

Court File No. 177/14

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SEELSTER FARMS INC., WINBAK FARM OF CANADA, INC.,
STONEBRIDGE FARM, 774440 ONTARIO INC., NORTHFIELDS FARM
INC., JOHN MCKNIGHT, TARA HILLS STUD LTD., TWINBROOK LTD.,
EMERALD RIDGE FARM, CENTURY SPRING FARMS, HARRY
RUTHERFORD, DIANE INGHAM, BURGESS FARMS INC., ROBERT
BURGESS, 453997 ONTARIO LTD., TERRY DEVOS, SONIA DEVOS,
GLENN BECHTEL, GARTH BECHTEL, 496268 NEW YORK INC.,
HAMSTAN FARM INC., ROBERT HAMATHER, JAMES CARR, GUY
POLILLO, DAVID GOODROW, TIMPANO GAMING INC., CRAIG TURNER,
ROBERT MCINTOSH STABLES INC., GLENGATE HOLDINGS INC.,
KENDALL HILLS STUD FARM LTD., ANDY KLEMENCIC, TIM
KLEMENCIC, STAN KLEMENCIC, JEFF RUCH, BRETT ANDERSON, DR.
BRETT C. ANDERSON PROFESSIONAL VETERINARY CORPORATION,
KILLEAN ACRES INC., DECISION THEORY INC., 296268 ONTARIO LTD.,
DOUGLAS MURRAY MCCONNELL, QUINTET FARMS INC., KARIN
BURGESS, BLAIR BURGESS, ST. LAD'S LTD., WINDSUN FARM INC.,
SKYHAVEN FARMS and HIGH STAKES INC.

Plaintiffs

- and -

ONTARIO LOTTERY AND GAMING CORPORATION

Defendant

NOTICE OF ACTION

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The Claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*,

serve it on the Plaintiffs' lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 10 2014 Issued by: Bonnie Rozell
Local Registrar

Address of 74 Woolwich St.
court office: Guelph, Ontario N1H 3T9

TO: Ontario Lottery and Gaming Corporation
4120 Yonge Street, Suite 500
Toronto, ON
M2P 2B8

CLAIM

1. The Plaintiffs claim:

- (a) a declaration that the Defendant owed common law, contractual and equitable obligations to the Plaintiffs and that those obligations were breached;
- (b) damages in the amount of \$60,000,000 for negligence, negligent and/or intentional misrepresentation, breach of contract, and unjust enrichment;
- (c) punitive, aggravated, and exemplary damages in the amount of \$5,000,000 or as otherwise determined by this Honourable Court;
- (d) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (f) such further and other Relief as this Honourable Court may deem just.

2. The Plaintiffs are breeders of standardbred horses carrying on business throughout Ontario. They breed mares, whose offspring are sold at auction as yearlings that go on to race at tracks throughout the Province. They provide horse boarding services. They stand stallions in their stables, which sire generations of future Ontario standardbred racehorses. Collectively, the Plaintiffs are referred to herein as the "Standardbred Breeders."

3. The Plaintiff Seelster Farms Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Seelster Farms Inc. was established in 1969, and carries on standardbred breeding in Lucan, Ontario.

4. The Plaintiff Winbak Farm of Canada, Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Winbak Farm of Canada, Inc. was established in 2005, and carries on standardbred breeding in Caledon, Ontario.

5. The Plaintiff Stonebridge Farm is a partnership carrying on business in the Province of Ontario. Stonebridge Farm was established in 1995, and carries on standardbred breeding in Avra, Ontario.

6. The Plaintiff 774440 Ontario Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario, operating as Windsong Acres. Windsong Acres was established in or about 1959, and carries on standardbred breeding in London, Ontario.

7. The Plaintiff Northfields Farm Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Northfields Farm Inc. was established in 2013, and carries on standardbred breeding in Meaford, Ontario. Prior to the incorporation of Northfields Farm, the Plaintiff John McKnight, an individual residing in the Province of Ontario, carried on standardbred breeding as a sole proprietor, under the name Northfields Farm. Northfields Farm was originally established in Meaford, Ontario in 1974.

8. The Plaintiff Tara Hills Stud Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario. Tara Hills Stud Ltd. was established in 1997, and carries on standardbred breeding in Port Perry, Ontario.

