



COMMISSION HEARING

TORONTO, ONTARIO – OCTOBER 2, 2009

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

**AND IN THE MATTER OF A REQUEST FOR HEARING BY
ONTARIO HARNESS HORSE ASSOCIATION**

REASONS FOR DECISION

Issue

1. Ontario Harness Horse Association (OHHA) seeks an Ontario Racing Commission (ORC) Hearing relating to status to bargain for Horse People at Woodbine Entertainment Group (WEG) tracks. An early date was scheduled in response to OHHA's claim of urgency.
2. The challenge is to the current Horse People's Agreement between WEG and the Central Ontario Standardbred Association (COSA), a derivative of which is money, money formerly paid by WEG to OHHA during currency of an expired OHHA contract and now paid by WEG to COSA under COSA's contract.

The Application and the Two Motions

3. Perhaps restatement of the background between WEG and OHHA is required by none of convention, courtesy or necessity. That history was adequately chronicled in the Reasons for Decision in the preceding round of litigation between WEG & Whelan (former president of OHHA). That Decision was released September 11, 2009, with Reasons to follow. The Reasons were released October 2, 2009, the date on which this Motion was argued.
4. The relief claimed by OHHA in first instance in this Application was solely a license remedy - "*Revocation or suspension of the license of WEG to operate a racetrack.*"
5. By amendment received by the Panel just before this Hearing commenced at 8:00 a.m. on October 2, 2009, the claim was supplemented and fundamentally altered by allegations that:
 - WEG breached a contract with the Ontario Lottery and Gaming Commission.
 - WEG breached a contract with the Ministry of Consumer and Commercial Relations of Ontario.
 - That the WEG/COSA contract "*has no lawful basis as the COSA principals signing such an Agreement had assigned to OHHA any rights to effect such action.*"
6. En route to proceeding with the Application, two preliminary Motions were introduced:
 - By OHHA seeking to disqualify counsel Randy Bennett from acting for COSA on conflict of interest grounds.
 - By WEG seeking an Order that the ORC "*has no jurisdiction to hear this matter on the merits.*"
7. The Panel dealt firstly with the jurisdictional issue. The WEG Motion proceeded. The Decision was reserved.



8. On October 15, 2009, a Decision granting the Motion and thereby declining OHHA's request for a Hearing was released with Reasons to follow. These are the Reasons.

Background

9. The government extended significant support to the racing industry in 1997 with reduction of the wagering tax levy from 7.4% to 0.5% on every dollar wagered. That 6.9% reduction was to be applied as follows:

- 1.5% to customer benefits and regulatory funding
- 1.0% to industry revitalization
- 2.4% to an improvement program
- 1.0% to racetracks
- 1.0% to Horse People

10. The 1.0% to Horse People is known in the industry as the SRA Funds (Standardbred Revenue Allocation). The SRA Funds are currently disbursed according to this formula:

- .45% to supplement overnight purses
- .30% to Ontario Sires Stakes (OSS)
- .15% to the Horse People's Group Retirement Savings program
- .10% to provincially oriented marketing

11. For many years, OHHA, as bargaining agent for Horse People racing at WEG, negotiated the Horse People's contract with WEG (the WEG/OHHA contract). During the currency of those contracts, the SRA funds were paid to OHHA as agent for the Horse People to be applied according to formula. The final contract negotiated by OHHA expired December 31, 2008. WEG/OHHA negotiations for a new contract aborted. No Horse People's contract was in place until WEG contracted with Horse People racing at WEG represented by COSA on July 30, 2009. That five-year contract provided in part:

"During the term of this agreement, WEG recognizes COSA as the exclusive representative of those owners, trainers, drivers, and other participants in standardbred racing in Ontario who race and stable at both Mohawk and WEG racetracks."

