

67. GCGC corporate strategy was not the subject of a detailed evidentiary analysis at this Hearing. Accordingly, no such finding is appropriate. It cannot be said on this evidence that corporate strategy is to reduce race dates. However, the following evidence underlies Mr. Lehman's suggestion "Walks like a duck, quacks like a duck...."

68. The parent company's (GCGC) background in "promoting" racing has been:

- Sandown Park on Vancouver Island - purchased as a going concern engaged in racing. Racing has closed. The facility exists as a teletheatre for wagering.
- Fraser Downs (formerly Cloverdale has had racing dates reduced by an estimated 20% during GCGC ownership).
- Flamboro Downs raced about 258 days when acquired by GCGC. Their original business case forecast 5 years with 258 race days per year. Within 4 months, GCGC applied for a reduction of race dates.

69. Flamboro dates have been:

2007 - 223; 2008 – 218; 2009 – 225; 2010 – 225 (moratorium). For 2011, Flamboro applied for 185 days with 2 months dark. GCGC has proposed a 6-month circuit between its Georgian and Flamboro tracks. That would reduce the historically reliable Flamboro market to 80 race dates.

- When GCGC purchased Georgian, there were 117 race dates. Each year there has been an application for fewer race days. Currently, Georgian has been allotted 109 dates. The projected Georgian/Flamboro circuit would reduce Georgian to 80 days.
- Marketing and promotion costs disclosed by Flamboro financial statements have been in precipitous decline:

|      |           |
|------|-----------|
| 2007 | \$852,654 |
| 2008 | \$417,387 |
| 2009 | \$194,000 |

(in successive years reduced by in excess of 50%)

70. Those reductions were said to be influenced by a change in the method of the manner of recording recovery from OLG for free soft drinks and coffee provided to patrons– nonetheless, a consistent pattern of reduction.

- There has been a vigorous increase in management fees charged by the parent company GCGC:

|      |             |
|------|-------------|
| 2007 | \$ 418,000  |
| 2008 | \$1,098,000 |
| 2009 | \$1,086,000 |



71. That course of conduct is to be assessed in the context of the obligation under the OLG Siteholder's Agreement. The burden imposed is more than to provide or support live racing. The Agreement obliges Flamboro to promote live racing. Promote must surely be more than provide. Promote must include the concept of "furthering the progress of" live racing.

72. The obligation imposed on the track is buttressed even more by the provision in the Siteholder's Agreement to:

"Benefit the agricultural sector in Ontario through support to the horse racing industry."

73. With a fully leveraged \$79.8 million dollar purchase price to be serviced, arrival at profitability may require a reasonable passage of time. When Flamboro arrives at profitability is very much a function of GCGC corporate policy. If intra-corporate expenses were to be attacked as persistently as racing dates, Flamboro could readily be profitable.

74. Not wishing to suggest or criticize corporate policy but rather approaching the issue as a problem in arithmetic, the 2009 deficit of \$759,000 could be made to disappear as follows:

- Essentially the Flamboro operation of racing and slots in 2007 was the same as in 2009.
- Maintain the 2007 management fee at \$418,000  
Saving  $(\$1,086,000 - \$418,000) = \$668,000$ .
- Forego the 15% surcharge included in the 2007 management fee  
(115% = \$418,000) (100% = \$363,478)  
Saving  $\$418,000 - \$363,478 = \$54,522$ .  
Thereby the 2009 loss of \$759,000 would be reduced to \$40,428.
- That loss of \$40,428 could be eliminated by reducing the 8% interest rate on money owing to the parent company. For example, the amount of the reduction could be proportionate to the reduction in the prime rate.
- Recovery of GCGC's capital loan is by the amortization payments (2007, \$4,865,000) (2008, \$4,986,000) (2009, \$4,840,000). Amortization is an expense that allocates the cost of an asset including interest over the period of time the asset is used to deliver its service. Blended payments of principle and interest are scheduled over that interval. Extending the recovery period would reduce the annual payment thereby contributing to earlier profitability.

75. In that scenario, Flamboro would be in the black. Race date objections based on red ink would disappear. All of this is simply to bring into focus Mr. Lehman's analysis:

"Flamboro's financial statements are what they are. The issue is why are they that way?"