9. The Plaintiff Twinbrook Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario, carrying on business as Twinbrook Farms. Twinbrook Ltd. was established in 2000, and carries on standardbred breeding in Embro, Ontario.

10. The Plaintiff Emerald Ridge Farm is a partnership carrying on business in the Province of Ontario. Emerald Ridge Farm was established in 1995, and carries on standardbred breeding in Rockwood, Ontario.

11. The Plaintiff Century Spring Farms is a sole proprietorship carrying on business in the Province of Ontario. Century Spring Farms was established in 2005, and carries on standardbred breeding in Gorrie, Ontario.

12. The Plaintiffs Harry Rutherford and Diane Ingham are individuals residing in the Province of Ontario, carrying on business in partnership as Cool Creek Farm. Cool Creek Farm was established in 1979, and carries on standardbred breeding in Mount Pleasant, Ontario.

13. The Plaintiff Burgess Farms Inc. is a corporation incorporated in or about 1971 pursuant to the laws of the Province of Ontario. The Plaintiff Robert Burgess is an individual residing in the Province of Ontario. Together, Burgess Farms Inc. and Burgess carry on standardbred breeding in Campbellville, Ontario.

14. The Plaintiff 453997 Ontario Ltd. is a corporation incorporated in 1978 pursuant to the laws of the Province of Ontario. The Plaintiffs Terry Devos and Sonia Devos are individuals residing in the Province of Ontario. Together, 453997 Ontario Ltd., Terry Devos and Sonia Devos carry on standardbred breeding in Langton, Ontario.

15. The Plaintiff's Glenn Bechtel and Garth Bechtel are individuals residing in the Province of Ontario, carrying on business in partnership. Their partnership was established in 2004, and carries on standardbred breeding in Caledon, Ontario.
16. The Plaintiff 496268 New York Inc. is a corporation incorporated pursuant to the laws of the State of New York. 496268 New York Inc. was incorporated in or about 1988, and carries on standardbred breeding in Ingersoll, Ontario.
17. The Plaintiff Hamstan Farm Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Hamstan Farm Inc. was established in 2003 and carries on standardbred breeding in Russel, Ontario, although the standardbred breeding on the farm dates back to 1989.
18. The Plaintiff Robert Hamather is an individual residing in the Province of Ontario, carrying on business as a sole proprietor in his own name. Hamather has carried on standardbred breeding in Exeter, Ontario since 1977.
19. The Plaintiff James Carr is an individual residing in the Province of Ontario, carrying on business as a sole proprietor in his own name. Carr has carried on standardbred breeding in Hamilton, Ontario since 1979.
20. The Plaintiff Guy Polillo is an individual residing in the Province of Ontario, carrying on business as a sole proprietor under the name Polillo Farm. Polillo Farm was established in or about 2004, and carries on standardbred breeding in Brantford, Ontario.
21. The Plaintiff David Goodrow is an individual residing in the Province of Ontario, carrying on business as a sole proprietor under the name David Goodrow Stables. David Goodrow Stables was established in 1994, and carries on standardbred breeding in Cambridge, Ontario.

22. The Plaintiff Timpano Gaming Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Timpano Gaming Inc. was established in or about 1981, and carries on standardbred breeding in Phelpston, Ontario.

23. The Plaintiff Craig Turner is an individual residing in the Province of Ontario, carrying on business as a sole proprietor in his own name. Turner has carried on standardbred breeding in Ingersoll, Ontario since 1994.

24. The Plaintiff Robert McIntosh Stables Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Robert McIntosh Stables Inc. was established in or about 1989 and carries on standardbred breeding in La Salle, Ontario, although the standardbred breeding on the farm dates back to 1985.

25. The Plaintiff Glengate Holdings Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Glengate Holdings Inc. was established in or about 1992, and carries on standardbred breeding under the name Glengate Farms in Campbellville, Ontario.

26. The Plaintiff Kendall Hills Stud Farm Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario. Kendall Hills Stud Farm Ltd. was established in 1980, and carries on standardbred breeding in Campbellcroft, Ontario.

27. The Plaintiffs Andy Klemencic, Tim Klemencic and Stan Klemencic are individuals residing in the Province of Ontario, carrying on business in partnership as 30 Plus Stable. 30 Plus Stable was established in or about 1986, and carries on standardbred breeding in Trenton, Ontario.