12. With expiration of the WEG/OHHA contract, the SRA Funds were no longer transferred by WEG to OHHA.

13. From December 31, 2008 to July 30, 2009, WEG made the appropriate SRA payments directly to supplement overnight purse accounts (.45%) and to support Ontario Sires Stakes (OSS) programs (.30%).

14. Entitlement to the balance of the SRA Funds post December 31, 2008 (.15% RSP and .10% marketing) was deemed by WEG to be uncertain and so WEG held those funds in trust. During currency of the expired contract, those funds had been applied by OHHA to its Horse People's Group RSP Program with Manulife and to provincial marketing initiatives which found expression in a variety of forms.



15. The impact on OHHA was substantial. WEG generates about 80% of Ontario's wagering revenue which is the source of SRA funding. The OHHA marketing budget for 2008 was \$522,000. In 2009, absent the SRA .10%, that budget was \$163,000.

16. On July 2, 2009, WEG released \$100,000 of the SRA Funds which OHHA applied \$60,000 to the RSP Program and \$40,000 for marketing. The balance of the funds in issue is held in trust by WEG pending determination of entitlement.

OHHA's Claim

17. OHHA claims:

- OHHA is the exclusive bargaining agent with the exclusive right to contract with WEG on behalf of Horse People racing at WEG tracks.
- The COSA contract is a nullity.
- Thereby all SRA funds are payable to OHHA notwithstanding the lapsed contract.

18. WEG's position is that since the COSA contract came into effect, the SRA Funds should be paid to COSA during currency of the five-year agreement. COSA supports WEG's position.

19. OHHA contends that it is over simplification to conclude that since one track contract has expired so the current contract governs the SRA funds.

20. OHHA's claim is premised upon four documents and OHHA membership terms. The documents are: the Memorandum of Understanding (MOU), the OHRIA Business Plan, the Site Holder Agreement, and in some measure, an acknowledgement of WEG's status as bargaining agent in the expired WEG/OHHA contract.

The MOU

21. The MOU which became effective September 30, 1996, deals with the Wagering Tax Reduction. Parties to the agreement are the Ministry of Consumer and Commercial Relations, the Ontario Racing Commission and the Ontario Horse Racing Industry Association (OHRIA) representing the horse racing industry. The definition section of the MOU states:

"Horse Racing Industry" means OHRIA and Racing Associations and Horse People licensed under The Racing Commission Act."

22. The purpose of the MOU was to define the roles and responsibilities of the parties regarding implementation of the *"business plan to support reduction in pari-mutuel taxes; Ontario Horse Racing Industry Association June 10, 1996"* (The Business Plan).

The Business Plan

23. The Business Plan which is subordinate to the MOU provides in part:

- *"The racetracks will remit the horsemen's portion of the revenues to the provincially recognized Horse People's association, namely, the Ontario Harness Horse Association"*



(OHHA) (representing standardbreds) and the *Horsemen's Benevolent and Protective Association (HBPA)* (representing thoroughbreds).

- Under Paragraph 5.2.6, the ORC will require OHHA and the HBPA to provide annual evidence of the proper application of the SRA Funds.

24. The Business Plan recognized the possibility of revision of the SRA strategy to respond to changing circumstances by providing that:

- Revenue allocation changes will be approved by OHRIA's Board of Directors and
- *"No changes will be made to the revenue allocation without prior approval of the Ontario Racing Commission."*

25. Both the Business Plan and an Addendum dated September 12, 1996, were executed by OHHA (among others).

The Implication of OHHA Being Named in the Business Plan as Recipient of the "Horsemen's Portion"

26. That 1996 designation is unlikely to have been in perpetuity. Not being time limited was it intended to be otherwise limited – perhaps by circumstances? If so, has there been a material change in circumstances? Would such a change be that OHHA has issues with WEG such that OHHA calls for *"Revocation or Suspension"* of WEG's racing license – an attitude rejected by OHHA membership by refusal to boycott WEG. Does COSA, by its five-year racing contract with WEG, reflect the will of the Horse People racing at WEG?

