



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

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

**AND IN THE MATTER IN THE APPEAL OF
RIDEAU CARLETON RACEWAY**

On February 15, 2009, the Judges at Rideau Carleton Raceway issued Standardbred Official Ruling SB 38493 to Rideau Carleton Raceway ("RC") wherein they ordered a penalty of a \$5,000 fine, in accordance with Rules 5.11 and 7.05 of the Rules of Standardbred Racing, for the following reasons:

The management of Rideau Carleton Raceway did fail to have the racing strip 'suitably prepared for racing' for the scheduled race date of February 5, 2009, causing the races to be cancelled after the third race due to unsafe track conditions.

On February 23, 2009, Rideau filed a Notice of Appeal.

On July 27, 2009, a Panel of the ORC, comprised of Chair Rod Seiling, Commissioner David Gorman and Commissioner Pamela Frostad, was convened to hear the appeal.

Jennifer Friedman appeared as counsel for the Administration. Calina Ritchie attended as counsel on behalf of RC.

Upon considering the Agreed Statement of Facts, hearing the testimony of Gord Brown, Gordon MacDonald, John Burt, Pat Webb, Richard Gardner, Jeff Taylor, Dan Byrne, and Brent Pyper, reviewing the exhibits filed, and upon hearing the closing submissions, the Panel denied the appeal. The Panel's Reasons for Decision included the following:

- i) RC was in violation of SB 7.05 on February 5, 2009;
- ii) Track superintendent, Jeff Taylor, violated SB 5.11 by not providing regular reports to the Judges as requested;
- iii) The evidence is clear, cogent and compelling that on February 5, 2009, the racing surface at RC was not 'suitably prepared for racing' as per SB 7.05. The onus rests solely on RC to have its track 'race ready' and it is up to track management to ensure that it has taken the appropriate steps for this to occur.

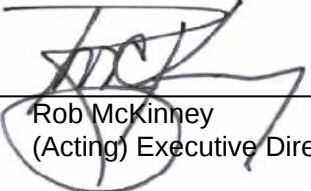
The Panel made the following Orders:

- a) Rideau Carleton's Racetrack Surface Committee must meet weekly;
- b) At each meeting, a senior management from the track must attend, along with the track superintendent and a senior representative from the NCRHHA;
- c) Minutes from each meeting must be kept and provided to the Senior ORC Judge weekly;
- d) This procedure must be adhered to until such time as the Senior Judge determines a schedule change is warranted.

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

DATED at Toronto this 12th day of August 2009.

BY ORDER OF THE COMMISSION


Rob McKinney
(Acting) Executive Director



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

REASONS FOR DECISION

Overview

1. Rideau Carleton Raceway (RC) appealed a decision of the Judges, SB 38493 (Ex. 1, tab 18) wherein the track was fined \$5,000 for violating SB Rules of Racing, Nos. 5.11 and 7.05 for failing to have the racing strip “suitably prepared for racing” for the scheduled race date of February 5, 2009 thereby causing a cancellation of the races after the third race.

Background

2. A number of preliminary matters required decisions at the commencement of the hearing. Legal counsel for RC, Ms. Calina Ritchie, objected to Ms. Jennifer Friedman, legal counsel for the Ontario Racing Commission (ORC) request to enter as an exhibit a supplementary book of documents arguing they did not provide any probative value. The Panel agreed to allow the documents to be entered as an exhibit with the understanding it would do so “with the appropriate weight” attached to them.

3. Ms. Friedman requested that two witnesses for the Administration, Gord Brown and John MacDonald, be allowed to testify via telephone. Mr. Brown was unable to attend the hearing as he was scheduled for a medical procedure the following day and Mr. MacDonald, President of the National Capital Region Harness Horse Association (NCRHHA) was a last minute replacement for Russ Moulton of the same organization who had become seriously ill over the weekend. Ms. Ritchie did not object to the telephone testimony concept but did object to Mr. MacDonald on the grounds he was not at the track on February 5, 2009. The Panel agreed to allow Mr. MacDonald to testify as it was important to hear from the horse people on such an important matter and to the testimony of both witnesses to be made via telephone given the very unusual circumstances but noting it is not be construed as an accepted practice by this Commission.

