

**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.,  
KENDAL 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, HIGH STAKES INC., 1806112 ONTARIO INC.,  
GLASSFORD EQUI-CARE, JOHN GLASSFORD, GLORIA ROBINSON, and  
KEITH ROBINSON

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S):**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

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 Plaintiff's 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 Statement of Claim 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: 14-APR-2014 Issued by: K. H. Cooper - Coventry  
Local Registrar

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

TO: **Her Majesty the Queen in right of Ontario**  
c/o Ministry of the Attorney General  
Crown Law Office (Civil)  
720 Bay Street, 8th Floor  
Toronto, ON M7A 2S9

Attn: Robert Ratcliffe, Counsel

## CLAIM

1. The Plaintiffs claim:

- (a) a declaration that the Defendant owed common law, contractual, quasi-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, waiver of tort 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.

### The Parties

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 sole proprietorship 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 Inc., 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, although the standardbred breeding on the farm dates back to 1974.

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 Plaintiffs 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 LaSalle, 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 Kendal Hills Stud Farm Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario. Kendal 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 Casimir 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. The Plaintiff 1806112 Ontario Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. 1806112 Ontario Inc. was established in 2009, and carries on standardbred breeding in St. Catharines, Ontario.

39. The Plaintiff Glassford Equi-Care is a sole proprietorship carrying on business in the Province of Ontario. The Plaintiff John Glassford is an individual residing in the Province of

Ontario. Glassford Equi-Care and Glassford together carried on standardbred breeding in Caledonia, Ontario until in or about July 2010, after which time they ceased their breeding activities.

40. The Plaintiffs Gloria Robinson and Keith Robinson are individuals residing in the Province of Ontario, carrying on business in partnership as Kesons Stables. Kesons Stables was established in or about 1985 as Kesons Stables Inc., a corporation then incorporated pursuant to the laws of the Province of Ontario, but which was dissolved in 2012. Kesons Stables carries on standardbred breeding in Cambridge, Ontario.

41. The Defendant, Her Majesty the Queen in right of Ontario ("Ontario"), is named in this action pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended.

42. At all times material to this action, Ontario directed and controlled the words and conduct of the Ontario Lottery and Gaming Corporation ("OLG"), a corporation without share capital established pursuant to the *Ontario Lottery and Gaming Corporation Act, 1999*, S.O. 1999, c. 12, Sched. L (the "*OLGC Act*"). Pursuant to section 2(3) of the *OLGC Act*, OLG is for all its purposes an agent of Ontario and all its powers may be exercised only as an agent of Ontario.

43. At all times material to this action, Ontario also directed and controlled the words and conduct of the Ontario Racing Commission ("ORC"), a corporation without share capital continued pursuant to the *Racing Commission Act, 2000*, S.O. 2000, c. 20. (the "*RCA*"). Pursuant to section 2(3) of the *RCA*, ORC is for all purposes an agent of Ontario and its powers may be exercised only as an agent of Ontario.

### **Standardbred Horse Breeding in Ontario**

44. Standardbred Breeders are an important part of Ontario's rural economy. They are directly and indirectly responsible for supporting valuable jobs in rural communities across the Province. Prior to the March 12, 2012 announcement that Ontario and OLG would no longer share revenue generated by the Slots at Racetracks Program with the horse racing industry – an announcement made by the Ontario and OLG 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.

45. The racehorse is the heart of the horse racing industry in Ontario. These horses are bred by horse breeders, such as the Standardbred Breeders, whose breeding activities follow a horse production cycle that requires an average of five years' of time, effort and resources before a horse reaches a racetrack.

46. Breeding a racehorse requires a broodmare and a stallion. The decision to breed is often made well before breeding attempts occur. Some breeding operations have the facilities to board the broodmares or stand the stallions in their stables, which can facilitate breeding activities. If a broodmare is "in-foal", *i.e.*, impregnated, there is an eleven-month gestation period before a foal is birthed. Once born, the foal must be cared for, first as a "weanling", and then as a "yearling." Yearlings are often sold at auction, by which time three to four years has elapsed since the original breeding decision was made. After being purchased at auction, a yearling will be trained, and it may race as a two-year old, or perhaps not until it is a three-year old.

47. Horse breeding is labour and capital intensive. As the horse production cycle runs its course, it benefits a number of individuals and businesses in rural Ontario. Breeders, such as the

Standardbred Breeders, employ farmhands to assist with reproductive activities, as well as the general health, maintenance, and care of horses throughout their production cycle. Veterinary and blacksmith services are consumed. The Standardbred Breeders purchase a steady supply of hay and feed, benefitting local farmers and feed suppliers. Capital investments are made in breeding operations to maintain and upgrade facilities, and to purchase equipment needed to support breeding operations.

48. The breeding sector therefore consumes and produces a significant revenue stream. It is and always has been an important part of Ontario's agricultural economy. Prior to Ontario and OLG's cancellation of the slots revenue sharing partnership, horse racing supported approximately 60,000 jobs in rural Ontario.

#### **The Genesis of the Slots at Racetracks Program**

49. In 1998, Ontario and OLG wanted to introduce slot machine gaming into Ontario. Their prior attempts to introduce video lottery terminals had been unsuccessful, as local communities had resisted Ontario and OLG's efforts. Ontario and OLG then looked to racetracks as a potential opportunity for the implementation of their plan, as gambling had a long-established history at these facilities.

50. Standardbred racing, by far the largest form of horse racing in Ontario, was carried on throughout the year at fifteen of Ontario's seventeen racetracks in rural communities across the province: Mohawk Racetrack in Campbellville, Clinton Raceway, Dresden Raceway, Flamboro Downs in Dundas, Grand River Raceway in Elora, Kawartha Downs in Fraserville, Rideau-Carleton Raceway in Gloucester, Hanover Raceway, Georgian Downs in Innisfil, Western

Fair Raceway in London, Woodbine Racetrack in Rexdale, Hiawatha Horse Park in Sarnia, Sudbury Downs, Woodstock Raceway, and Windsor Raceway.

51. Standardbred racing, and the breeders that supported it, had built a ready-made customer base for Ontario and OLG's slot machines at these fifteen racetracks. This network of racetracks and their customers would be a valuable springboard for OLG's nascent slot machine program.

52. Standardbred racing's customer base presented a significant commercial opportunity for Ontario and OLG. However, it was acknowledged by Ontario and OLG that the imposition of slot machines at racetracks would come at a significant cost to standardbred breeding and racing. Ontario and OLG recognized that the diversion of the standardbred racing customer base to slot machine gambling would have a serious negative impact on breeders, such as the Standardbred Breeders, and the rural economy. It would cause a loss of employment and commercial activity at breeding operations, as well as in the industries linked to breeding activities such as farming of hay and feedstock, equine veterinarian and nutritional services, training, grooming, blacksmithing and racing.