27. The Business Plan contemplates and makes provision for changing circumstances and adapting to them (prior ORC approval for changes in revenue allocation). Is the reasonable inference that the Business Plan was intended to be responsive to contemporary circumstances? - All for contemplation.

Site Holder Agreement

28. The Ontario Government *"Slots Program at Race Tracks"* was implemented to promote live horse racing and thereby benefit the agricultural sector in Ontario. To participate, the Site Holder was required to develop and license a portion of the race track facility for the *"Slot Machine Lottery Scheme"* operated by the Ontario Lottery Corporation. The Site Holder Agreement allocated responsibilities between the two parties to the agreement.

29. The WEG Slot Machine Lottery Scheme Site Holder Agreement between the Ontario Jockey Club (now WEG) and the Ontario Lottery Corporation dated March 29, 1999, provides in Section 5.2 (d):

"In the event of a dispute as to representation of the respective Horse People by any particular organization or association such dispute shall be resolved by a vote of Ontario Racing Commission licensed owners and trainers who race at the race track. The procedures relating to and supervision of such vote will be the responsibility of the Ontario Racing Commission."



30. OHHA alleges multiple violations of the Site Holder Agreement by WEG relating to information about and failure to remit SRA funds.

31. No request for a vote pursuant to the Site Holder Agreement has been made either prior to institution of or in the course of these proceedings.

The WEG/OHHA Contract

32. Acknowledgement of the OHHA right to represent Horse People at WEG is found in the expired OHHA/WEG contract delineated as follows:

OHHA “during the term of this Agreement is and shall be the sole and exclusive representative and bargaining agent for Horse People in respect of all matters relating to harness racing.”

33. This acknowledgement is time limited “*during the term of this Agreement.*” That expression may be tacit acknowledgement by one or both parties that status as bargaining agent is a contemporary concept and not an in perpetuity status.

OHHA Membership Terms

34. OHHA purports to further support its claim for exclusive bargaining rights by assignment of those rights from its individual members. The contention is that by virtue of undertakings from its membership, OHHA has exclusive rights to negotiate all race track contracts on behalf of its members. Accordingly it is contended that COSA members (if also OHHA members) had no right to contract with WEG.

The Relief Claimed

35. OHHA’s amended claim for relief is:

- (a) *A determination by the Ontario Racing Commission and an Order that WEG has breached the agreement with the OLG, and is in breach of its obligations under the Site Holders Facility Agreement by:*
 - (i) *failing to make payments as required to OHHA,*
 - (ii) *failing to permit the cooperative operation of the cosignatory designation,*
 - (iii) *failing to account to OHHA for the non-payment of such funds,*
 - (iv) *failing to properly or at all determine if there was a dispute as to the proper representation to standardbred Horse People by OHHA, and*
 - (v) *failing to seek the vote of required Horse People pursuant to a vote conducted under the procedures and supervision of the Ontario Racing Commission,*

- (b) *A determination by the Ontario Racing Commission and an Order that WEG has breached the agreement with the Minister of Consumer and Commercial Relations of Ontario and is in breach of its obligations under the memorandum of Understanding by:*



- (i) *failing to make payments as required to OHHA,*
- (ii) *failing to account to OHHA for the non-payment of such funds;*
- (c) *A determination and an Order by the Ontario Racing Commission that the agreement between WEG and COSA has no lawful basis as the COSA principals signing such an agreement had assigned to OHHA any rights to effect such action.*
- (e) *The revocation or suspension of the license of WEG to operate a race track, or;*
- (f) *The imposition of significant restrictions and conditions on the license of WEG to operate a race track, including:*
 - 1. *Providing satisfactory and complete accounting of funding matters to OHHA pursuant to the provisions of the MOU and the Site Holders Facility Agreement;*
 - 2. *Suspending the operation of the agreement between WEG and COSA pending determination of the necessity for, and the holding of, a vote pursuant to the provisions of the Site Holders Facility Agreement and;*
 - 3. *Making payments on a continuing and regular basis to OHHA as required pursuant to the provisions of the MOU and the Site Holders Facility Agreement together with full and complete disclosure and support;*

36. In support of the claimed relief, OHHA contends that WEG:

- Intentionally terminated the OHHA Agreement.
- Intentionally elected not to negotiate with OHHA.
- Sought to change OHHA's constitution.

