



COMMISSION HEARING

TORONTO, ONTARIO - SEPTEMBER 6, 2012

**IN THE MATTER OF THE *RACING COMMISSION ACT S.O. 2000, c.20*;  
AND IN THE MATTER OF A REQUEST FOR HEARING BY**

**Jeffrey BROOKS (# 6368T7)  
Terry BROOKS (#7306T0)  
Andrew BROOKS (# 962K25)  
Victoria BROOKS (#718K13)  
SEIZE THE DAY INDUSTRIES (# 085L81)  
GOLDFINGER ENTERPRISES (# 301L09)  
VAE LLC (#374J40)  
BULLETPROOF ENTERPRISES (#862K92)**

On January 26, 2010, the Executive Director issued an Immediate Suspension Order, suspending the licences of Jeffrey Brooks and Bulletproof Stable (“Jeffrey Brooks and Stable”) and Terry Brooks, Andrew Brooks, Victoria Brooks, Seize the Day Industries, Goldfinger Enterprises, and VAE LLC Stable (“the Brooks family and Stables”).

On February 10, 2010, Counsel for all Parties noted above requested a Hearing in relation to this Order pursuant to s. 23(3) of the *Racing Commission Act, 2000*.

On February 2, 2012, a Notice of Proposed Order was issued against the aforementioned parties.

On February 17, 2012, Counsel for Jeffrey Brooks and Bulletproof Stables requested a Hearing in relation to this Notice of Proposed Order pursuant to 22(3) of the *Racing Commission Act, 2000*. On February 21, 2012, Counsel for the Brooks family and stables made the same request.

On September 6, 2012, a Panel of the Ontario Racing Commission (“ORC”), comprised of Vice-Chair James Donnelly, Commissioner Brenda Walker and Commissioner Dan Nixon was convened to hear pre-hearing motions.

Trudy Mauth appeared as Counsel for the Administration. Edward Greenspan appeared as counsel for Jeffrey Brooks and Stable at the pre-hearing motions. Robyn Ryan Bell appeared as counsel for the Brooks family and Stables.

The Applicants filed a motion with the Panel seeking an Order a) to Quash the Order of Immediate Suspension, b) Quash or permanently Stay the Proposed Order to Suspend Licences.

In the alternative, the Applicants requested an Order directing further particulars of the allegations underlying the ORC Orders be provided, such particulars to be delivered within 30 days of release of these reasons and b) an Order that no date be fixed for the Hearing of these allegations on the merits before expiration of 30 days following such release.

Upon hearing oral argument from all parties on September 6, 2012 and after reviewing the facts that had been submitted, the Panel makes the following findings:

- 1) Disclosure obligations have been fulfilled subject to the continuing obligation to make disclosure.
- 2) Having regard to volume, complexity and institutional capability, the disclosure was timely.



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 6, 2012

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- 3) Adequate particulars of the Administration allegations have been furnished through the disclosure process.
- 4) There is no finding of abuse of process by the Administration.
- 5) The Application to quash firstly the Order of Immediate Suspension and secondly the Notice of proposed Order is dismissed.
- 6) The issue of investigative costs is reserved to be dealt with at the Hearing.
- 7) This matter should proceed expeditiously. The parties will have opportunity to agree on hearing dates. Failing agreement, this Panel will convene within 21 days of the release of these reasons to hear submissions upon an appropriate pre-emptory Hearing date.

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

DATED at Toronto this 6<sup>th</sup> day of November, 2012.

BY ORDER OF THE COMMISSION \_\_\_\_\_

  
Rob McKinney  
Acting Executive Director



## REASONS FOR DECISION

### The Ontario Racing Commission (ORC) Licensees

David Brooks (Brooks)  
Jeffrey Brooks, his brother  
Terry Brooks, his wife  
Andrew Brooks, his son  
Victoria Brooks, his daughter  
Seize The Day Stable (Andrew Brooks)  
Goldfinger Stable (Terry Brooks)  
VAE LLC Stable (Andrew and Terry Brooks)  
Perfect World Stable (David Brooks, Victoria Brooks)  
Bulletproof Stable (from David Brooks to Andrew Brooks Sept 27, 2009,  
and to Jeffrey Brooks Dec 3, 2009)

### Licence status

1. David Brooks' ORC licence was suspended November 16, 2007 in consequence of reciprocal enforcement of a racing suspension in Pennsylvania. The ORC licence had an expiry date in December 2007 and has not been renewed. On September 8, 2008, David Brooks was declared ineligible to race in Ontario and remains so.