4. Legal counsel were able to provide the Panel with an agreed statement of facts. It included the following:

- Rideau Carleton Raceway is a racing association licensed by the ORC
- On December 4, 2008 a Racetrack Surface Committee meeting took place.
- On December 7, 2008 Judge John Campbell drafted a report with respect to the meeting of the Racetrack Surface Committee meeting.
- On February 5, 2009 the Judges were advised that stone dust was placed on the track on February 3, 2009. However, too much stone dust was placed on the track, which caused the track to be excessively deep. Several complaints were received following the morning qualifiers. In addition, subsequent to race three, drivers contacted the Judges to advise that the track was unsafe and that they refused to drive on it for the following reasons including too much material on the track, the track was too deep, the track had ice beneath the material and the excessive amount of material on the track caused dust to be “kicked up” which created vision problems.
- Following the third race, a vote was held with the result that approximately 74% of participants voted against continuation of the races that evening. As a result of the vote, the races were cancelled due to unsafe conditions.



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

- On February 8, 2009 the Judges held a hearing in respect to the track conditions at RC on February 5, 2009.
- On February 15, 2009, the Judges issued SB Ruling No. 38493 to RC wherein they were fined \$5,000 in accordance with ORC Rules Nos. 5.11 and 7.05 for the following reasons:

“The management of Rideau Carleton Raceway did fail to have the racing strip “suitably prepared for racing” for the scheduled race date of February 5, 2009, causing the races to be cancelled after the third race due to unsafe conditions.”

5. The dusty conditions on the track at RC, thereby creating unsafe conditions for both horses and participants at RC, had been an ongoing issue since at least March of 2008 (Ex.6, tab 1). A Racetrack Surfaces Committee was formed consisting of track and horse people members. Then Supervisor of Standardbred Racing, William Fines, issued a report entitled “Unsafe Racetrack Surface conditions due to Excessive Dust” as a result of the Judges convening a meeting of the committee on March 2, 2008. That report listed that on at least three or four times that winter an “unsafe racing environment” at RC resulted from excessive dust. Furthermore, the report stated that despite the significant risks to participants no action plan had been developed to counter the dust problem. RC was put on notice that future dust conditions would no longer be tolerated and, if necessary, cancelling race programs would be considered citing the need to protect the safety of horses and drivers.

6. Commencing in November of 2008 the Judges received a series of complaints regarding the condition of the track including the depth of the material and dust. Evidence was tabled via Judges’ reports listing track surface issues. They started on November 16, 2008 (Ex. 6, tab 2), November 21, 2008 (Ex. 6, tab 4), November 23, 2008 (Ex. 6, tab 5), November 28, 2008 (Ex. 6, tab 6), December 4, 2008 (Ex.6, tab 7), December 26, 2008 (Ex. 6, tab 8) where the races were cancelled due to ice on the track, January 11, 2009 (Ex.6, tab 9) where the Judges gave a horse in race 8 an interference break due to the dust, January 25, 2009 (Ex. 6, tab 10), January 29, 2009 (Ex. 6, tab 11) and February 1, 2009 (Ex. 6, tab 12). On every one of these reports except the November 16, 2008 report where Russ Moulton agreed to speak to the RC track people, the reports indicate that the Judges spoke to either or both senior management at RC or the track superintendent, Jeff Taylor, about the track issues. In the November 23, 2008 report (Ex. 6, tab 5), Mr. Taylor was asked to report to the Judges on a weekly basis as to the track surface. Mr. Taylor’s testimony as to his compliance with this request was at odds with Senior ORC Judge, Pat Webb’s testimony.

7. Witnesses for the appellant, Richard Gardner, RC’s Secretary/Treasurer and Acting Facility Manager, Jeff Taylor, RC Track Superintendent and Brent Pyper, representative for RC’s aggregate supplier did not dispute there was a dust problem on the track. It was their contention that RC was attempting to deal with the problem but that the weather conditions limited the time available for them to add material to the track. It was their position that even if the temperature was below freezing, if the sun was out, they could not put the heavy equipment on the track for fear of ruining it. Conversely, when the temperature was too cold, the material froze in the trucks and would not spread. Mr. Gardner testified that race days proved a further hindrance as RC could not add material on those days. He was contradicted by Mr. Taylor who stated that RC does add material to the track on race days.