28. The Plaintiff Jeff Ruch is an individual residing in the Province of Ontario, carrying on business as a sole proprietor under the name Pinestone Farms. Pinestone Farms was established in 2006, and carries on standardbred breeding in Innisfil, Ontario.

29. The Plaintiff Brett Anderson is an individual residing in the Province of Ontario, and the Plaintiff Dr. Brett C. Anderson Professional Veterinary Corporation is a corporation incorporated pursuant to the laws of the Province of Ontario. Together, they carry on standardbred breeding in Port Hope, Ontario, beginning with Anderson in 1997 and subsequently including the Professional Veterinary Corporation starting in or about 2009.

30. The Plaintiff Killean Acres Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Killean Acres Inc. was established in 2003 and carries on standardbred breeding in Ingersoll, Ontario, although the standardbred breeding on the farm dates back to 1954.

31. The Plaintiff Decision Theory Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Decision Theory Inc. was established in 2003, and carries on standardbred breeding in Claremont, Ontario.

32. The Plaintiff 296268 Ontario Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario. The Plaintiff Douglas Murray McConnell is an individual residing in the Province of Ontario. Together, they carry on standardbred breeding under the name Caisimir Stables in Hagar, Ontario, beginning with 296268 Ontario Ltd. in 1972 and subsequently including McConnell starting in or about 2004.

33. The Plaintiff Quintet Farms Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. The Plaintiff Karin Burgess is an individual residing in the Province of

Ontario. The Plaintiff Blair Burgess is an individual residing in the Province of Ontario. Together, Quintet Farms Inc., Karin Burgess and Blair Burgess carry on standardbred breeding in Campbellville, Ontario, beginning with Quintet Farms Inc. in 1983 and subsequently including Karin Burgess and Blair Burgess.

34. The Plaintiff St. Lad's Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario, carrying on business as St. Lad's Farm. St. Lad's Ltd. was established in 1991, and carries on standardbred breeding in Ruscom Station, Ontario.

35. The Plaintiff Windsun Farm Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Windsun Farm Inc. was established in 1989, and carries on standardbred breeding in Uxbridge, Ontario.

36. The Plaintiff Skyhaven Farms is a partnership carrying on business in the Province of Ontario. Skyhaven Farms was established in 1997, and carries on standardbred breeding in Orton, Ontario.

37. The Plaintiff High Stakes Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. High Stakes Inc. was incorporated in 2003, and carries on standardbred breeding in Moffatt, Ontario.

38. Standardbred Breeders represent an important part of Ontario's rural economy, directly and indirectly employing thousands of people. Prior to the March 12, 2012 announcement that the Slots at Racetracks Program was being terminated effective March 31, 2013 – an announcement made by the Defendant and Ontario without prior notice, consultation, or any offer of

compensation to the Plaintiffs – the Standardbred Breeders were important contributors to the rural communities in which they are based.

39. The Defendant Ontario Lottery and Gaming Corporation (“OLG”) is a corporation without share capital established pursuant to the *Ontario Lottery and Gaming Corporation Act, 1999*, S.O. 1999, c. 12, Sched. L (“*OLGC Act*”). In or about April 2000, pursuant to the *OLGC Act*, the OLG assumed the obligations and liabilities of the Ontario Lottery Corporation and the Ontario Casino Corporation, which were predecessor corporations (and which are also referred to as “OLG” in this Claim). The OLG has corporate locations in Toronto and Sault Ste. Marie.

40. In or about 1998, the OLG and the government of Ontario wanted to increase gaming revenue earned by the OLG by introducing slot machines. The OLG and Ontario determined that racetracks and their existing customers offered the most advantageous entry point for slot machines into local communities.

41. Standardbred Breeders, the OLG and Ontario all recognized that the introduction of slot machines at racetracks would cannibalize racing customers, leading to an industry-wide impact that would have serious financial ramifications for racetracks, horsepeople, and breeders.

42. The OLG and Ontario partnered with the horse racing industry and created the Slots at Racetracks Program (“SARP”). It was agreed that the OLG and Ontario would share 20% of the revenue generated by slot machines with the horse racing industry, in exchange for the continued supply of horses and access to the industry’s customer base at the racetracks.