76. In order to answer the "why" raised by Mr. Lehman, the ORC must have access to financial information from the parent company which controls Flamboro's passage to profitability. If that disclosure demonstrates verification of the hardship, then further consideration may be appropriate. Without that disclosure the hardship claim stands unresolved.

77. No claim based on impecuniosity has been advanced. In such circumstances the Director may consider alternatives to keep the enterprise in business.



78. The purse structure at Flamboro will be infused by the redistribution of funds from Georgian. Fewer race dates will further increase the purse for individual races.

79. Flamboro's submission was that the ORC did not seek further financial information. The obligation is on the race date applicant to provide information supporting its position.

### **THE DIRECTOR'S DECISION**

80. The Director approved Flamboro for 199 days racing in 2011 with no live racing in October when there are sufficient racing opportunities in the Central West region. The one-month closure dovetails with the limited horse supply following the ending of the stakes season. The application for a two-month shut down was considered excessive.

81. In terms of procedural fairness and natural justice, Flamboro had full opportunity to make submission on an equal basis with all other tracks. There has never been a direct relationship between slot proceeds and the number of race dates. The Framework does not determine allotment of race dates exclusively by consideration of finances. That is but one of the criteria. The inappropriateness of reducing race dates in a reflexive response to claims of financial hardship was discussed in the Windsor case. The Director did not repeat those reasons as the issue had recently been fully vented (003, 2010). The quest is for a remedial response as opposed to a destructive reaction. That simple theme brought the industry together in unprecedented fashion and so the Framework was conceived and implemented.

82. The Panel finds that the Framework for Ontario racing has been fairly and reasonably applied to Flamboro. No basis for revision exists. Flamboro's Race Date Appeal must be dismissed.

83. The Director has undertaken a "financial review" of the Flamboro racetrack operation and related companies in response to management's claim that the race dates awarded are excessive.

### **OHHA'S APPEAL FOR INCREASED RACE DATES**

84. OHHA's Notice of Appeal drafted prior to consulting counsel stated:

"It is the OHHA position that there should be no change to the Ontario horse racing model and that the moratorium on race dates should be extended for the 2011 racing season until further studies and consultation are complete."

85. An Amended Claim for Relief was filed by Counsel seeking an Order requiring minimum live racing dates as follows:

|              |                                  |
|--------------|----------------------------------|
| Woodbine     | 135 (winter racing 5 days/week)  |
| Mohawk       | 108                              |
| Flamboro     | 225 (12 months)                  |
| Western Fair | 130                              |
| Windsor      | 111                              |
| Woodstock    | 27                               |
| Dresden      | 25                               |
| Georgian     | 105 as ordered but for 12 months |





86. OHHA also seeks an Order prohibiting redistribution of purse funds as indicated by the Director's Order:

- From Georgian to Flamboro
- From Woodstock and Dresden to Windsor

87. The claimed basis is:

- No adequate business case has been demonstrated in support of the reductions.
- The perceived harm is to the industry and its participants.
- Purse redistribution is without authority and would have a negative effect by limiting the quality of racing at certain tracks.

88. OHHA appeals the WEG track race dates (Mohawk, Woodbine) although it has no status as bargaining agent for horse people at those tracks. Historically, OHHA had acted for those horse people. However, irreconcilable differences arose and WEG refused to deal with OHHA. WEG horse people organized the COSA group which now bargains with WEG. OHHA's status on the appeal arises from the fact that some of its members race or may race at WEG tracks

89. OHHA's opposition to reduction of race dates is premised upon the theory that a cancelled race date is a lost opportunity to work and earn. This concept of lost opportunity was the subject of various rationalizations during the Hearing. For example, synchronization without adding race dates may add opportunity by eliminating the situation whereby on the same date a race may be written at three separate tracks with identical entry conditions.

90. OHHA's opposition to reduction in race dates has much merit. However, that it is not the sole factor. The challenge is to give that proposition proper weight in the race date debate.

91. The Framework formula results in 95 fewer racing dates, a very substantial reduction indeed. In demonstration of the appropriateness of that cutback are similar reductions negotiated by the two largest horse people's groups.