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

8. Judge Pat Webb testified that she consulted with Georgian Downs Track Superintendent, John Burt, who had advised her that RC should use a brine solution on the track to control the dust as he successfully does. RC summarily dismissed this potential solution. Their reason for not trying a brine solution was that they believed it could cause more problems to the track when it started to thaw to the extent races would have to be cancelled and potentially a major rebuild of the track could be required.

9. RC had made changes to try and deal with the dust problems. The changes included putting heating cables on its water truck so it could spread water on the track. This solution seemed to work until the temperature went below -15 degrees C and the truck would then freeze. RC has hired Dan Byrne as a consultant to assist Mr. Taylor. He is Track Superintendent at Windsor Raceway and serves as a consultant at the tracks at Dresden, Woodstock and Clinton. Mr. Byrne supported the actions of RC as it related to their approach to solving the problems.

10. Mr. Pyper testified that his company, which has supplied aggregate to RC since its opening, uses a type of material that has only 3% moisture content. Equipment utilized by RC and his company was not the issue as suggested by Judge Webb regarding using an E-poke spreader. Nevertheless, dust is still a by-product of the material being rubbed together by the racing action on the track. In total, RC uses about 2000 tonnes of aggregate yearly. He admitted that there are other solutions to the dust issue available, but that he believes that someone else needs to try them out before they should be utilized at RC.

11. Mr. Taylor testified that the decision was made to add the 900 tonnes of aggregate on the track on February 3, 2009 as there was a weather forecast that warm temperatures were coming and that the extra material would be needed to keep the track in racing condition. Mr. Byrne supported this decision but Mr. Burt testified that it is much better to add material to the track at a much lesser amount with the maximum amount about 100 to 150 tonnes at a time. The Panel noted that RC, by way of Mr. Taylor's track maintenance reports (Ex. 1, tab 4), has done this in the past. Mr. Byrne was of the opinion the 900 tonnes was okay while Mr. Pyper stated he could not offer an opinion as to the appropriate amount. There was no disagreement that the Georgian Downs track is very similar to RC in both size and winter conditions. It was noted Windsor's similarity to RC ends with track size.

12. ORC Judge Hughes, on arriving at RC on the morning of February 5, 2009, was notified by John MacDonald, an NCRHHA representative, of the track situation with the new material. In his report (Ex. 1, tab 6) Hughes wrote that the decision was made to proceed with the qualifying races and to allow 7 seconds in time but that the horse people had told him if the track was still like it was for the races they would vote not to race. Mr. Hughes contacted Mr. Taylor and after viewing the track together Mr. Taylor "told him he would grade some of the stone dust off the track for that night's racing". Mr. Taylor testified that he graded between 300 to 350 tonnes of the new material off to the side of the track.

13. Gordon McDonald admitted that he was not present at the track on February 5, 2009 but was familiar with the issues having been briefed by Mr. Moulton. He testified that he is at the track weekly and was aware of the ongoing track issues. Driver John MacDonald was asked to inspect the track prior to the races and after the grading off of some of the new material. He reported that it looked better and should be okay. Mr. Burt testified that his measure for "suitably prepared" of the track surface is to observe the horses' hoof prints. Judge Hughes wrote that the



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

track was no better in the opinion of the Judges and they allowed seven seconds for the races off the qualifying time standard. Judge Webb testified that she has never witnessed a seven second variance in all her years of being a racing official. RC witnesses argued that had the ORC officials requested the track at any time, including during the races, they would have graded more material off the track. Mr. Taylor stated that, in his opinion, the track was okay to race on when the decision was made to cancel.