43. Standardbred Breeders agreed with the OLG and Ontario that they would ensure a steady supply of standardbred horses for the racetracks, in consideration for a share of the SARP revenue.

This slots revenue would benefit the agricultural sector by incentivizing investments in both the quality and long-term supply of Ontario standardbred horses, which drew customers to the racetracks and supported local employment. The SARP revenue was made available to the Standardbred Breeders by the OLG and Ontario via a number of conduits. One such conduit was the Horse Improvement Program ("HIP"). Slots revenue directed to this program by the OLG and Ontario provided racing and breeding incentives to the Standardbred Breeders through the Standardbred Improvement Program, including the Ontario Sires Stakes ("OSS") program.

44. From the moment the SARP was established, and continuing at all material times thereafter until the announcement of its termination, the OLG and Ontario represented to Standardbred Breeders that the SARP was a long-term revenue sharing partnership, that material changes to the program would only be made on reasonable notice and with proper consultation, and that the OLG and Ontario would compensate the Standardbred Breeders for losses they incurred if the SARP was terminated in manner that interrupted their horse production cycle.

45. These representations made by the OLG and Ontario included representations made through the Ontario Racing Commission ("ORC"), a Crown agency which at all material times had oversight of the HIP and a mandate to act in the public interest to govern, direct, control and regulate the horse racing industry and to ensure public confidence in the honesty and integrity of the industry.

46. Such representations were made by the OLG and Ontario for the purpose of inducing Standardbred Breeders to continue to invest in their breeding operations that supplied standardbred horses to the racetracks. At all material times, the OLG and Ontario knew that

Standardbred Breeders made breeding decisions involving the expenditure of a minimum of five years of time, effort and resources before a horse would reach the racetrack.

47. Beginning with the establishment of the SARP and continuing at all material times thereafter, the OLG and Ontario knew that Standardbred Breeders were relying on their representations, and that failure to honour these representations would cause significant economic harm to the Standardbred Breeders. The OLG and Ontario regularly assured the Standardbred Breeders that the HIP – and the slots revenue that funded a significant portion of the HIP – would be allocated in accordance with the Standardbred Breeders's five-year planning cycle. The OLG and Ontario, on a regularized basis, presented a variety of financial statements and financial plans to the Standardbred Breeders via the ORC, which confirmed that SARP revenues would continue to be directed towards the HIP, its Standardbred Improvement Program, and/or the OSS program over the long term in five year cycles.

48. Standardbred Breeders did rely on these representations, and made long-term business decisions that committed substantial resources both to their breeding operations and to the rural communities in which they operated.

49. As result of the establishment of the SARP and representations made in connection with that program, the OLG and Ontario were in a close, direct and special relationship of proximity with the Standardbred Breeders that gave rise to a duty of care. This duty of care included an obligation of candour and honesty as well as a duty on the OLG and Ontario to ensure that any changes to the SARP were implemented in a manner that recognized the vulnerability and dependence of the Standardbred Breeders, especially in light of the long-term investments the

Standardbred Breeders were induced to make in their breeding operations by the OLG and Ontario.

50. Through the clear and consistent representations made by the OLG and Ontario to Standardbred Breeders regarding the SARP that began in 1998 and the established pattern of conduct thereafter, the parties intended to and did create express and/or implied contractual obligations to one another.

51. It was a term of this contractual relationship that Standardbred Breeders would supply horses to racetracks across the Province in consideration for the OLG and Ontario providing a share of revenue from the SARP. It was also a term of this contractual relationship that the OLG and Ontario would ensure that any changes to the SARP would be implemented in good faith, on reasonable notice and with proper consultation with the Standardbred Breeders, in consideration for the long-term investments that the Standardbred Breeders would make in their breeding operations and rural communities. Finally, it was a term of this contractual relationship that the OLG and Ontario would compensate the Standardbred Breeders for losses they incurred if the SARP was terminated in manner that interrupted their horse production cycle.

52. The representations by the OLG and Ontario and the long-established pattern of conduct between the OLG, Ontario and Standardbred Breeders placed the Standardbred Breeders in a position of vulnerability and trust vis-à-vis the OLG and Ontario. This vulnerability and trust gave rise to equitable obligations owed by the OLG and Ontario to the Standardbred Breeders, including an obligation to act honestly and fairly with due regard for the legitimate expectations of the Standardbred Breeders, an obligation of candour and consultation, and an obligation to

compensate the Standardbred Breeders if the SARP was terminated in a manner that interrupted their horse production cycle.