### Extent of the racing operation

2. When Brooks' ORC licence was suspended about 460 standardbred horses were registered in his name or his stable names. In 2009, Bulletproof's purse money in Ontario, principally Sires Stakes, was about 6.5 million dollars.

### The Allegation

3. That David Brooks, while suspended in Ontario, continued to be actively involved in his racing operation being carried on in the names of licensed members of his family. For example, Bulletproof cheques accompanied licensing applications for Brooks' family licensing applications to the ORC.

### David Brooks' circumstance

4. About 2007, Brooks was under investigation by Federal Authorities in the United States upon allegations of looting his body-armour company. As a result of allegations of concealing millions of dollars in assets overseas, his bail on criminal charges was revoked. Following trial, Brooks was convicted on multiple charges involving dishonesty, fraudulent conduct and deceit. He is currently subject to a lengthy term in Federal prison in the United States.

5. David Brooks conducted a massive racing operation. That operation was dispersed to his family and continued.



**This proceeding**

6. In relation to his alleged participation in the continued racing activity of his horses and his ineligibility to race in Ontario, an ORC Order of Immediate Suspension of ORC licenses issued January 26, 2010 for Jeffrey Brooks, Terry Brooks, Andrew Brooks, Victoria Brooks, Seize The Day Industries, Goldfinger Enterprises, VAE LLC, and Bulletproof Enterprise.

7. Following an extensive investigation, an ORC Notice of Proposed Order to Suspend Licenses of the aforesaid licensees was issued February 2, 2012, whereby the ORC Director sought 10-year licence suspensions for those licensees and fines as follows:

Jeffrey Brooks	\$400,000
Terry Brooks	\$ 40,000
Andrew Brooks	\$ 40,000
Victoria Brooks	\$ 40,000
Seize The Day Industries	\$ 10,000
Goldfinger Enterprises	\$ 10,000
VAE LLC	\$ 10,000
Bulletproof Enterprises	<u>\$ 10,000</u>
Total	\$650,000

8. Pursuant to Section 18 (3) of the *Racing Commission Act 2000*, the Director sought an Order for recovery of \$40,000 investigative costs, being \$5,000 from each of the eight licensees.

**This Motion**

9. Greenspan Partners, on behalf of Jeffrey Brooks and Bulletproof Enterprises seek an Order:

Quashing the Order of Immediate Suspension.

Quashing or permanently staying the Proposed Order to Suspend Licensees.

In the alternative - (a) an Order directing further particulars of the allegations underlying the ORC Orders be provided, such particulars to be delivered within 30 days of release of these reasons; (b) an Order that no date be fixed for the hearing of these allegations on the merits before expiration of 30 days following such release.

10. The relief sought is premised upon the allegation that the Administration's investigation and resulting proceeding constitute an abuse of process by reason of delay and failure to provide disclosure and particulars to a degree that the Director's suspension application must not be permitted to continue.

11. Concurrently, Bennett Jones on behalf of Terry Brooks, Andrew Brooks, Victoria Brooks, Seize The Day Industries, Goldfinger Enterprises and VAE LLC, seek identical relief upon identical grounds.

12. The Applicants' submission relates to the pace and quality of disclosure and claimed inadequacy in furnishing particulars of the case propounded by the Administration.

13. There is a common law positive obligation to provide fairness. That fairness stripped to essentials is to know and have opportunity to respond to the allegations of wrongdoing.