53. Ontario and OLG agreed to negotiate a commercial arrangement that would allow Ontario and OLG's slots program to have access to the customer base at racetracks across the province in a manner that would not undermine live horse racing, and which would maintain and grow the benefits of a strong standardbred breeding and racing industry to Ontario's agricultural economy. These negotiations were conducted through the Ontario Horse Racing Industry Association ("OHRIA").

### **June 1998 Letter of Intent between Ontario, OLG and the Standardbred Breeders**

54. The result of the discussions was the establishment of a revenue-sharing partnership called the Slots at Racetracks Program ("SARP"). This partnership was initially reflected in a June 25, 1998 Letter of Intent between Ontario and the horse racing industry (the "1998 Agreement"). Through the industry associations that represent their interests, the Standardbred Breeders are a signatory to and beneficiary of the 1998 Agreement.

55. The 1998 Agreement recorded the promise of Ontario and OLG that the SARP would "serve to promote live horse racing in the Province and subsequently benefit the agricultural sector in Ontario through support to the horse racing industry." Ontario and OLG further promised in the 1998 Agreement that SARP benefits would be "maximized to the horse racing industry."

56. In order to carry through on their promise, Ontario and OLG agreed to share "20% of the total gross slot machine revenues at racetracks across the province" with the horse racing industry, and work together with OHRIA and the Standardbred Breeders to ensure that the benefits of this program were being maximized to the industry. The revenue sharing partnership was a means of ensuring that the slot machines did not destroy horse breeding by cannibalizing the horse racing industry's customer base.

57. From the outset of the SARP, Ontario and OLG knew that the success of the partnership hinged on assuring horse breeders that Ontario and OLG had made a long-term commitment to sharing slots revenue, so that breeders such as the Standardbred Breeders would make corresponding long-term investments in their breeding operations and farms. This would ensure the steady supply of racehorses that was critical to the success of Ontario and OLG's slot machine plans, the future of the horse racing industry and the SARP. Racetracks were needed to provide the

facilities that would house the slot machines and host the customers. Horsepeople were needed to race the horses, which would sustain and grow the customer base that frequented the tracks.

58. Because the Standardbred Breeders were dispersed across the Province in isolated rural communities, it was understood and agreed that Ontario and OLG would, at all times material to this action, communicate with them through the ORC, a Crown agency whose mandate is to act in the public interest, to govern, direct, control and regulate the horse racing industry in Ontario with honesty, integrity and social responsibility. Specifically, Ontario and OLG would communicate with the Standardbred Breeders through statements in ORC Annual Reports, business plans, strategic reports, industry newsletters and via the ORC's racing and breeding incentive program, the Horse Improvement Program ("HIP").

59. It was also understood and agreed that Ontario and OLG would, at all times material to this action, communicate with Standardbred Breeders through industry associations. These associations included the Standardbred Breeders of Ontario Association, Standardbred Canada, the Ontario Harness Horse Association, the Central Ontario Standardbred Association, and OHRIA.

60. Ontario and OLG also agreed to communicate with Standardbred Breeders through their own official channels including Ontario budget statements, government reports and studies, and OLG annual reports and corporate news releases. Ontario and OLG intended that their representations and assurances made through these channels would be received and relied upon by the Standardbred Breeders and they were.

61. In addition, and as set out between paragraphs 72 and 77 below, there were a number of instances in which Ontario and OLG communicated directly with representatives of the

Standardbred Breeders in a number of instances for the purpose of conveying their intentions and plans for the continuation of SARP revenue sharing. On those occasions, Ontario and OLG made specific representations confirming that Ontario and OLG remained committed to the SARP and that Standardbred Breeders should continue to make long-term investments in their farms and animals.

### **Implementation of the Slots at Racetracks Revenue Sharing Partnership**

62. In order to make the SARP partnership operational across the province and to ensure that slots would be inserted into each track and revenues generated therefrom shared with breeders, Ontario directed OLG to enter into site holder agreements with all seventeen racetracks, including the fifteen tracks where standardbreds raced.

63. The resulting agreements with the racetracks were typically for five year terms, with a number of successive renewal terms that could be exercised by OLG. The site holder agreements stipulated that 20% of the "Net Win" generated by slot machines at each racetrack were to be paid to that track, and further required the racetracks to pay 50% of this amount to horsepeople, in order to enhance the purses for live horse races conducted at the tracks.

64. Ontario and OLG did not permit the breeders, including the Standardbred Breeders, to see the site holder agreements. However, Ontario and OLG assured breeders and the horse racing industry that the site holder agreements reflected the long-term nature of the commitments that Ontario, OLG and the Standardbred Breeders had agreed to make and also reflected the long-term nature of breeders' horse production cycle.

65. The enhancements to purses that were brought about by these site holder agreements were visible and transparent. Through enhanced purses, the Standardbred Breeders participated directly in SARP revenue, because the value of purses had a corresponding direct impact on the value of the racehorses that were being bred by the Standardbred Breeders to race at these tracks.

66. Beginning in 2002, Ontario directed that a designated percentage of horsepeople's share of SARP revenue be reallocated from purses to the Horse Improvement Program. The HIP is a racing and breeding incentive program that was established in 1974 by the Ontario government, with the purpose of helping Ontario farms remain economically stable and encouraging ownership in Ontario-produced horses. At all material times, the HIP was overseen by the ORC and its budget was audited and reviewed annually by the Provincial Auditor.

67. By putting the SARP revenue sharing arrangement in place, and subsequently allocating a defined percentage of that revenue to the HIP, Ontario and OLG encouraged the Standardbred Breeders to make the necessary long-term investments to ensure a supply of high quality race horses, so that live racing would be promoted and the customer base at racetracks expanded. With a greater customer base at racetracks, Ontario and OLG expected to generate additional revenue from their slot machines.

#### **Duty of Care Owed by Ontario and OLG to the Standardbred Breeders**

68. In order to secure the Standardbred Breeders' participation in the SARP, Ontario and OLG engaged in a continuing and sustained course of representations through words and conduct regarding the nature of their commitment to this revenue sharing partnership. This began with the 1998 Agreement and continued up until the sudden announcement on March 12, 2012 that SARP revenue would no longer be shared.

69. At all times material to this action, the representations and assurances about the SARP made by Ontario and OLG were part of a continuing, planned and sustained course of conduct, directed at Standardbred Breeders across the province, which was intended to and did convey Ontario and OLG's long-term commitment to the revenue sharing partnership. These representations and assurances were made with the intent of inducing Standardbred Breeders across the province to make long-term investments in their breeding operations that would promote live horse racing and maximize the associated benefits to the agricultural sector. They were also made to assure the Standardbred Breeders that they could invest with trust and confidence owing to the long-term nature of the program.