ORC Powers

37. The subject matter of this Application relates to "*private sector dealings*".

38. The Commission's power cannot extend beyond that conferred by statute: The Racing Commission Act 2000 provides:

S5 The objects of the Commission are to govern, direct, control and regulate horse racing in any or all of its forms.

S7 (a) The Commission has power to govern, direct, control and regulate horse racing in Ontario.

S7 (k) The Commission has power to hold hearings relating to the carrying out of its objects or powers.

S11(7) Subject to subsection (a) a person who considers oneself aggrieved by a decision of a person to whom the Commission has delegated a power under subsection (3) or by a decision resulting from a hearing held pursuant to a delegation under subsection (4) is entitled to hearing by the Commission....



39. The ORC power to encroach upon individual or property rights is defined and circumscribed by the two-pronged *Sudbury Downs* test.

- (a) The dispute is primarily a matter of racing.
- (b) The ORC should hear the matter on public interest grounds such as relating to “*the good of horse racing generally.*”

Onus

40. The onus is upon the Applicant (OHHA) to demonstrate on a balance of probability (*F.H. v. McDougall* 2004 S.C.C.) that jurisdiction exists, and on *Sudbury Downs* principles, that jurisdiction should be exercised (“*Sudbury Downs*” or *OHHA v. ORC 2002 62 O.R. (3d) 44 Ont. C.A.*).

Disposition of the Motion

41. For three reasons, any one of which would be sufficient, WEG’s Motion must succeed:

Firstly – The Business Plan “*Dispute Resolution Mechanism*”

42. OHHA is a signatory to the OHRIA Business Plan and thereby is bound by its provisions. The Business Plan under government authority as expressed in the MOU governs the SRA Funds. The second paragraph of the Business Plan, provides:

“The MOU sets the understanding of the Minister, the Commission and the OHRIA with respect to the framework for implementation of the Business Plan including objectives, reporting requirements, and accountability mechanisms particularly as they relate to Section a) Revenue Allocation Strategy and b) Allocation and Accountability Mechanism.”

43. The Business Plan is a self-resolving document incorporating its own dispute settlement mechanism as follows: “*In the event of a dispute between two or more members of the horse racing industry as to allocation of revenues from wagering dollars.*” The dispute shall be immediately submitted for conciliation by OHRIA’s Board of Directors or a Board Committee. Failing resolution within 30 days, the Board shall forthwith refer the dispute for alternate dispute resolution before a retired Judge of the Superior Court.

44. This dispute resolution mechanism was triggered by OHHA’s formal request in a letter to OHRIA, July 2, 2009.

45. Distilled to the nucleus, this controversy is squarely within the ambit of the OHRIA Business Plan dispute settlement mechanism. In the Panel’s view, that conciliation/arbitration route is the proper course. There ought not to be concurrent proceedings before the Commission.

Secondly - ORC Policy

46. As a policy issue, the Commission must refuse to be drawn into disputes beyond statutory authority. There must be safeguard against a “*creeping mandate*”.



Thirdly - ORC Jurisdiction

47. Lack of jurisdiction alone is dispositive.

48. The subject matter of the dispute is not a racing issue. The contest relates to which of two unlicensed trade associations (OHHA/COSA) has status as bargaining agent for Horse People at WEG tracks. Identity and not competence stands to be decided. The decision will not be resolved on merit. Legalities will carry the day.