14. The allegations detailed in the Director's Notice of Proposed Order to Suspend Licenses are as follows:

**Summary of Allegations Arising from the ORC Investigation:**

6. *BULLETPROOF ENTERPRISES is solely owned by Jeffrey BROOKS.*
7. *It is alleged that both David and Jeffrey BROOKS were considered by industry participants and trades people as the owners of BULLETPROOF ENTERPRISES.*
8. *On July 5, 2007, a horse owned by David BROOKS received a positive drug test.*
9. *On November 16, 2007, the ORC suspended David BROOKS, reciprocating a Pennsylvania State Decision.*
10. *In December of 2007, David BROOKS' ORC licence expired.*
11. *On May 17, 2008, as a consequence of the positive test referred to in paragraph 8 herein, BROOKS' licence was suspended by the ORC until he re-paid his purse of \$2700 to Kawartha Downs.*
12. *On July 31, 2009, David BROOKS returned the purse monies and made payment using a bank draft drawn on the BULLETPROOF ENTERPRISES account.*
13. *On September 08, 2009, David BROOKS was declared ineligible to be licensed in Ontario until he appeared before the Deputy Director of the ORC. He has not done so to date.*
14. *It is alleged that Jeffrey BROOKS permitted his brother David BROOKS to be heavily involved in the training and business decisions of horses owned by Jeffrey BROOKS.*
15. *It is alleged that Jeffrey BROOKS permitted David BROOKS to have frequent contact with and provide instruction to trainers of Jeffrey BROOKS' horses.*
16. *It is alleged that Jeffrey BROOKS permitted David BROOKS to negotiate training fees and payment of outstanding invoices with industry participants for horses owned by Jeffrey BROOKS.*
17. *It is alleged that industry people interviewed in this investigation believed that David BROOKS was the driving force behind BULLETPROOF ENTERPRISES and his brother Jeffrey did whatever David BROOKS told him to do.*
18. *It is alleged that Jeffrey BROOKS was not paying trades people for the work done on his horses.*
19. *It is alleged that Jeffrey BROOKS was not paying outstanding accounts owed to veterinarians who provided veterinary services to his horses.*
20. *It is alleged that ORC applications for GOLDFINGER ENTERPRISES, VAE LLC and SEIZE THE DAY INDUSTRIES were paid for with a cheque drawn from the BULLETPROOF ENTERPRISES bank account. BULLETPROOF ENTERPRISES paid for the licensing of Andrew BROOKS and his stables, Terry BROOKS and her stables, as well as Victoria BROOKS and her stables.*
21. *Jeffrey BROOKS was not, according to registration documents, affiliated with GOLDFINGER ENTERPRISES or VAE LLC.*
22. *It is alleged that Jeffrey BROOKS dated official licensing documents for stables he was not registered to.*



23. Horses owned by BULLETPROOF ENTERPRISES raced a total of 1004 times in 2009 in Ontario and earned \$6,558,567.
24. Horses owned by BULLETPROOF ENTERPRISES raced a total of 21 times in 2010 in Ontario and earned \$112,860.
25. It is alleged that all of the stables licensed in Ontario that involve Jeffrey BROOKS, Terry BROOKS, Andrew BROOKS and Victoria BROOKS are linked together.
26. It is alleged that trainers for horses affiliated with GOLDFINGER ENTERPRISES invoiced BULLETPROOF ENTERPRISES for payment.
27. It is alleged that Jeffrey BROOKS, Victoria BROOKS, Andrew BROOKS, and Terry BROOKS violated the Rules by taking instruction from, or permitting a suspended licensee, namely David BROOKS, to have involvement in their respective stables and horse-related businesses.
28. It is alleged that David BROOKS remained involved in the purchase, sale, training decisions and payment arrangements with horse industry participants when he was prohibited from doing so. Jeffrey, Victoria, Andrew and Terry BROOKS permitted David BROOKS to have involvement in their horse-related affairs which is contrary to the Rules.