70. Ontario and OLG further represented and assured the Standardbred Breeders that any material changes to the SARP revenue sharing partnership would, because of breeders' vulnerability and dependence arising from their long-term investments and the nature of the breeding cycle, be made with full consultation and on reasonable notice.

71. At all material times, it was reasonably foreseeable that if Ontario and OLG's representations about the nature of their commitment to the SARP revenue sharing partnership were false, inaccurate or misleading, the Standardbred Breeders, as well as those that supported the equine industry generally, would suffer serious economic harm.

*I. REPRESENTATIONS BY ONTARIO*

72. The representations by Ontario intended to reflect a long-term commitment to the SARP and that material changes would not be made without consultation and reasonable notice include:

- (a) **Letter of Intent Regarding the SARP, dated June 25, 1998**
  - (i) The objectives of the SARP are to “promote live horse racing in the Province and subsequently benefit the agricultural sector in Ontario through support to the horseracing industry.”
  - (ii) OLG and OHRIA will work cooperatively “in ensuring that [SARP] benefits are maximized to the horse racing industry.”
- (b) **Addendum to the Letter of Intent, dated June 19, 2000**
  - (i) “[T]he joint objectives of the Letter of Intent are being achieved” by the SARP.
  - (ii) OLG and OHRIA’s Racetracks at Slot Operations Working Group would meet once a month, beginning in April 2000, to discuss “issues of mutual concern.”
- (c) **Ontario Annual Budgets 2000-2011**
  - (i) SARP revenues “promote the economic growth of the horse racing industry,” which is a “key component of the Province’s agricultural sector” (2000 – 2011).
  - (ii) The SARP was designed to “preserve[] and enhance[]” jobs in Ontario’s horse racing industry (2000 – 2004).
  - (iii) The agricultural sector received a “share” of SARP revenue “directly” from OLG (2005-2010).
- (d) **Ontario Ministry of Government and Consumer Services Report June 2008 “It’s All About Leadership: Strategic Vision and Direction for the Ontario Horse Racing and Breeding Industry”**
  - (i) “The Panel fully supports the continuation of the Slots at Racetracks Program at a minimum level of 20% of the revenue generated from slot machines at the racetracks.”
- (e) **Direct Representations by Finance Minister Dwight Duncan in June 2010**
  - (i) Minister Duncan told Jim Bullock – a representative from OHRIA and the Standardbred Breeders of Ontario Association – in June 2010 that Ontario would honour its long-term commitment to the SARP, particularly owing to the multi-year nature of investments made by breeders.
  - (ii) Minister Duncan also assured Mr. Bullock that Ontario and OLG understood the long-term nature of the breeding cycle and that Ontario

wanted breeders to continue to invest in their farms and animals to build the rural economy.

(f) **Email from Premier Dalton McGuinty to the Ontario Harness Horse Association and the Standardbred Breeders, September 15, 2011**

- (i) "We value the impact that the horse racing industry has on the agricultural sector in the province, and we believe in working closely with the industry to ensure that it remains strong and prosperous in the future."
- (ii) "Ontario Liberals are strongly committed to the responsible implementation of gaming programs, and will make any future changes with a view to supporting this principle."

**II. REPRESENTATIONS MADE BY ONTARIO THROUGH THE ORC**

73. The following representations were made by Ontario and OLG through the ORC, and were intended to confirm their long-term commitment to SARP and that no material changes would be made without consultation or reasonable notice:

(a) **The ORC Industry Newsletter, "Integrity Matters"**

- (i) "The horse racing industry is growing rapidly and the Ontario government is committed to seeing that trend continue" (Fall 2000).
- (ii) The ORC envisions "[a] climate where customers and participants can invest and **conduct their horse racing activities with trust and confidence.**" **"The ORC is committed to the timely release of information** that is clear, concise, and of interest to the Ontario horse racing community" (Fall 2007).
- (iii) "Working together, we can ensure that Ontario continues to be one of the largest, most competitive and best places to race in North America" (Fall 2008).
- (iv) "I believe that fairness and confidence can also be secured with ongoing dialogue, consultation and cooperation among all parties. ... The ORC is committed to doing its part to facilitate a healthy, productive relationship among all parties. And it begins with listening to each other" (June 2009).
- (v) The "Initial Founding Principles to Create an Acceptable Model for Racing in Ontario" include:

- (1) “Enhance live racing and provide benefits to the agricultural sector in Ontario. This language is repeated in various slots-related documents and represents the return on investment (“ROI”) on public funds that are being invested into this industry annually. Simply put, **the slots-at-racetracks program is a “jobs program” focused on rural Ontario**” (Spring 2010).
  - (2) “Provide a fair return on investment over the short term **while protecting value for owners and communities over the long term**. ... [T]his principle therefore acknowledges that industry participants who make rational business decisions should expect a reasonable rate of return on that investment” (Spring 2010).
- (vi) “The new framework for horse racing approved by the ORC Board marked a significant moment for racing in Ontario. It included considerable consultation with all racetracks and all horsepeople associations. ... [T]his fundamentally represents a **commitment to live horse racing and accountability – and more to the point, it is a firm commitment from our provincial government that it wants live racing and the jobs and growth that racing represents for rural Ontario**. (Fall 2010).
  - (vii) The Ontario Racing Program is built on six principles, including: “Enhance live racing and provide benefit to the agricultural sector in Ontario”; and **“Provide a fair return on investment over the short term while protecting value for owners and communities over the long term”** (June 2011).
- (b) **ORC Annual Reports (Currently Available Between 2001 and 2010)**
- (i) OLG is an “internal stakeholder” or “partner” of the ORC (between at least 2004-2005 and 2009-2010).
  - (ii) The ORC envisions **“a climate where customers and participants can invest and conduct their horse racing activities with trust and confidence”** (2005-2006; 2008-2009).
- (c) **Business Plans & Strategic Reports (Currently Available Between 2006-2011)**
- (i) The ORC envisions **“a climate where customers and industry participants can invest and conduct their horse racing activities with trust and confidence”** (Business Plan 2006-2007; Strategic Plan 2006-2009; Business Plan 2007-2010; Business Plan 2008-2011).
  - (ii) OLG is one of the ORC’s **“government partners”** (Business Plan 2006-2007; Business Plan 2007-2010; Business Plan 2008-2010).