49. There is no public interest component justifying ORC intervention in a matter of private rights. The issue fails on both aspects of the *Sudbury Downs* test.

Comment on ORC Policy Issues (Ground Two)

50. Prosperity in the form of purse structures bloated by Slot revenues has substantially increased the industry appetite for litigious proceedings. The Commission is being required to do more with less (expense increases – revenue not so or certainly no so rapidly).

51. ORC policy has been not to intervene in commercial disputes. As stated by the Chair in the Elliott Decision (SB 022/2006), “*I believe this Commission should not become a trespass court or a forum for the resolution of private contract disputes.*” The Flamboro Downs case (SB 36/1996 Chair Sadinsky) from an earlier era supports that proposition as follows:

“The ORC has no jurisdiction to affect the contractual rights of parties as that does not involve an Administrative act. In our view, that limitation extends to the interpretation and enforcement of contracts which deal with common law rights of a private nature over which the Courts would ordinarily exercise inherent jurisdiction. To provide the Commission with such jurisdiction would require clear statutory authority which is absent in this case.”

52. The Commission has expertise in and deals with racing issues as identified in Section 7 RCA and the ORC Rules of Racing. The procedures for hearings are summary. Commission expertise does not extend to complex commercial issues involving such as contract interpretation, contractual rights, breach, remedies and status of persons with no privity of contract. There are traditional forums for such disputes and there they belong. ORC adjudication Panels by skill sets and industry expertise have a place and purpose. To otherwise engage ORC Panel deflects and impedes the discharge of proper responsibility.

53. An additional role as a Civil Court should not be forced upon the Commission. The summary procedure of Commission Hearings coupled with the comfort of no peril of a costs award against an unsuccessful litigant, makes an attractive incubator for litigation. All the while the parties contemplate furtherance by Judicial Review and beyond in the Court system.

54. In demonstration of the potential for complexity which bears on the policy aspect:

- OHHA seeks to establish breach of the WEG/Ministry Contract, breach of the WEG/Lottery Corporation Contract and to void the WEG/COSA contract. OHHA is a



party to none of those Contracts. None of the parties to the contracts is alleging breach. There may be issue as to OHHA's status.

- For the ORC to interpret and adjudicate upon a document to which the ORC is a party (the MOU) would be fundamentally wrong. Issues of bias and perceived bias would be inevitable.
- The Commission should not interfere with matters upon which the parties have agreed to the private remedy of binding arbitration pursuant to a self-resolving commercial contract.
- A determination may be required as to the dominant or subordinate nature of individual documents in the pyramid (particularly relating to contracts between tracks and trade associations).
- The boundaries of the arbitration proceeding were not disclosed on this Motion. Such comment as was made indicated that they were amorphous at best. The proposed litigation is complex. Better it should not be compound. Parallel or concurrent proceedings are to be avoided.
- The arbitration may be in conflict with the voting provision in the Site Holder Agreement. Thereby a dominance or relevance issue may arise.
- If a vested right to negotiate is asserted by OHHA, it will be contested by WEG. In this regard a brief comment by Hengen J. was referenced (*OHHA v. CPMA & Sudbury Downs* 2005 F.C. 1320 Sept. 27, 2005, paras. 51-53) to the effect that OHHA has no vested right to represent Horse People in Ontario.
- There will be dispute as to whether naming OHHA in the Business Plan as the Horse People's representative thirteen years ago is factual now – should a contemporary element be infused? Since then OHHA has been fragmented by the Northern Horsemen's, National Capital Region Harness Horse and COSA Associations. In the same interval there have been substantial changes in OHRIA.

55. Is it in the public interest to immerse a Racing Commission with industry expertise in a long-running complex commercial dispute thereby deflecting it from proper function? The answer is NO, resounding, emphatic and decisive.