**Conclusion Regarding Allegations:**

29. It is alleged that Jeffrey BROOKS and BULLETPROOF ENTERPRISES violated the following Rules:

Rule 1.09 (conduct not provided for in the rules; best interests of racing),  
Rule 3.09 (financial irresponsibility),  
Rule 6.13.01 (horse owned or controlled by suspended/unlicensed/ineligible person),  
6.13.02 (transfer of horse by suspended/disqualified/unlicensed/ineligible person),  
Rule 6.13.03 (evidence to establish bona fide transaction),  
Rule 6.13.04 (nomination or entry made by suspended person; owner responsible),  
6.17 (threaten bodily harm, use insulting, offensive or improper language, be guilty of any improper conduct); and  
Rule 6.20 (misconduct or act injurious or prejudicial to racing)

30. It is alleged that Victoria, Andrew and Terry BROOKS had very little or no involvement in the running of their horse stables, making training decisions or payment arrangements for horses in their stables and permitted David BROOKS to do so contrary to Rule 1.09 of the Rules.
31. It is alleged that Terry BROOKS, Andrew BROOKS, Victoria BROOKS and VAE LLC also violated Rule 3.09 (financial irresponsibility) and 6.20 (misconduct or act injurious or prejudicial to racing) of the Rules.
32. It is alleged that SEIZE THE DAY INDUSTRIES violated Rule 6.13.03 by permitting BULLETPROOF ENTERPRISES to pay for the licencing of its stable.
33. It is alleged that GOLDFINGER ENTERPRISES violated Rule 6.13.03 by permitting BULLETPROOF ENTERPRISES to pay for the licencing of its stable.

15. The Notice of Proposed Order also provides the following in relation to the due diligence investigation of the various parties:

**DUE DILIGENCE  
INVESTIGATION:**



34. The ORC requested that the Ontario Provincial Police conduct a due diligence investigation into Jeffrey BROOKS, Terry BROOKS, Andrew BROOKS, Victoria BROOKS, SEIZE THE DAY INDUSTRIES, GOLDFINGER ENTERPRISES, and BULLETPROOF ENTERPRISES. The ORC investigation revealed the following:

- a) On September 14, 2010, David BROOKS was convicted of insider trading, fraud, and obstruction of justice in Central Islip, New York.
- b) It is alleged that several stables have been created over the years and put in different BROOKS' family members' names. While David BROOKS was still licensed with the ORC, there were various stables formed either in the name of David BROOKS or in other family members' names. After David BROOKS was indicted in New York in 2007 and his ORC license expired, new stables were formed and put into various family members' names. It is alleged that all of these stables continued to be controlled by David BROOKS.

35. The Due Diligence Investigation also yielded the following outstanding civil suits and unpaid civil judgments:

- b) On November 2, 2009, ORC licensee Wayne Preszcator (SB#E43546) filed a civil suit against BULLETPROOF ENTERPRISES for money owed. The case was settled for \$75,000.00 and ownership of one horse. BULLETPROOF ENTERPRISES has not yet fulfilled the terms of settlement.
- c) On December 15, 2009, ORC licensee Travis Mackay (SB#073J30) filed a civil suit against BULLETPROOF ENTERPRISES for money owed. The amount alleged to be owed is \$27,000.00.
- d) Halton Equine Veterinary Services advises that BULLETPROOF ENTERPRISES owes \$15, 233.87 for services provided.

14. On March 30, 2010, in the matter of Doyle Bloodstock Transportation Inc. vs. BULLETPROOF ENTERPRISES bearing court file number SC-10-95124-00, the plaintiff obtained judgment in the amount of \$25,584.63. BULLETPROOF ENTERPRISES has failed to pay the judgment.

- e) On March 30, 2010, in the matter of Anderson & Goodrow Equine Veterinary Professional Corp., o/a Mountsberg Equine Services vs. BULLETPROOF ENTERPRISES bearing court file number SC-10-110002-00, the plaintiff obtained judgment in the amount of \$13,629.15. BULLETPROOF ENTERPRISES has not satisfied the judgment.
- f) On December 14, 2010, in the matter of Murray Bonshor DVM vs. BULLETPROOF ENTERPRISES bearing court file number 09-15836SR, the plaintiff obtained judgment in the amount of \$82,608.70. The judgment remains unpaid.