14 The first three races from RC were shown for the benefit of Mr. Burt. Dust could easily be observed from the action of the horses in each race. The Panel notes that the times of the races were not as much of an issue as was the dust. Judge Webb, in referencing the races, noted that in race #2, the 8 horse was 15 lengths off the gate and attributed it to the depth of the track. When a track is too deep, (material), horses cannot “grab” the track, which may cause them to break stride. In race #3, Judge Webb noted a horse made a break, one which does not show a break in stride on its past performance chart. This almost caused a serious accident as she testified that due to the dust the other drivers behind could not see ahead and take the appropriate action to avoid the horse and driver. In that same race a driver’s objection of foul was upheld by the Judges but they did not penalize the driver citing track conditions (Ex, 1, tab 9, p2).

15. Judge Webb testified that the Judges called the horse people in the paddock after both race #1 and #2 to see if they wanted to race. After race #3, the horse people called the Judges to register their objections about any further races. The Judges then proceeded to the paddock where the vote took place that triggered the decision to cancel the remainder of the races for that day. It was her opinion that horse people want to race as that is their means of earning their income. Cancelling would mean a loss of income therefore they were reluctant to vote for any cancellation. RC, according to Mr. Gardner, does not want to have to cancel races as they too lose money when this occurs.

16. The Panel notes that John MacDonald, despite being appropriately summoned to appear at the hearing, did not appear and did not provide any notice or reason as to his not being present. The Panel will leave it up to the ORC Administration to deal with its own witness in an appropriate manner given the circumstances.

17. Reference was made a number of times to Policy Directive No. 2-2007, Standardbred Racetrack Minimum Standards (Ex.1, tab 1). Paragraph #3 states under the heading of material that an adequate supply of material must be available throughout the racing season and that the minimum standard racetrack surface is to be at least a one inch cushion. No mention is made of a maximum cushion. As stated in the follow up July 24, 2007 memo (Ex. 1, tab 2) to all ORC Judges “the objective of the standards is to improve the overall conditions of the race surface, making it safer for horses and participants”. In this memo under Judges’ Responsibilities the Judges are to communicate any concerns regarding the track surface to the track supervisor.

Issue

18. Were the Judges at Rideau Carleton Raceway, on February 5, 2009, correct in finding the track in violation of SB Rules Nos. 5.11 and 7.05 and subsequently fining the track \$5,000?



Decision

19. After carefully reviewing the testimony and reading the submissions and documents submitted, the Panel denies the appeal of Rideau Carleton Raceway. Rideau Carleton was in violation of SB 7.05 on February 5, 2009, and track superintendent, Jeff Taylor, violated SB 5.11 by not providing regular reports to the Judges as he was requested.

Reasons for Decision

20. The evidence is clear, cogent and compelling that on February 5, 2009 the racing surface at Rideau Carleton Raceway was not “suitably prepared for racing” as per SB 7.05. The onus rests solely on Rideau Carleton to have its track “race ready” and it is up to track management to ensure that it has taken the appropriate steps for this to occur. The ORC expects all licensees to comply with the Rules of Racing, including tracks, trades people, owners and horse people.

21. The Panel accepts the testimony of the Judges that the track was not suitably prepared as the regulation requires. Supporting evidence is the visible dust coming from the horses in the first three races on February 5, 2009 and the drivers’ comments to the Judges with the near accident at the quarter pole in race #3 when they reported that they could not see the breaking horse ahead of them because of the dust and therefore had trouble taking evasive action.

22 The Panel recognizes RC may have made its best efforts as they relate to the track on February 5, 2009, even though these efforts were ultimately found wanting. As a licensee, tracks have a responsibility to ensure their facility meets the standards as set from time to time by the Commission. To meet those standards, management must be able to demonstrate, that they utilized all reasonable means at their disposal to fulfil these responsibilities. On a balance of probabilities, adding 900 tonnes of material to the track on February 3, 2009, two days before the races, was too much. This act was directly responsible for the cancellation of the races.