53. In or about 2009 and 2010, Standardbred Breeders learned that the OLG and Ontario were re-evaluating whether to continue to extend the SARP for long-term periods. Standardbred Breeders were aware that the OLG, Ontario and the racetracks were in negotiations over the long-term siteholder agreements that applied to slot machines at those racetracks. The Standardbred Breeders sought confirmation from the OLG and Ontario that their assurances of a long-term commitment to the SARP and their contractual relationship with Standardbred Breeders would continue to be honoured.

54. The OLG and Ontario again assured the Standardbred Breeders that the SARP was a long-term revenue sharing partnership, that changes to the program would only be instituted on reasonable notice and with proper consultation, and that the OLG and Ontario would compensate the Standardbred Breeders for losses they incurred if the SARP was terminated in manner that was contrary to the representations and the terms of the parties' contractual relationship.

55. The OLG and Ontario's reassurances were communicated in both words and conduct, including through the long-term renewal of siteholder agreements with racetracks.

56. The OLG and Ontario continued to make representations to the Standardbred Breeders through the ORC. These representations took a number of forms, including representations made through the Standardbred Advisory Group, which was a forum to consult with the Standardbred Breeders.

57. The OLG and Ontario also made a number of representations through ORC annual reports that were prepared and released when the Standardbred Breeders were seeking assurances from the OLG and Ontario of their continued commitment to the SARP. In a report for the HIP released in or about 2010 or 2011, Standardbred Breeders were assured that the OLG and Ontario were committed to a horse racing industry characterized by “[a] climate where customers and participants can invest and conduct their horse racing activities with trust and confidence.”

58. Standardbred Breeders were further assured that the HIP budget, which was largely derived from the SARP, “should be guaranteed at minimum 2007 budget forecast levels (\$43.7 million) for the 2008-2012 period.” Further, it was represented by the OLG and Ontario to the Standardbred Breeders that the standardbred portion of the HIP (the Standardbred Improvement Program), “incorporates a five-year industry consultation and planning cycle, is intended to create a stabilized environment for business-decision making by Program participants and support the promotion and branding of the Program as a reliable structure that rewards participants for long-term breeding industry investments in Ontario.”

59. In or about October 2011, with knowledge that they were about to terminate the SARP, the OLG and Ontario, through the ORC, expressly represented to Standardbred Breeders that the SARP would continue as a long-term program, and at least for an additional five years, by providing an additional five-year financial projection of slots revenue in a 2012 HIP Financial Plan. They also represented to the Standardbred Breeders that “Slot Revenue is projected to decrease at a rate of 3% in 2012 due to the change in [International Financial Reporting Standards] and remain flat from 2013-2016.”

60. At the time they made these representations to the Standardbred Breeders through the ORC, the OLG and Ontario knew that they were false and misleading and that Standardbred Breeders would rely on them.

61. On March 12, 2012, the OLG and Ontario announced the termination of the SARP, effective March 31, 2013. This announcement came without notice or consultation. It also came in the midst of the Standardbred Breeders's breeding season, a fact that the OLG and Ontario knew and deliberately or recklessly chose to ignore. The decision to terminate the SARP had been made by the OLG and Ontario well prior to its announcement, but it had been wrongfully withheld from Standardbred Breeders with knowledge of the harm that would result from doing so.

62. The OLG and Ontario timed the announcement of the termination of the SARP with the public release by the OLG and Ontario of an OLG Report entitled *Modernizing Lottery and Gaming in Ontario* (the "OLG Report"). The OLG Report recommended drawing the SARP to a close and reported that consultations with the horse racing industry, including the Standardbred Breeders of Ontario Association and Standardbred Canada had occurred.

63. The OLG and Ontario deliberately misrepresented their intention and plans regarding the future of the SARP during those consultations. Specifically, during these consultations the OLG and Ontario continued to represent, as they had in the past, that any changes to the SARP would be made in a fair manner that was consistent with the reliance interests and vulnerability of Standardbred Breeders. This conduct took place between 2010 and 2012, during which time the OLG and Ontario increased the compensation of OLG executives who were responsible for making these decisions by 49%.