16. The parties' progress toward a Hearing date has been less than impressive. On June 7, 2012, a Hearing convened in an attempt to move the matter forward. Counsel for the Administration advised that preliminary Motions should be scheduled, and first availability for Greenspan Partners was September 6. Counsel for the Administration indicated availability through June, July and August. The Motions were fixed for September 6 & 7 and were concluded on September 6.

17. Through the interval preceding June 7, 2012, counsel for the Administration repeatedly sought to reach agreement on a Hearing date. This is seen as a *bona fide* attempt to maintain forward progress and not an attempt to evade disclosure obligations.



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 6, 2012

18. Counsel for the Applicants declined to agree to a date preferring, and fairly so, to await disclosure and particulars.

19. On occasion the Racing Commission deals with matters of profound significance for licensees. Although the “liberty at stake” considerations of criminal law have no application, the Hearing may have profound consequences upon the licensee’s business or employment, certainly as it relates to horse racing and potentially beyond and also in terms of reputational stigma. Much has been said in this forum and in the hierarchy of Courts about the Commission’s obligation to provide a high standard of justice in such circumstances. No profound discussion is required. The Panel understands and embraces that obligation.

20. There is a fundamental right to have the opportunity to respond to allegations of impropriety. It follows that disclosure and particulars must be in full and thereby adequate to enable the licensees to know and respond to the case against them. A further feature of equal importance is timeliness. It is in that area that some departure from reflexive response may be adequate for those bringing the charges.

21. There can be no absolute standard of instantaneous response. The investigation may proceed in stages. That leads to disclosure in stages. The Racing Commission, funded by the industry which suffers from declining fan and mutual support, does not have unlimited resources.

22. To assess the timeliness of disclosure, the availability of institutional resources is a valid consideration. If there is less than swift compliance caused by constraints in resources, there can be compensation by providing supplementary time and opportunity to prepare.

23. In the Administrative law forum with no direct access to contempt proceedings, the Panel has some limitation on the power to control its own process. Fairness and reasonableness are the outer boundaries of the proceedings. There is no such result as compelling the parties to proceed. Attempting to do so would be to invite a circular rather than a linear procedure such as judicial review alleging denial of procedural fairness.

24. The result is that a permissive approach is employed to negotiate trial dates. If in June counsel states, “I am not available until September 1<sup>st</sup>,” - in practical terms, that ends the matter. The preferred course is to accept that eventuality and avoid a lot of useless discussion.

25. No complaint is made that there has been anything less than full disclosure. At the June 7, 2012 session to fix dates for motions, the Panel made enquiry of counsel and no specific Order relating to disclosure was requested.

26. Given the scale of the racing operations, the many separate racing entities and geographic sites for business and for racing and the multitude of persons connected with the various operations, and further given the investigative personnel and capability of the Ontario Racing Commission and the Commission’s other responsibilities and limited financial resources, this investigation and disclosure constituted an immense task. In total, 3200 plus pages and 17 audio statements were disclosed. Their review, compilation and assessment added to the normal full-time administrative duties of staff. Witnesses must be interviewed, the results assessed and coordinated, the finished product assembled and then disclosure made.





27. The Administration's case includes records relating to conduct of the Applicants' racing operations. The identity and significance of those documents should be known to persons conducting the racing operation. Those persons would recognize the names of their horses, tracks at which they race, the names of trainers and drivers and perhaps of grooms and veterinarians. They would have awareness of the horses proposed and actual racing sites and the success or otherwise of such endeavours. There is no element of mystery or of the unknown in the Administration allegation - that is - David Brooks, following suspension of his licence, continued to control broad aspects of the management and racing of the horses that came from his stables. The parties' knowledge of their own racing operations should render the disclosure relative to them recognizable.

28. The assertion of "delay" is made at the end of the disclosure process. Throughout the process there was no expression of dissatisfaction with the time consumed or the pace of the investigation. Requests were invariably for compliance with disclosure obligations.