- COSA negotiated a reduction at WEG of 8 days for 2011.
- OHHA negotiated a reduction of 8 days at Kawartha for 2011.

92. OHHA's Race Date Appeal is essentially an attempted repudiation of the Framework. By Reasons on the Preliminary Motion to dismiss the, the Panel ruled: "There is no jurisdiction either in totality or substantial result to reverse the Framework as an ORC policy.'

93. Brian Tropea, General Manager for OHHA, was the only witness called by OHHA. He described OHHA awareness of the Framework by participation throughout the 14-month collaborative stage. He professed failure to understand the detailed implementation. That misunderstanding led to new direction at OHHA and this Appeal.

94. The issue of support for the Framework was never put to the general membership either by way of information or vote. OHHA policy was the prerogative of the association leadership. Historically, leadership had come from within the ranks. For about ten years, the presidency did not change, then in close succession it passed from Jim Whelan to Darryl McArthur to Don Amos to Ken Hardy. Whelan,



McArthur and Hardy have long-standing OHHA experience. Amos came from a background with the Stronach/Magna racetrack era. Amos was at the OHHA helm through the fourteen-month consultation process. During that interval OHHA participated in, appeared to support, and at no time voiced opposition to the Framework. As the Framework initiative moved from formative stages to implementation, Amos left office. With Hardy's ascendancy, OHHA reverted to its prior policy of steadfast opposition to race date reductions.

95. Tropea presented as knowledgeable, well-prepared articulate and able to think "on his feet". Nonetheless, there was a tinge of the advocate witness in his evidence. Clearly he was contending for a certain result. Assessment of the OHHA submission requires a careful assessment of his evidence.

96. A specific instance of the "advocacy frailty" was in relation to his claimed lack of understanding of the detail of the Framework. That lack of understanding seems unlikely in this confluence of events:

- Tropea is a longtime harness horseman now in a position of responsibility with OHHA.
- A dramatic change is proposed for the industry.
- His close connection with the 14-month progression leading to the Framework.
- His obvious native intelligence.
- In 2010 he attended a two-day industry-wide forum.
- Was provided with the project brief for the forum.
- That brief stated the goal of the forum:  
"For industry participants to work collaboratively to develop a base 2011 Ontario standardbred race date schedule, using the founding principles of the race date Framework."
- In attendance were representatives of racetrack operators, horse peoples' Associations, ORC Administration as well as other industry members.

97. The brief for that forum identified the:

- Purpose
- Goal
- Desired outcomes
- Role of participants
- Task definition
- Application of the Framework
- The Framework concept
- Proposed criteria for awarding race dates
- The effect of those criteria as follows:
  - Demand for product trumps all
  - Total number of racing opportunities by track should be dictated by a combination of customer demand and available horse supply
  - Recognition of local market considerations
  - Recognition of traditional seasons in the short term
  - Synchronization of racing locally
  - Synchronization of the Ontario simulcast product
  - Product must be coordinated to ensure horses race to their level
- A sample monthly schedule (January & June)
- Additional resource material which was provided included:



- Guiding principles
- Glossary of terms
- Framework technical aspects
- Further information was as referenced on the ORC website
- The desired outcomes were identified:
  - Development of a 2011 standardbred race dates calendar which applies the Framework principles to result in approved quality of racing in Ontario and offer the best wagering product possible to customers
  - Identify performance indicators and protocols for monitoring activity
  - Flexibility in application of those principles to allow for adjustments

98. Given that man, in that circumstance, with that motivation, it strains credulity that he did not understand what was being proposed.

99. OHHA asserted through Tropea's evidence that no report was presented to it following the Director's review of the impact of the cancellation of race dates on such a large scale. The Administration response was that the entire Framework evolution constituted that report. The industry assembled, debated, devised and the ORC reported. That report was the Framework. It was thoroughly promulgated and available to all.

100. This is not an appeal to reverse ORC policy. OHHA does not seek in express terms to reverse the Framework. Although not so stated, that is the pith and substance of OHHA's claim. The essence and true nature of the relief sought is to cast aside the Framework principles and application and revert to the former status quo.

101. The Director applied Framework standards in developing the 2011 racing calendar. That result is consistent with the direction of the Commission and the will of the industry. No basis for variation has been demonstrated. The Director's Order as relating to race dates in issue by OHHA's Appeal is confirmed. That Appeal is dismissed.