(d) **Report of the Standing Committee on Government Agencies, November 2009**

- (i) The ORC is in agreement with “the principles of the Slots Program to support live horse racing and enhance the rural economy.” “[W]e work and do all we can to ensure that the **maximum return goes back to the industry**; not just racetracks, but horse people and the breeding industry, because **we recognize the chain that feeds through the whole agriculture community.**”

**III. REPRESENTATIONS THROUGH THE HORSE IMPROVEMENT PROGRAM**

74. At all times material, the ORC’s HIP included a component that was specifically directed towards the Standardbred Breeders, called the Standardbred Improvement Program (“SIP”). The SIP is a racing and breeding incentive program within the HIP which, as its name suggests, is exclusively for standardbred horses.

75. The SIP includes a racing series known as the Ontario Sires Stakes (“OSS”), which is only open to two- and three-year old horses that were sired by stallions that are registered through with the OSS and standing in Ontario. Financial incentives offered through SIP and via OSS races to the Standardbred Breeders were funded in large part by SARP revenue.

76. The representations made by Ontario and OLG through the HIP, including the SIP and the OSS, were intended to convey a long-term commitment to Standardbred Breeders and an assurance that no material changes would be made to the revenue sharing partnership without consultation and reasonable notice:

(a) **HIP Annual Reports (Currently Available for 2008-2009 and 2010)**

- (i) The goals of the HIP include:
- (1) “Rewarding excellence [through] incentives for breeders” (2008-2009 and 2010).
  - (2) “Developing and supporting programs that **foster, sustain and encourage investment within the breeding sector** [including that

the] HIP budget should be guaranteed at minimum 2007 budget forecast levels ... for the 2008-2012 period” (2008-2009 and 2010).

- (3) “Supporting the Ontario breeding sector as a priority with programs and race conditions that **create incentives for the breeding and purchase of Ontario offspring (yearlings in particular)**” (2008-2009 and 2010).
  - (4) “**Supporting the breeding sector over the long-term with programs that: Encourage investment in the breeding sector ... Encourage the purchase of Ontario offspring ... Maximize the value of Ontario offspring ... Include long-term returns to owners of Ontario-bred horses, Ontario breeders, and Ontario stallion owners**” (2008-2009 and 2010).
  - (5) “Aggressive marketing of HIP is required. A marketing-communications program should be developed to promote HIP” (2008-2009 and 2010).
- (ii) “Included in the overall recommendations was a phased implementation and long term planning strategy for the HIP, to ensure adequate horse supply for the intended Program participation and **sufficient time for breeders to adjust their business models and breeding decisions in order to take advantage of new opportunities**” (2008-2009 and 2010).
  - (iii) “Quality improvements in Ontario **breeding production, long-term returns to owners and indicators of a strong, sustainable live-racing product are measurables that will become apparent in the mid- to long-term**” (2008-2009 and 2010).
  - (iv) Guaranteed levels in purses in 2008, 2009 and 2010 in the OSS were “**intended to promote confidence among owners and breeders in making business decisions that affect their ability to participate in the [SIP] over the mid- to long-term**” (2008-2009 and 2010).
  - (v) “**The restructured Standardbred Improvement Program, which 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**” (2008-2009 and 2010).
  - (vi) Changes to the Standardbred Improvement Program were “intended to act not only as an immediate stimulus for the breeding sector, but also as a **significant positive influence on breeding sector profitability over the long-term by: Encouraging breeders to improve the quality of their broodmares consistently and over time ... Encouraging the relocation**

**of more high-quality stallions to Ontario, to serve a broodmare band of increasingly improved quality ... Realizing an increase in yearling prices due to increased earning capacity ... Realizing an increase in profitability over the long-term for the Ontario breeding sector, in general, and for the Ontario breeders who have invested in high-quality Ontario Resident Mares and Ontario Sires, in particular” (2008-2009 and 2010).**

(vii) HIP advertising was intended to promote a “Breed, Buy and Race in Ontario” theme, and was targeted at standardbreds at notable industry events and trade shows in 2008, 2009 and 2010.

**(b) Advertisements in Industry Publications (Between at Least 2006-2012)**

(i) Advertisements for the HIP’s Ontario Sires Stakes races for standardbred horses were placed in industry publications such as Standardbred Canada’s Trot Magazine, Canadian Sportsman and The Harness Edge. All advertisements actively encouraged industry participants to “Breed, Buy and Race” Ontario-sired standardbred horses.

(ii) This includes an advertisement in February 2012 that encouraged “Breeding for the Future.”

**(c) Meetings with the HIP’s Standardbred Advisory Group**

(i) There would be a “Five-Year Planning Cycle” (October 5, 2010).

(ii) Financial documents projected the availability of “Slots Rev.” through 2015 (October 5, 2010).

(iii) Revised financial documents circulated after the October 5, 2010 meeting projected the “Contribution from [horsepeople’s] Slot Revenue through 2015 (November 15, 2010)

(iv) “Updated financial projections were presented to the group” (September 13, 2011).

(v) Financial documents projected the availability of “Slots Rev.” through 2015 (September 13, 2011)

**(d) 2012 HIP Financial Plan, dated October 24, 2011**

(i) “Slots Revenue is projected to decrease at a rate of 3% in 2012 ... and remain flat from 2013-2016,” along with a corresponding financial document illustrating this projection.

**IV. REPRESENTATIONS BY OLG**

77. The following representations were made by OLG, which at all material times acted as agent of Ontario, and were intended to confirm its long-term commitment to revenue sharing under SARP and that no material changes would be made without consultation and reasonable notice:

**(a) Initial Site Holder Agreements With Racetracks**

- (i) OLG entered into long-term site holder agreements with seventeen racetracks beginning in December 1998, which allowed slot machines to be located at the racetracks. The agreements were for no less than five-year terms, and contained successive options for renewal, again for long-term periods not less than five years in duration to reflect the breeders' horse production cycle.

**(b) Statement in the Report of the Standing Committee on Government Agencies, dated November 2009**

- (i) "According to OLG, the presence of slot machines at racetracks is tied to horse racing; therefore, if a racetrack ceases to offer racing, OLG's obligation to provide the Slots Program ceases."

**(c) OLG Annual Reports (Currently Available Back to 2007-2008)**

- (i) SARP revenue was a "major economic stimulus for the overall agricultural industry in Ontario" (between at least 2007-2008 and 2010-2011).
- (ii) OLG was committed to the expansion of existing Slots at Racetrack operations in the Province (at least 2007-2008 and 2008-2009).
- (iii) OLG was "committed to the establishment of an additional Slots at Racetrack operation" (at least 2007-2008 and 2010-2011).
- (iv) "A Site Holder Agreement Strategy was also developed this year that anticipates the upgrade of all racetrack facilities and capital reinvestment by site holders" (at least 2007-2008).
- (v) OLG has loaned or was committed to loan funds to racetrack operators to renovate or construct buildings to accommodate OLG's slot machines (at least 2007-2008 and 2010-2011).
- (vi) OLG made it a priority to be "great partners in the communities in which [it] operate[d] including helping [its] partner businesses and communities to thrive" (at least 2007-2008 and 2010-2011).