29. Section 23(3) of the *Racing Commission Act* requires that should the parties request a Hearing in relation to the Director's Notice of Proposed Order, they must express their intention to do so within 15 days. The applicants assert this constitutes a denial of procedural fairness. This statutory provision does not require that a Hearing occur within 15 days. If the parties wish to challenge the Notice of Proposed Order, they must give timely notice by requesting a Hearing.

30. The Order of Immediate Suspension is an interim measure implemented under Section 23 (1) *Racing Commission Act 2000* which authorizes such action:

"If the Director considers it to be necessary in the public interest."

31. No prior Hearing is required for an Order of Immediate Suspension. This is statutory recognition that the public interest in the integrity of racing is so vital that stringent measures may be warranted. An Order of Immediate Suspension is a harsh remedy to be invoked only with clear justification. The responding party should have prompt access to a Hearing. This was promptly and repeatedly referenced by Commission counsel. No Hearing relative to the Order of Immediate Suspension was requested by any of the Applicants.

32. If subsequent investigation warrants, section 22 permits the Director to propose to suspend or to revoke a licence pursuant to Section 21 by service of written notice. (Section 22) That notice identifies any suspensions and fines sought by the Director as was the case in this matter.

**Disclosure relating to the Immediate Suspension Orders proceeded as follows:**

- |              |   |   |
|--------------|---|---|
| Jan 26, 2010 | - | The Immediate Suspension Order issued                                       |
| Mar 15, 2010 | - | Volumes one to four.  |
| Mar 29, 2010 | - | Duty book notes for Detective Constable Deasy and ORC Investigator Moffatt. |
|              | - | CD audio – interview of two witnesses.                                      |
| May 20, 2010 | - | Will says, Deasy and Moffatt.   |



Aug 20, 2010 - Volume five plus additional disclosure by 4-page letter from Commission counsel addressing issues raised by Applicants' counsel and advising that aspects of disclosure were being delayed in order to protect the integrity of the investigation pursuant to the authority of *R v Girmonte*, (1997) 12 CR (5<sup>th</sup>) 352 Ont C.A. and *R v Eggar*, [1993] 2 SCR 451.

33. Included in the delayed disclosure were witness interviews from April 2010.

34. Also disclosed at that stage were senior racing Judge Patricia Webb's notes relating to horses registered to Brooks or his stable which were transferred pursuant to written permission from the ORC.

35. By letter of August 20, 2010, counsel for the Administration suggested a Hearing on the Immediate Suspension could be scheduled at that time. No response was received until January 31, 2011.

36. After that absence of response, Commission Counsel enquired by letter of January 31, 2011 as to whether the Applicants' counsel were still retained. Ms. Bell of Bennett Jones replied that she was acting for the remaining Applicants (other than Bulletproof and David Brooks).

37. By letter of February 7, 2011, counsel David Moore advised that he was replacing Mr. Cohen as counsel for Jeffrey Brooks and Bulletproof. Mr. Moore requested copies of the Suspension Order, correspondence and an index of disclosure to date. This material was provided February 28, 2011.

38. Commission counsel had no further communication from Ms. Bell on behalf of the Brooks family or from Mr. Moore on behalf of Jeffrey Brooks or Bulletproof to May 18, 2011.

39. Commission counsel on May 10, 2011, had written to Bell and Moore suggesting that a Hearing date be set.

40. May 18, 2011, Mr. White from Greenspan Partners wrote advising that his firm was now acting for Jeffrey Brooks. As well, Tom Curry of Lenczner Slaght advised that he had been retained by Jeffrey Brooks (the third law firm said to be acting for Jeffrey Brooks).

41. Ms. Bell requested two extensions before responding to the enquiry as to whether she had been retained (to May 25 and then to June 3).

42. Ms. Bell and Mr. White jointly requested a further extension which was granted to June 30, 2011 so that they could respond verifying or otherwise their respective retainers.

43. On March 12, 2012, counsel for the Administration wrote to counsel for both Applicants suggesting any outstanding concerns over disclosure be resolved by the parties or by an ORC Panel if necessary.