#### **PURSE REDISTRIBUTION**

102. GCGC and OHHA oppose the concept of and jurisdiction for re-distribution of purses.

#### **FLAMBORO/GEORGIAN PURSE DISTRIBUTION**

103. The Director ordered a transfer from Georgian to Flamboro (both owned by GCGC) to partially address the issue of purse levels.

#### **WINDSOR, DRESDEN, WOODSTOCK PURSE DISTRIBUTION**

104. Redirected funds from Dresden and Woodstock to Windsor, (all under one ownership), will address purse disparity as observed by the Director. The purse money remains in the south west region and is supported by the Canadian-based entry preference.

#### **OHHA'S CONTENTION**



105. OHHA contended that the Director has no authority over purse redistribution between tracks, as it interferes with the OHHA track agreement relating to purses. The OHHA contract on behalf of horse people with Flamboro provides:

“Subject to deductions and contributions for industry programs and subject to section 1.05 below, it is the intent of the association (OHHA) and the company (Flamboro) that the components of the aggregate purse pool will be distributed for purses at Flamboro.”

106. The Site Holder’s Agreement between the Ontario Lottery and Gaming Corporation (OLG) and the track (Flamboro) provides that the slot funds are received by the track on account of the horse people’s entitlement shall not be “used by the Site Holder for any purpose other than enhancing purses on live horse races conducted by the Site Holder at the racetrack”.

107. Those contracts define the rights and obligations of the parties to the contract. The contracts neither bind non-parties nor curtail their rights.

108. Those provisions require the track to pay those funds into the purse account along with other purse account components such as wagering revenue, SRA funds (Standardbred Racing Allocation) and HIP Allocations. The contracting parties have no power to preclude or abridge the authority of the Director over purse funds.

109. The submission that the ORC is interfering with a commercial contract has no force. The terms of the track/OHHA contract remain undisturbed. The track complies with its obligation to deposit the funds held in trust to the credit of the purse account. Upon deposit, the funds are subject to the control and order of the Director.

110. The ORC authority over purse funds originates with the statutory governance provision and the obligation to act in the public interest for the benefit of racing.

111. The Commission derives its authority by statute (Sections 5 and 6 RCA 2000). The Commission has approved the Framework. Implicit in that Framework is the redistribution of purse account funds. The Director’s obligation is to act in furtherance of the Framework which has been implemented in the public interest for the benefit of racing.

112. Standardbred Rule 7.16.05 (d) provides that purse funds may be used:

“For other purposes which are approved by the Director that are for the benefit of racing or will provide benefits to all or a sizeable proportion of horse people who participate at meetings of the association.”

113. The Framework has been approved by the Commission and has been deemed by the Commission to be for the benefit of racing. Examples of deductions made from purse funds pursuant to the Director’s Order are as follows:

- Insurance (through OHHA)
- OHHA fees
- ORC Medication control and Drug Task Force
- OSAS purse expense



**THE APPROPRIATENESS OF PURSE DISTRIBUTION IS DEMONSTRATED AS FOLLOWS:**

114. Purse pooling and province-wide uniform condition sheets are key and interlocking factors in the Framework. For example, currently Woodstock with few racing dates and 365-day slot revenues pouring into the purse account has a robust purse schedule. In result, horses that should in terms of class, be racing at Woodbine, will show up at Woodstock (with almost the same purse). The result, a “walk around” for the horse racing well below its class. A large purse leaves town. The bettors confronted with a 1 – 9 favourite pass on the race. The outcome is a dreary non-event occasioning no interest and the situation replays next week with still no wagering. Probably some horses will not enter against that competition. Result - smaller fields, less betting and bad racing.

Purse pooling and standard province-wide condition sheets will direct that horse to race in its proper class. The result - competitive racing with full fields and accordingly, a more attractive wagering model.

115. There can be no long term future in producing a racing card with purses totaling \$70,000 and a mutuel handle of less than \$10,000. The cost of production is in the \$3,000 range – the return in the \$200 range.

**Woodstock**

- Provided 0.3% of the total Ontario mutuel market.
- Received 23.7 million dollars from the Slot Program.
- Provided 27 race dates.