OHRIA's Response to OHHA's Request on July 2, 2009 for Conciliation/Arbitration

56. Concurrently with this Application before the ORC and concurrently with the requested conciliation/arbitration, OHRIA purports to act under authority of the Business Plan. By letter August 21, 2009, OHRIA sought ORC approval of its Board Motion of August 18, 2009, that the Business Plan (June/96) and the MOU (Feb/97) be amended:

*“to replace any reference to OHHA and to insert in the place of OHHA the words:
‘The Standardbred Horse People’s Association under contract with a race track
licensed by the Ontario Racing Commission’.”*

57. The OHRIA motion purports to unilaterally delete the OHHA references from the MOU and the related Business Plan. ORC approval, if granted, would apply only to the Business Plan Amendment and could not authorize amendment of the MOU on behalf of the Ministry.

58. That proposed amendment by OHRIA was opposed by counsel for OHHA by letter to the ORC August 28, 2009.



59. ORC consent has been withheld pending further information and further consideration.

60. The difficulty with OHRIA's proposal is that:

- It is not responsive to the conciliation request by OHHA (first step in the arbitration process).
- It raises an issue of a decision being made without first having heard both parties.
- The requirement of ORC approval found in the Revision Mechanism Section of the Business Plan is narrowly cast:

"No changes will be made to the revenue allocation without the prior approval of the Ontario Racing Commission."

There may be serious doubt that this controversy involves a change in "revenue allocation" as opposed to simply rerouting revenue. This uncertainty may constitute a potential impediment to ORC approval.

Comment on ORC Jurisdictional Issues (Ground Three)

61. The ORC authority to conduct hearings is founded on two sections of the Racing Commission Act 2000:

Section 7(k)

"To hold hearings relating to the carrying out of its objects or powers."

Section 11(7)

"A person who considers one self aggrieved by a decision under delegated authority is entitled to a hearing before the Commissioner."

62. The issue involves no administrative act under ORC authority, delegated or otherwise. This proceeding does not shelter under S. 11(7) as an appeal from a decision under delegated authority. Can it shelter under section 7(k) – (that is within the ORC mandate to govern direct and regulate horseracing)?

63. As a dispute over bargaining rights, money, and the power which money confers, this is beyond S. 7 RCA authority to "govern, direct and regulate horse racing." It is a private contract issue between a track operator and two unlicensed trade associations. The dispute is not primarily a matter of racing.

64. Turning to the second tine of the *Sudbury Downs* test, and mindful of the public interest, elements bearing upon the propriety of ORC intervention include:

- Quality racing has continued at WEG notwithstanding lapse of the OHHA contract.
- The rights of individual Horse People are enhanced by freedom of choice between competing bargaining agents.



- In the course of this dispute, OHHA, as is its right, has by law restricted members to membership in a single trade association. That provision in itself may lend support for the existence of a competing trade association.
- There is no public interest in shutting down WEG racing in relation to private contract disputes.
- The public interest supports adherence by the Commission to its legitimate purposes, activities and expertise. Costly and time consuming diversions proper beyond the ambit of Commission function only detracts from proper discharge of Commission duties.
- The COSA Contract is a new beginning. To date, no evidence of hostility between WEG and COSA has emerged. This augers well for the future of horse racing.
- There is no public interest component leading to the ORC accepting jurisdiction to hear this matter.
- The long standing background between WEG and OHHA as evidenced by the current flurry of hostilities, lends no support for recreating opportunity for deadlocked bargaining stances between WEG and OHHA. Within the past ten months OHHA action direct or indirect designed to shut down WEG harness racing included:
 - Two failed boycott attempts
 - Failed submissions to CPMA questioning wagering license eligibility
 - Failed letters to MPP's to cut off WEG Slot revenues
 - Failed attack (in Whelan's name and personal capacity) on WEG's Access Agreements

65. At some stage the bloom comes off the rose – as does the credibility of demands to close down WEG. The credibility of a call to shut down racing and the intimidation factor of such a call dissipate and disappear in lockstep. There is no public interest in forcing WEG into contract negotiations with OHHA. Until there is a change in ideology there is no purpose in restoring OHHA/WEG bargaining – a model of futility sheathed in acrimony. The status quo is preferable.