44. By letter April 24, 2012, counsel for the Administration responded to issues raised about the timing and sufficiency of disclosure pointing out that counsel would not be forfeiting "Stinchcombe" rights by agreeing to a trial date, and further suggesting that she make a unilateral application to fix a Hearing date. (*R v Stinchcombe*, [1995] 1 SCR 754)

45. The investigation and review of materials thereby generated continued through June 20, 2011 to February 2, 2012 when the Director's Notice of Proposed Order issued. Through this approximate 8



months, there was neither objection from, nor discernable activity by, the Applicants. There was no effort made by the Applicants to resolve the purse issue, to review the Order of Immediate Suspension, to arrange pre-hearing motions or to set a date for the Hearing.

46. The second stage of disclosure related to the investigation underlying the Director's Notice of Proposed Order and proceeded as follows:

Feb 23, 2012	Volumes 6 & 7	
Mar 8, 2012	Volumes 8 & 9	On February 27, 2012, counsel for Jeffrey Brooks delivered a 14-page letter regarding disclosure, and in response received volumes 8 & 9 with will says from 14 witnesses plus information that more volumes would be forthcoming.
Mar 21, 2012	Volume 10	
Apr 2, 2012	Volumes 11 & 12	
Apr 12, 2012	Volumes 13 & 14	
May 4, 2012	Volume 15	

47. There was no evidence of wilful or negligent delay in the investigation or the disclosure process nor is there suggestion of unnecessary investigation either in terms of quantity or direction of endeavour.

### Particulars

48. Particulars and disclosure are separate entities. Particulars relate to the material facts underlying the investigation and are provided for in s. 4 (1) (d) *SPPA* and ORC Rules of Procedure (3 – 1).

49. The Notice of Proposed Order detailed the particulars upon which the Director relied. Disclosure related to continuation of David Brooks' racing operation in the names of his family members and their stables. As stated, the significance and relevance of the documents would be apparent to them as they related to the activities of the various registered owners of the horses. Details relating to the particulars incorporated in the Director's Notice of Proposed Order may be expected to be supported by the disclosure documents.

50. The disclosure volumes were organized with a table of contents for each volume. Separate binders were provided in order to organize the documents and render them more manageable by subject matter.

51. Thereby the parties were provided with reasonable particulars relating to the various allegations.

52. Counsel for the Administration identified the 15th volume as concluding "all the relevant disclosure in my possession" as of May 4, 2012. The additional obligation of continuing disclosure was acknowledged through correspondence and during the Motion Hearing.

53. Subsequent to May 4, 2012, counsel for the Administration received a report from the Centre of Forensic Sciences (CFS) (which application to the Centre had been referenced in volume 15). That report was disclosed July 27, 2012.



54. Following disclosure of the CFS report, additional disclosure requests were made and dealt with (some being for records in third party hands). A CFS resume was produced as well as a 12-minute re-interview of the witness Reid.

55. At this time (May 4, 2012), Greenspan Partners on behalf of Jeffrey Brooks, requested additional time to review the disclosure. Counsel for the Administration suggested setting dates for pre-hearing motions. Counsel for Jeffrey Brooks responded. "We are not in a position to know what pre-trial motions we may bring or to schedule them," and further "I'm not available either date," June 5 & 7 having been suggested by counsel for the Administration.

56. Commission counsel persisted and the parties agreed to appear before an ORC Panel on June 7, 2012 to schedule a date for Motions. Over that long interval (two years), neither counsel for the Brooks family suggested fixing a date for motions relating to the Immediate Suspension, to purse money withheld (approximating \$750,000) nor for motions relating to the Hearing. That extended inaction is inconsistent with a desire for a timely Hearing and is relevant to an assessment of prejudice.

57. On June 7, 2012, before the ORC Panel, counsel for Jeffrey Brooks not being available before September, Motions were set for and proceeded on September 6, 2012. These reasons relate to those proceedings of September 6.