- (vii) OLG has “a culture of integrity, transparency and accountability”, and promote values of integrity, accountability and respect for its partners (at least 2007-2008 and 2010-2011).

**(d) OLG Corporate News Releases (Currently Available Back to 2010)**

- (i) A “major new expansion” at OLG’s Slots at Ajax Downs is coming (January 20, 2010).
- (ii) Ten year anniversary of slots at Rideau Carleton Raceway: OLG “look[s] forward to many more successful years serving this community” (February 24, 2010).
- (iii) A “new and much bigger” slot facility at Georgian Downs is opening (July 21, 2010).
- (iv) Ten year anniversary of slots at Flamboro Downs: OLG “look[s] forward to many more successful years serving this community and providing great entertainment” (October 22, 2010).
- (v) Ten year anniversary of slots at Woodstock Raceway: OLG “look[s] forward to many more successful years serving this community and the region and providing great entertainment” (June 17, 2011).
- (vi) Ten year anniversary of slots at Georgian Downs: OLG “look[s] forward to many more successful years serving this community and the region and providing great entertainment” (November 30, 2011).

**(e) Renewal of Expiring Site Holder Agreements in 2010**

- (i) In or about August 2010, OLG announced the renewal of every site holder agreement that was about to expire for a minimum of a further five-year period.

**(f) “Consultations” During OLG’s Strategic Review in 2011, Misrepresentations by Omission**

- (i) In a meeting with Standardbred Canada on March 29, 2011, OLG noted that any proposals coming out of OLG’s strategic review would minimize changes to its relationship with the racetracks. No mention was made that it was planning to terminate the SARP.
- (ii) In a meeting with the Standardbred Breeders of Ontario Association on May 3, 2011, OLG made no mention that it was planning to terminate the SARP.
- (iii) In a meeting with the Ontario Harness Horse Association on February 25, 2011, OLG made no mention that it was planning to terminate the SARP.

- (iv) In a meeting with the Central Ontario Standardbred Association on March 2, 2011, OLG made no mention that it was planning to terminate the SARP.
- (v) In a meeting with OHRIA on May 5, 2011, OLG made no mention that it was planning to terminate the SARP.

78. In addition to the representations made to the Standardbred Breeders described above, Ontario and OLG also gave assurances regarding the nature of their commitment to the SARP and its revenue sharing arrangement in documents that are no longer available to the Standardbred Breeders, but were made available to them over the course of dealings between the parties.

79. Such documents include OLG Annual Reports (1998-2007), OLG Corporate News Releases (1999-2009), ORC Annual Reports (2010-2012), ORC Business Plans and Strategic Reports (2005-2012, except as referenced in paragraph 73(c)), HIP Annual Reports (2005-2011, except as referenced in paragraph 76(a)) and HIP Standardbred Advisory Group agendas, minutes and accompanying financial documentation (2005-2012, except as referenced in paragraph 76(c)). All of these documents are in the possession or control of Ontario and OLG.

80. Viewed in their totality, the aforementioned representations and assurances created a close, direct and special relationship of proximity between Ontario, OLG and the Standardbred Breeders. The representations were part of an organised and sustained communications plan made with the intent that Standardbred Breeders rely on them and they did rely on them.

81. The Standardbred Breeders' reliance on these representations and assurances also gave rise to equitable obligations owed by Ontario and OLG. These obligations arose from the Ontario and OLG's express representations that the relationship was one characterised by trust and confidence, and owing to the vulnerability and dependence of the Standardbred Breeders created by the long-term investments they made in their farms and animals in reliance on such assurances.

82. As a result of their relationship of proximity, Ontario and OLG owed a duty of care to the Standardbred Breeders. Ontario and OLG were duty-bound, when making decisions that would have a material impact on the revenue sharing partnership, to have due regard to the long-term nature of the investments made by the Standardbred Breeders in their breeding operations. This was especially so because the investments made by the Standardbred Breeders were for the benefit of Ontario and OLG in fulfillment of the key objectives of the SARP.

83. The content of this duty of care includes:

- (a) a duty to consult with the Standardbred Breeders about any material changes to the SARP revenue sharing arrangement;
- (b) a duty of honesty, candour and good faith;
- (c) a duty to give reasonable notice to the Standardbred Breeders if SARP revenue sharing was going to be terminated, having regard to the long-term nature of breeders' horse production cycle; and
- (d) a duty to compensate the Standardbred Breeders for their losses on the long-term investments made in reliance on the representations and assurances of Ontario and OLG, if SARP revenue sharing was terminated without reasonable notice.

#### **Contractual Offer Made by Ontario and OLG**

84. The representations made by Ontario and OLG described between paragraphs 72 and 77 were not only made with a view to inducing the Standardbred Breeders to make long-term

investments in their breeding operations. They were also made in a systematic and deliberate manner that evinces contractual intent.

85. Beginning with the establishment of the SARP and continuing until the announcement that the revenue sharing aspect of that program was being terminated, breeders, including the Standardbred Breeders, were offered the opportunity to benefit from a share of the SARP revenue, provided they made corresponding long-term investments in their breeding operations that would promote live horse racing and benefit the agricultural sector in Ontario.

86. Ontario and OLG encouraged the Standardbred Breeders to make breeding decisions involving a five-year time horizon before a return on their investments could be realized. As a result of the conduct of Ontario and OLG a contractual and/or quasi-contractual relationship arose between Ontario, OLG and Standardbred Breeders. The material terms of this relationship were:

- (a) in order to have an opportunity to benefit from a share of SARP revenue, the investments required of the Standardbred Breeders needed to be long-term in nature;
- (b) the investments had to promote live horse racing by ensuring a steady supply of high quality horses to the racetracks and benefit the agricultural sector through generating economic growth in rural communities;
- (c) any change in the opportunity to benefit from a share of SARP revenue would be made fairly and in good faith, in consultation with the Standardbred Breeders and on reasonable notice, particularly given the nature of breeders' horse production cycle;

- (d) Ontario and OLG and the Standardbred Breeders would perform their obligations in good faith and not do anything to eviscerate the benefits of the contract; and
- (e) in the event that the opportunity to benefit from a share of SARP revenue was terminated without reasonable notice, the Standardbred Breeders would be compensated for any losses they suffered on the long-term investments they were encouraged to make.