Interim Relief

66. A pro-forma application for interim relief pending a decision herein was summarily dismissed. Leaving aside considerations of triable issue, there was no demonstration of irrevocable harm. The balance of convenience was overwhelmingly in favour of the status quo.

Result

67. For these Reasons the Panel has declined opportunity to hold this Hearing.

In Passing

68. The ORC with its governance responsibilities and multiple program management projects is loaded to the plimsoll line. It should not be overloaded by assuming responsibility beyond its mandate. That capacity load has been evident this fall with administrative responsibilities well beyond the norm. One manifestation of that workload is the delay in preparation and release of these Reasons.



69. The recurrence of protracted hearings between parties other than the Administration raises the issue of establishing a Commission infrastructure whereby the Commission would have authority to “*Order a party pay all or part of another party’s costs in a proceeding*” (Section 17-1 SPPA). This suggestion of Party and Party costs may pass under the radar as seemingly innocuous. It should not. The impact on Commission hearings between the industry participants could be profound.

70. Such costs would be compensatory, not punitive – but they would be substantial. Given the importance, extent and complexity of this issue with the Application and two Motions, a costs order in the \$20,000.00-\$25,000.00 range payable loser to winner may well be justifiable.

Immediate Payment of RSP Funds

71. Fair comment may permit the observation that the only SRA funds kept current by WEG are the two in which WEG has a direct business interest – OSS and overnight purse accounts.

72. Isolating consideration of the unpaid RSP Funds. Determination of the quantum is by mathematical formula. Neither the amount nor the ultimate destination of the funds is in dispute. Those funds are the property of the Horse People. There is correspondence before the Panel indicating WEG was contemplating setting up an RSP fund. There is no indication that such was done.

73. There is currently only one existing Registered Retirement fund into which they can be paid, that is the Manulife Fund.

74. An inflexible deadline for RSP payments is provided by the *Income Tax Act*. By letter to the ORC September 21, 2009, Darryl MacArthur, President of OHHA (to Steven Lehman CAO, ORC) stated that the deadline for the annual RSP contribution is December 1 (no explanation offered as to why it is not the end of February, or early March 2010). For purpose of this discussion, the precise date is not vital. The crux is that the RSP payments since January 1, 2009, should be made now. This could be readily accomplished by a “*without prejudice*” payment directly to Manulife with, if not concurrence, at least acquiescence by OHHA and WEG. This proper and overdue step would involve both parties thinking beyond self-interest for a pittance of time. The appropriate RSP payment having been made, the remaining issues including who should administer the RSP program may proceed at their own pace.

75. Historically, racing has been a form of entertainment. Since introduction of the Slots at tracks program, there is a new dimension. It is now an industry by which a portion of Slots revenues is directed to and distributed amongst persons in the rural communities. A vital component of racing is that make-work facet. That distribution of funds contemplated by the Government ought not to be frustrated by inability of two industry giants to resolve their differences. Those funds must not be held hostage, even if inadvertently so.

76. A secondary benefit of immediate payment is that neither trade association may then posture as protector of the RSP. Thereby any choice or vote by Horse People would be free of that potential contaminant. The RSP issue must be neutralized before any fair vote under the Site Holder Agreement could be held. Entitlement to the RSP funds is unrelated to which trade association may succeed in this contest.



COMMISSION HEARING

TORONTO, ONTARIO – OCTOBER 2, 2009

77. Horse People must understand that the contributions to their RSP funds are not beneficence from one or the other trade association. Those payments belong to the Horse People as a matter of right originating with the Wagering Tax Reduction and the MOU under the existing distribution formula.

DATED this 19th day of November 2009.

James M. Donnelly
Vice Chair