64. The representations made to Standardbred Breeders in 2009, 2010 and 2011 by the OLG and Ontario were false, inaccurate or misleading at the time they were made, or implied facts that were false, inaccurate or misleading. Further, these representations were negligently or recklessly made by the OLG and Ontario as to the truth of their contents.

65. The conduct of the OLG and Ontario breached common law, contractual and equitable obligations owed to the Standardbred Breeders, and the OLG and Ontario knew or ought to have known that this would cause devastating harm and losses to the Standardbred Breeders. At the time that the OLG and Ontario decided to cancel the SARP, they performed calculations and forecasting that quantified the significant damages the Standardbred Breeders would sustain when the SARP was terminated, along with damages that would result to other horse racing industry participants such as the racetracks.

66. The OLG and Ontario resolved to compensate racetrack owners for their losses, because they knew that these owners had substantial resources and could easily organize to assert claims against them. At the same time, the OLG and Ontario determined that they would wrongfully withhold compensation from the Standardbred Breeders, because they knew the Standardbred Breeders were located in small rural communities across Ontario, were vulnerable, and lacked the economic and informational resources of racetracks, thereby making it more difficult for them to assert their rights.

67. The OLG and Ontario provided \$80.6 million to racetrack owners in compensation for the harm they suffered as a result of the unlawful manner in which the SARP was terminated. The OLG and Ontario have refused to compensate Standardbred Breeders, notwithstanding their

deliberate breach of the common law, contractual and equitable obligations owed to the Standardbred Breeders and their knowledge of the harm their actions would and have caused.

68. This conduct warrants the sanction of the Court with an award of punitive damages. The manner in which the OLG and Ontario terminated the SARP was arbitrary, capricious, irrational and demonstrates bad faith by the OLG and Ontario.

69. The conduct of the OLG and Ontario, including the assurances given between 2009 and 2011, is in breach of the equitable obligations owed to the Standardbred Breeders. The words and actions of the OLG and Ontario were made during the course of an existing legal relationship with the Standardbred Breeders, constitute a series of clear representations, and caused the Standardbred Breeders to rely and make significant long-term investments in their breeding operations. This reliance was to the detriment of the Standardbred Breeders, who at all times acted in good faith. In order to protect the reliance interest of the Standardbred Breeders, the OLG and Ontario are estopped from now refusing to pay compensation for the harm caused by their conduct.

70. Ontario has admitted that the manner in which the SARP was terminated breached legal and equitable obligations to the Standardbred Breeders. The Ontario Minister of Agriculture, Food and Rural Affairs admitted on or about January 25, 2013 that "our government dropped the ball" on the horse racing issue. The Premier of Ontario, who is also the Minister of Agriculture and Food, admitted on or about September 17, 2013 that the decision to terminate the SARP was "not necessarily in the best interests of the industry or rural communities," and on or about October 14, 2013 that "[t]he way the SARP program was cancelled was not thoughtful."

71. As a result of the termination of the SARP without notice, consultation or compensation to Standardbred Breeders, the OLG and Ontario have been enriched. They have received and will

continue to receive the benefit of the customer base and corresponding economic opportunities at racetracks across the Province, which customer base and economic opportunities were built and maintained in substantial part by the effort and contribution of Standardbred Breeders. The Standardbred Breeders have suffered a corresponding deprivation as they have been wrongfully deprived of the benefits of the SARP to which they were entitled as a result of the common law, contractual and equitable obligations owed by the OLG and Ontario. There is no juristic reason for this enrichment.

72. As a result of the manner in which the SARP was terminated, the Standardbred Breeders have suffered damages, including lost income from yearling sales, lost income from horse boarding activities, lost income from stallion fees, and lost income resulting from the impairment in the value of their broodmares. Many of the Standardbred Breeders have also suffered damages resulting from losses on large capital investments made in reliance on the representations of the OLG and Ontario.

73. The Plaintiffs ask that this action be tried in Guelph, Ontario.

March 10, 2014

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Lawyers for the Plaintiffs

SEELSTER FARMS INC. et al.
Plaintiffs

-and- ONTARIO LOTTERY AND GAMING CORPORATION
Defendant

Court File No. 177/14

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
GUELPH

NOTICE OF ACTION

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