**The Standardbred Breeders Rely on Ontario and the OLG and Accept Their Offer**

87. At all times material to this action, the Standardbred Breeders relied on the representations of Ontario and OLG. They believed the promises of Ontario and OLG that the SARP was a long-term revenue sharing partnership and was a core component of Ontario's commitment to the agricultural sector. They believed Ontario and OLG's assurances that they would have the opportunity to benefit from a share of SARP revenue, provided they made corresponding long-term investments in their breeding operations. They took Ontario and OLG at their word that, if changes such as the elimination of the SARP were being considered, they would be consulted, given reasonable notice, and compensated for any losses they incurred resulting from their reliance on the promises of Ontario and OLG.

88. Accordingly, between 1998 and 2012, the Standardbred Breeders did exactly what Ontario and OLG asked them to do: they each repeatedly made significant long-term investments in their breeding operations in service of the SARP revenue sharing partnership. Standardbred Breeders steadily increased the quality and quantity of the standardbred racehorse supply in the Province as their part in promoting live horse racing in Ontario. They hired workers and reinvested in their

businesses to the benefit of Ontario's agricultural sector. In short, the Standardbred Breeders played a significant role in achieving the success of the SARP.

89. Through the long-term investments they made between 1998 and 2012 that promoted live horse racing and benefitted the agricultural sector, the Standardbred Breeders accepted the contractual offer made by Ontario and OLG in accordance with the terms set out in paragraph 86, above. The performance by the Standardbred Breeders in accordance with the contractual offer constitutes consideration in favour of Ontario and OLG, and crystallized the contractual relationship between the Standardbred Breeders, Ontario and OLG.

90. The SARP was a resounding success. It created billions of dollars of profit for Ontario and OLG. That portion that was shared with Standardbred Breeders by way of increased returns on yearling sales, as well as through elevated purses and breeders' incentives, was re-invested into the agricultural economy and the rural equine industry.

91. OLG was substantially enriched by its insertion of slots at racetracks and the access provided to the horse racing industry's customer base. As a result of the increased profits from OLG's participation in the industry, OLG decision makers substantially increased their salaries and remuneration during the period 2009 to 2012 by 49%.

#### **Ontario and OLG Misrepresent Their Intentions to Standardbred Breeders**

92. At some point between 2009 and March 12, 2012 at a time known only to Ontario and OLG but not known to the Standardbred Breeders, Ontario and OLG resolved to terminate the revenue-sharing partnership that was central to the SARP.

93. With knowledge that the revenue sharing partnership under the SARP was going to be terminated or materially altered, Ontario and OLG continued to make representations to the Standardbred Breeders intended to induce them to make long-term investments in their breeding operations.

94. Beginning in or about 2009 and 2010, there were rumours that Ontario and OLG were re-evaluating whether to continue the SARP in its current form.

95. OHRIA struck a committee to communicate with the government to ensure that Ontario and OLG remained committed to sharing 20% of SARP revenue with the horse racing industry, as had been agreed, or if any changes to the partnership were to be made that they would be made with due notice and consultation having regard to the vulnerability and dependence of the Standardbred Breeders.

96. A representative from the Standardbred Breeders of Ontario Association, Jim Bullock, was designated to head up OHRIA's efforts. Beginning in or about May 2009, Mr. Bullock and the OHRIA committee met with a number of members of the Ontario Liberal government to seek clarification of the government's intentions on behalf of the horse racing industry, including the Standardbred Breeders.

97. At or about the same time, the Standardbred Breeders learned through OHRIA that a number of the existing site holder agreements with racetracks – the agreements that allowed the slot machines to be located at those facilities – were expiring or nearing expiration, and were being renewed by Ontario and OLG for interim periods of only a few months.

98. This development concerned the Standardbred Breeders, especially given the multi-year investments they had made in their breeding operations in reliance on the representations of Ontario and OLG and in performance of their contractual obligations. The Standardbred Breeders sought confirmation from Ontario and OLG that they remained committed to SARP revenue sharing for a long-term period as had been promised.

99. In June 2010, the OHRIA committee, including Mr. Bullock, met with Finance Minister Dwight Duncan, who at that time had oversight of OLG. At that meeting, Mr. Bullock presented Minister Duncan with the Standardbred Breeders' concerns about the expiration of site holder agreements, and sought confirmation of Ontario and OLG's long-term commitment to the SARP revenue sharing partnership.

100. In response, Minister Duncan assured Mr. Bullock that Ontario and OLG understood the need for a long-term commitment to the SARP, particularly owing to the multi-year nature of investments made by breeders. Minister Duncan recognized the anxiety that the short-term renewal of site holder agreements had caused and assured Mr. Bullock that Ontario and OLG remained committed to the SARP revenue sharing partnership, understood the long-term commitments that Standardbred Breeders had made in support of and reliance upon that partnership, and that no changes would be made to the partnership without due notice and consultation. Minister Duncan made these representations to Mr. Bullock on behalf of Ontario and OLG knowing that Mr. Bullock was present at this meeting as a representative of OHRIA and the Standardbred Breeders of Ontario Association, and that Mr. Bullock would convey this information to the Standardbred Breeders through these associations, which he did.

101. Thereafter, and beginning in or about August 2010, Ontario directed OLG to renew all site holder agreements that were about to expire for no less than an additional five years. While Ontario and OLG continued to insist on confidentiality language in these site holder agreements that prevented disclosure of their details to the Standardbred Breeders, Ontario and OLG took steps to ensure that the renewal of these site holder agreements for multi-year terms was communicated through industry organizations to the Standardbred Breeders.

102. In addition, as stated in greater detail between paragraphs 72 and 77, above, between 2009 and March 12, 2012, Ontario and OLG continued to assure the Standardbred Breeders that the SARP, and the revenue it shared with the horse racing industry, was a key component of Ontario's commitment to growing the agricultural sector. As they had for years, Ontario's budgets in 2009, 2010 and 2011 continued to indicate that SARP revenues were intended to "promote economic growth of the horse racing industry," while OLG Annual Reports referred to the revenue as a "major economic stimulus for the overall agricultural industry in Ontario."

103. In addition to the renewal of site holder agreements in 2010, Ontario and OLG continued to emphasize their long-term commitment to the SARP revenue sharing partnership through the expansion of slots machines at existing racetracks and a commitment to the establishment "of an additional Slots at Racetrack operation." ORC documents trumpeted a "firm commitment from our provincial government that it wants live racing and the jobs and growth that racing represents for rural Ontario."

104. Reports were tabled in the Legislature in or about November 2009 in which Ontario through the ORC confirmed its agreement with "the principles of the Slots Program." HIP breeding incentive programs specifically targeted at the Standardbred Breeders – and funded

largely by SARP revenue – were organized around a five-year planning cycle. Financial documentation was even presented to the Standardbred Breeders through the HIP in late October 2011, which projected SARP revenues into the year 2016.