**Dresden**

- Provided 0.2% of that mutuel market.
- Received 13.2 million dollars from the Slot Program.
- Provided 25 race dates.

**Windsor**

- Provided 1.9% of the mutuel market.
- Received 47.3 million dollars from the Slot Program
- Provided 110 race dates.

116. Woodstock and Dresden as compared to Windsor have much higher ratios of slot funds to race dates and lower mutuel yields. In result, those tracks are able to offer disproportionately high purses with little mutuel return. The theory is to reduce that inequity by transferring funds to the mutuel market at Windsor, enabling that facility to card higher class or “Signature” races.

117. Local objection to purse pooling from horse people at the donor site is predictable. The answer to that reflexive objection is that such a response is founded on near term values. Certainly, for some time persons racing at that track will race for reduced purses. In the long term, purse pooling should have the dual benefit of reinforcing the long term existence of racing at that track and increasing the purse funds incidental to a revitalized province-wide racing industry.

118. The Director’s authority to make the purse redistributions included in his Decision is affirmed. The Appeals by Flamboro and OHHA must be dismissed as they relate to purse redistribution.



### **NHA APPEAL RE SUDBURY DOWNS**

119. Sudbury's isolation and weather create a special circumstance. There is no regional partner. Minor changes in scheduling, accordingly, do no violence to harmonization with others. Sudbury's problem is to sustain industry participation by owners and trainers through a lengthy weather enforced seasonal track closure. Budgets are strained; training fees are in short supply because many owners train their own horses.

120. The Northern Horsemen's Association (NHA) appealed with reference to loss of December race dates. The result of that loss would be an extension of the closed season. The peril asserted was that with no opportunity to race and on-going expense, owners and trainer may leave the industry. The NHA Appeal was unrelated to "Framework" considerations.

121. Standing was granted to Sudbury Downs represented by Andrew MacIsaac. The Appeal was opposed by Sudbury Downs principally on the basis that in the 1990's Sudbury raced about 50 days (as opposed to 66 now) and the industry was able to survive. Witnesses for the NHA gave compelling evidence based on hardship grounds. Unfortunate and unnecessary were gratuitous comments offered about the conduct of the son of one of the NHA witnesses.

122. As per the Ruling released January 27, the Director's Decision on Sudbury Downs 2011 race dates is varied as follows:

- Race dates on Wednesday, April 27 and Sunday, July 31 are cancelled.
- Race Dates are granted, Saturdays, December 3, 10 and 17.

123. Further, it is ordered that the Sudbury Downs track must be in good condition and open for training one month prior to commencement of live race in 2011.

### **ESTOPPEL**

124. The Administration's preliminary motion for dismissal of the OHHA Appeal on jurisdictional grounds failed. Reasons for dismissal dated January 14, 2011, indicated that the estoppel issue would be dealt with in these Reasons. The basis for the estoppel claim was the Administration's perception of a policy redirection by OHHA. Given OHHA's participation through the collaborative process, the Administration sought to prohibit OHHA's Appeal relating to the ORC Framework.

125. The collaborative process was non-binding. Constructive input including criticism was welcome. No line was drawn in terms of "crossing the Rubicon." Reliance of OHHA's input was neither invited nor required. OHHA's future action, although perhaps inconsistent from the Administration perception, was unfettered. OHHA's indicated and perceived support of the Framework was not pivotal for the ORC decision. Certainly it would be welcome and important support. However, that indicated support did not induce reliance by the ORC that OHHA had passed a point of no return on the Framework issue. Hence the estoppel claim failed.

### **THE FUTURE FOR RACE DATES**

126. Mr. Lehman expressed the hope that as the Framework is refined there will evolve a more predictable race date supply model – not precisely to the point of inputs determining output but preferably



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closer to that result. Participants would know what to expect. For example, with rising revenues, more race dates would follow.

127. Performance measures and benchmarks such as customer demand, horse supply based on unique starters, wagering and attendance are being established by the ORC and monitored by its watchdog or transition committee.

DATED this 17<sup>th</sup> day of February 2011.

Rod Seiling  
Chair

James M. Donnelly  
Vice Chair

John W. Macdonald  
Commissioner