58. The Administration has invoked the statutory powers of Immediate Suspension and Notice of Proposed Suspension which are provided for protection of the public interest. No funds were seized from the Applicants. Rather, their entitlement to unpaid purse funds was put in issue. If the Director's allegations are sustained, that withholding of purse funds will be ratified.

59. No evidence of prejudice beyond that necessarily incidental to the Director's enforcement action has been adduced. Inferentially there must be prejudice in terms of lost opportunity to race and the stigma of suspension. There was no evidence that any of the Applicants depend on racing to earn a livelihood.

60. Purse money won by Bulletproof was withheld. Other owners have a contingent claim to those funds depending upon the Hearing result. That withholding may be seen as an element of prejudice.

61. The remedy of a Stay is drastic. In effect, it constitutes dismissal of the allegations without a Hearing. The remedy of a Stay is available only in the clearest of cases.

62. The societal interest in these proceedings bears on the integrity of the racing industry. So often and so ably comment has been made that racing, without integrity, is doomed. The public must have confidence in the racing product. Otherwise there is no adequate fan or mutuel support. With a diminishing wagering dollar, the purse structure withers and with it the racing and breeding segments.

63. In all of the circumstances mindful of the volume of material, availability of institutional resources, the superimposed workload on Commission staff and the significance for the public interest in racing, this investigation and Hearing should have proceeded. The Applicants have done little to move the matter forward. This supports an inference at least as to acquiescence in the pace at which matters proceed.



64. To fail to proceed to a Hearing in light of David Brooks' gross criminal activity and the scope of his racing activity would be a substantial affront to the public interest in racing. Proceeding with the investigation and the conduct thereof is not an affront to the public's sense of decency and fair play.

65. The community has a substantial interest in having a Hearing proceed upon such serious allegations. To summarily dismiss the Hearing must certainly offend the community sense of fair play and decency.

66. Certain matters require comment:

- The appellants claim unfairness in repeated suggestions of an early Hearing by Commission counsel. Anyone suspended without a Hearing may reasonably be expected to want a prompt Hearing and to know that such avenue was available.
- Issues of costs claimed under s.18 (1) (3) *RCA* are for disposition at the Hearing.
- The applicants seek particulars underlying the quantity of the suggested fines. The quantity of any fines levied will be determined by the gravity of the offence and aggravating or mitigating circumstances as determined at the Hearing. The usual criteria in assessing penalty can be expected to be applied. Those criteria were discussed in *ORC and Scott & Gray*, Ruling COM SB 021/2007.
- With respect to disclosure of interviews held in March, April and May 2010 and disclosed in 2012, the applicants had been informed that the integrity of the investigation was protected by delaying certain disclosure.
- The Immediate Suspension Order is a mechanism to protect racing during further investigation; the intent being to prevent continuation or recurrence of perceived misconduct. Notwithstanding the provision in the Order that it endures "pending the completion of an ORC investigation," the Order does not automatically end with that completion. The continuing status of the Order will depend upon the result of the investigation. As provided in the *Racing Commission Act*, that interim order ends at the Hearing.

67. No breach of procedural fairness has been found. There has been no affront to the community's sense of fairness and decency.

68. Upon all of the evidence, the Panel finds:

- 8) Disclosure obligations have been fulfilled subject to the continuing obligation to make disclosure.
- 9) Having regard to volume, complexity and institutional capability, the disclosure was timely.
- 10) Adequate particulars of the Administration allegations have been furnished through the disclosure process.
- 11) There is no finding of abuse of process by the Administration.
- 12) The Application to quash firstly the Order of Immediate Suspension and secondly the Notice of proposed Order is dismissed.



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 6, 2012

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13) The issue of investigative costs is reserved to be dealt with at the Hearing.

14) This matter should proceed expeditiously. The parties will have opportunity to agree on Hearing dates. Failing agreement, this Panel will convene within 21 days of the release of these reasons to hear submissions upon an appropriate pre-emptory Hearing date.

DATED this 6<sup>th</sup> day of November 2012.

James M. Donnelly  
Panel Chairman