105. As Ontario and OLG continued to represent to the Standardbred Breeders that they would have the opportunity to benefit from a share of SARP revenue, they simultaneously encouraged the Standardbred Breeders to make the corresponding long-term investments in their breeding operations in service of the objectives of the SARP. For instance, advertisements in industry publications continued to run into 2012, actively soliciting the Standardbred Breeders to “Breed, Buy and Race” in Ontario.

#### **Material Misrepresentations by Ontario and OLG during Strategic Review**

106. In July 2010, the Ontario Ministry of Finance directed that OLG undertake a strategic review of its operations. In the course of this review, Ontario and OLG evaluated the termination of SARP revenue sharing with the horse racing industry. Ontario and OLG engaged consultants to study the expected economic impacts of the termination of revenue sharing on the breeding sector generally, and the Standardbred Breeders in particular.

107. In the course of that review, Ontario and OLG were warned by consultants and were aware from their own analyses and studies that any termination of the revenue sharing arrangements without consultation, reasonable notice and compensation would be catastrophic for Standardbred Breeders.

108. During the strategic review, Ontario and OLG conducted consultations with the horse racing industry and the Standardbred Breeders. In the course of these consultations, Ontario and

OLG deliberately and wilfully misrepresented their intentions and plans regarding the future of the SARP.

109. Specifically, during these consultations OLG made no mention whatsoever that the termination of the SARP revenue sharing was even under consideration, even though that option was actively being evaluated by Ontario, OLG, and the consultants they employed.

110. In some consultations, such as the March 29, 2011 meeting with Standardbred Canada, OLG assured participants that any proposals coming out of its strategic review would seek to minimize changes to its relationship with the racetracks.

111. These omissions and misrepresentations during OLG's "consultations" were made with knowledge that they would be communicated to the Standardbred Breeders. These messages were calculated to ensure that industry participants, such as the Standardbred Breeders, would not question the longstanding representations made to them by Ontario and OLG; namely, that any changes to their opportunity to benefit from a share of SARP revenue would be made in a fair manner, consistent with the vulnerability and dependence of the Standardbred Breeders and the reliance they placed on Ontario and OLG's representations when deciding whether to make long-term investments in their breeding operations.

112. OLG prepared consultation memoranda and summaries of their meetings with industry participants in such a manner so as to support their desired plan to terminate the revenue sharing component of the SARP partnership.

113. In some instances, OLG modified the consultation memoranda after-the-fact to distance itself from representations made during the course of those consultations. For example, after

receiving a letter from Standardbred Canada on or about April 6, 2011, wherein Standardbred Canada thanked OLG for including it in the review and conveyed its appreciation for the assurances OLG provided during the course of its March 29, 2011 meeting – namely, that OLG was looking to “minimize” changes and was “focused on implementing an expanded gaming model that improves upon what we have today,” – OLG modified its consultation memorandum for Standardbred Canada to deny that any such comments were made.

114. Importantly, Ontario and OLG took no steps to contact Standardbred Canada to respond to its April 6, 2011 letter and to correct the impression that had been deliberately left with Standardbred Canada that any changes under consideration were “minimal” and that the current SARP program would in fact be “expanded.”

#### **Premier Dalton McGuinty Promises No Changes to the SARP Without Consultation**

115. In September 2011, the Standardbred Breeders, through horse racing industry associations, sought confirmation from then-Premier Dalton McGuinty on behalf of Ontario that Ontario and OLG would continue to honour their long-term commitment to the revenue sharing partnership, that no material changes would be made without consultation and that the continuing assurances and representations described above were accurate.

116. By email dated September 15, 2011 Premier McGuinty assured the Ontario Harness Horse Association and the Standardbred Breeders that the Liberal government of Ontario valued the horse racing industry and its importance to the agricultural sector in the province, and indicated that “we believe in working closely with the industry to ensure that it remains strong and prosperous in the future.”

117. In that email, Premier McGuinty further assured the Ontario Harness Horse Association and the Standardbred Breeders that “Ontario Liberals are strongly committed to the responsible implementation of gaming programs, and will make any future changes with a view to supporting this principle.”

118. At the same time as these assurances were given, OLG assured Standardbred Breeders that it believed in “working closely with the industry” that it was a “great partner” with a “culture of integrity, transparency, accountability and respect for its partners.” For its part, the ORC emphasized that “fairness and confidence can also be secured with ongoing dialogue, consultation and cooperation among all parties.”

119. Moreover, at the time these assurances were given and representations made, Ontario and OLG had decided to cancel the revenue sharing partnership and they deliberately withheld this information from the Standardbred Breeders and others. They did so, in part, because Ontario was in an election and the Liberal Party did not want to risk the backlash in rural Ontario that would arise from the breach of its obligations.

#### **Ontario and OLG Warned of Consequences if SARP Revenue Sharing was Terminated**

120. On February 13 2012, Minister Duncan gave a speech, which suggested that Ontario and OLG may withdraw their commitment to the SARP partnership and their contractual commitments to the Standardbred Breeders.

121. This speech caused great anxiety amongst the horse racing industry and Standardbred Breeders in particular.

122. In response to this speech, two former Progressive Conservative Cabinet Ministers who were instrumental in the creation of SARP took the extraordinary step of broadcasting statements emphasizing the rationale behind the creation of the SARP and its importance to the rural economy and the livelihoods of breeders. They specifically warned Ontario that cancellation of the revenue sharing partnership would be catastrophic for breeders, the horse racing industry and rural Ontario.

123. First, in a video statement posted on [www.ontarionewswatch.com](http://www.ontarionewswatch.com) on or about February 16, 2012, John Snobelen explained to Ontario and OLG that cancelling SARP revenue sharing would “kill [the horse racing] industry in Ontario.” Mr. Snobelen recounted the history of the SARP as follows:

Now, I'm sure Dwight Duncan can remember back to the Harris government when we put slot machines in all of those racetracks across Ontario. Slot machines obviously draw a lot of revenue away from the gambling that would happen with horse racing, and so the effect on the purses for horse racing is pretty dramatic. To make up for that, the government allowed a percentage of the slot revenue to go to the horsemen, so that the race horse industry in Ontario would not be affected by the imposition of slot machines on their tracks. All sounds kind of fair to me.

124. Mr. Snobelen then warned of the economic impact that would inevitably follow from any precipitous cancellation of the SARP, in the following terms:

[T]here are a lot of people who make a living making hay, and growing oats, and raising horses, and doing all of the other things that are involved with putting on horse races. Pretty important industry in lots of parts of Ontario. [...] I'm not so sure those folks will be really excited to hear that horse racing will now end in Ontario because it's a lot more efficient to put money in a slot machine than it is to wager on horse racing. Good thinking, Dwight, just kill another industry in Ontario, and pretty soon we can all work for the government.