23. There is a documented history of track surface related issues at Rideau Carleton. Unfortunately, solutions were not forthcoming. The Judges, to their credit, provided the track ample time to resolve the problems. It is unreasonable to have one accept that by adding almost one half of the track’s annual supply of material on the track at one time just two days before a race day that the track would be suitably prepared come race day unless the track took adequate steps to have the material absorbed into the racing strip. That clearly did not occur

24. Undoubtedly, contributing to the problem was the decision of track superintendent, Jeff Taylor, not to comply with the Judges’ order to report to them weekly regarding the track. His actions represent wilfully disobeying an order of the Commission. The Panel accepts Judge Webb’s testimony that the Judges received six weeks of track reports after the February 5, 2009 cancellation. Mr. Taylor is an employee of the track and therefore has a delegated authority from the senior management of the track. Under SB Rule No. 5.11 authority exists to discipline a licensee for failing to comply with an order by way of a fine, suspension or expulsion.

25. The appellant argued that it had no other option than to apply the material on February 3rd due to weather constraints. This argument was weakened by Mr. Gardner’s claim that race days further reduced the available time as the track could not apply new material on those days. His own track superintendent testified that they could. The track could have opted for accepted best



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

practice of adding smaller amounts as it had in the past or choosing a time in a day when the track was receptive to the heavy equipment required to add new material. No evidence was tendered any attempt was made for a 24/7 approach. The track's supplier, Mr. Pyper, testified that his company staffs 24/7 to service the Rideau Carleton facility so availability for the supplier would not have been an issue.

26. As to the argument by the appellant that the Judges only had to ask management to remove more material and they would have complied, the Judges had already fulfilled their obligations by informing the track of the problems with the amount of material that had been added to the track. It was the track's decision to only remove a certain portion of the new material. Furthermore, there was no evidence tabled that the track requested time to remove more of the new material. To the contrary, Mr. Taylor testified that in his opinion the track was okay to race on and track management referenced Mr. MacDonald's approval that the track was okay to race on post his inspection. As to the claim by the track that one week later all the material had been absorbed by the track, that argument bears no weight as to the issues related to February 5, 2009.

27. The Panel accepts that there is authority to fine a track for non compliance to rules and regulations. The precedent cases of Flamboro Downs, Ruling No. SB 50/2004 (Ex. 2, tab A), and Notice to the Industry, dated July 23, 2008, referencing Windsor Raceway agreeing to a fine of \$3,000 each for Windsor, Dresden and Woodstock Raceways (Ex. 2, tab B), establish the principle of fines for tracks for non-compliance.

28. ORC officials operate on a delegated authority from this Commission. The three guiding principles of this Commission are to protect the health and welfare of the horse, to protect the safety of participants and to protect the public interest. Clearly allowing races to occur on a racing surface that is not suitably prepared is a violation of those first two principles as it could endanger either the horse or participant or both. It also represents a violation of the public interest. Racing depends on the public through wagering for its economic lifeblood. Bettors deserve and need to have confidence that the condition of the racetrack is not an unknown variable. The public could not reasonably have been expected to be aware of the condition of the racing surface at Rideau Carleton on February 5, 2009. The Panel suggests that consideration should be given for tracks to be required to post for the public on a regular basis all work conducted on its track so as to better inform the public on what is an important variable in wagering.

29. The Panel notes the apparent breakdown in the Racetrack Surface Committee at Rideau Carleton. The fault is systemic in nature and speaks to the current dysfunctionality and the poor or lack of communications within. It speaks to Mr. MacDonald's viewing of the track, post grading, and reporting it looks all right. With all the importance attached to a race day, as per the testimony, surely a more professional and thorough procedure should be employed as to determine if the track is suitably prepared. The Panel orders that the Rideau Carleton Racetrack Surface Committee must meet weekly. Further that at each meeting a senior management from the track must attend along with the track superintendent and a senior representative from the NCRHHA. Minutes from each meeting must be kept and provided to the Senior ORC Judge weekly. This procedure must be adhered to until such time as the Senior Judge determines a schedule change is warranted. The objective must be to identify



COMMISSION HEARING

TORONTO, ONTARIO – JULY 27, 2009

and implement means to eliminate the dust and ice on the track and have an acceptable cushion on the track as well.

DATED this 12th day of August 2009.

Rod Seiling
Chair