125. Then, in a video segment posted on [www.ontarionewswatch.com](http://www.ontarionewswatch.com) on or about March 12, 2012, David Tsubouchi, the Cabinet minister responsible for the introduction of SARP, reminded

Ontario and OLG of the original purpose of the revenue sharing partnership: "The slot machines were introduced specifically to assist the horse racing industry ... The horses came first. It wasn't the slot machines there first, it was the horses. And they were introduced not to be the main activity at racetracks, but to support the main activity, which would be breeding, and horse racing."

126. Ontario and OLG also received reports and analyses in the weeks leading up to the announcement of the cancellation of the SARP revenue sharing arrangement that warned of the catastrophic consequences that this would have on the horse racing industry generally and the Standardbred Breeders in particular.

127. Ontario and OLG were therefore acutely aware of the economic harm that would result to the Standardbred Breeders if revenue sharing under the SARP was discontinued without consultation, reasonable notice, or any compensation for the long-term investments made by the Standardbred Breeders.

128. Ignoring the warnings it received from its consultants, the civil service, and former Cabinet ministers, Ontario's governing Liberal Party instead undertook a radio campaign consisting of false and misleading radio advertisements about SARP revenue sharing that began with a common opening: "Did you know that Tim Hudak's PCs started a secret subsidy for a few, very wealthy racetrack owners? And now in these times of restraint, Tim Hudak says these rich payouts should be protected ...".

129. The warnings that Ontario and OLG received from their bureaucrats, consultants, their own analyses and former Cabinet ministers provided the last clear chance to avoid the harm that would be caused by the precipitous cancellation of the revenue sharing partnership. With knowledge of the harm that would ensue, Ontario and OLG resolved to cancel the partnership.

### **Ontario and OLG Announce They Will No Longer Share SARP Revenues**

130. On March 12, 2012, Minister Duncan and the Chair of OLG, Paul Godfrey, announced that Ontario and OLG would stop sharing slots revenue from the SARP with the horse racing industry, effective March 31, 2013. Ontario and OLG did not cancel the SARP itself or take the slots out of the racetracks.

131. Effectively, Ontario and OLG resolved to cancel the revenue sharing component of the SARP, and keep for themselves the profits of what was by then an immensely successful enterprise built on the customer base and efforts of the horse racing industry, including the Standardbred Breeders.

132. This announcement came in the midst of the Standardbred Breeders' breeding season that runs between February and the end of June, a fact that Ontario and OLG knew would cause catastrophic losses to breeders and deliberately chose to ignore.

133. Although the decision to terminate SARP revenue sharing had been made by Ontario and OLG well prior to its announcement, it had been wrongfully withheld from Standardbred Breeders with knowledge of the harm that would result from doing so. In the circumstances, the announcement amounted to a breach of the standard of care and of the equitable obligations owed by Ontario and OLG to the Standardbred Breeders. It also was a breach of Ontario and OLG's contractual relationship with the Standardbred Breeders. It is also conduct worthy of the sanction of this Court with an award of punitive damages.

134. The March 12, 2012 announcement by Ontario and OLG that SARP revenue would no longer be shared with the horse racing industry was made before Cabinet had been provided with a briefing note about the decision and its projected economic impact on the horse racing industry.

135. The announcement was instead driven by Ontario and OLG's self-interests and realization that they had failed to properly account for slots revenue distributed to racetracks and create benchmarks for the expenditure of that money, causing them to act out of a desire to avoid embarrassment and scandal. Ontario and OLG chose to do so notwithstanding their awareness of the common law, contractual, quasi-contractual and equitable obligations owed to the Standardbred Breeders.

136. Ontario and OLG's March 12, 2012 announcement – made on the heels of a misleading “consultation” process and without warning or notice to the Standardbred Breeders – is bad faith conduct that reflects a fundamental breakdown in the orderly exercise of Ontario and OLG's decision making powers. The announcement was made with knowledge of the harm it would cause to the Standardbred Breeders, or with reckless indifference to that result.

137. The March 12, 2012 announcement is irrational because it is inconsistent with the objectives of the SARP partnership; namely, promoting live horse racing and benefitting the agricultural sector through support to the horse racing industry. Again, the March 12, 2012 announcement did not remove slot machines from racetracks across the Province; instead, it was a declaration by Ontario and OLG that beginning March 31, 2013, they were no longer willing to share slots revenue with Standardbred Breeders and the horse racing industry.

138. Such a decision cannot rationally be expected to promote live horse racing or benefit the agricultural sector, especially in circumstances where Ontario and OLG maintained slot machines at racetracks, and failed to give any warning to the Standardbred Breeders that the terms of the partnership were about to be unilaterally changed.

139. The March 12, 2012 announcement had an immediate and foreseeably catastrophic impact on all Standardbred Breeders, notwithstanding the fact that the announcement indicated that Ontario and OLG would continue to share SARP revenues until March 31, 2013. This is because the announcement instantly impaired the value of their long-term investments and undermined certainty and confidence in the future of standardbred breeding and racing in Ontario.

140. Ontario and OLG took deliberate and public steps to characterize the SARP as an illicit “secret subsidy for a few very wealthy racetrack owners.” This characterization was in stark contrast to their characterizations of SARP revenue sharing over the prior fourteen years, during which Ontario and OLG consistently confirmed that the revenue sharing partnership was a key aspect of the agricultural economy and an important incentive for breeders to invest in their farms, animals and local employment. After breaching their common law, contractual, quasi-contractual and equitable obligations to the Standardbred Breeders, Ontario and OLG characterized SARP revenue sharing as nefarious “secret [...] payouts to rich racetrack owners” that “Tim Hudak says should be protected.”

141. It was known by Ontario and OLG that this aggressive messaging was false and would signal the government’s withdrawal of support for the horse racing industry, trigger an immediate panic in the equine industry and destroy the market for standardbred breeding.

142. The impact of this conduct was immediate. Panicked owners of broodmares began to call and cancel stallion bookings *en masse* after the March 12, 2012 announcement. Since breeding season had only begun in February and continued until the end of June, Standardbred Breeders who stood stallions in their stables had a rush of cancellations for previously-confirmed bookings scheduled later in the breeding season, which instantly deprived them of their share of stud fees

that would be paid to breed to those stallions, and/or management fees the Standardbred Breeders received for administering bookings and standing the stallion at their farm. Stallion owners began to move stallions out of Ontario to jurisdictions with racing futures and more lucrative incentive structures, thereby completely eliminating streams of revenue to Standardbred Breeders.

143. With no assurance regarding whether there would even be standardbred racing in Ontario, and based on the fact that the elimination of SARP revenue would substantially reduce purses and HIP racing and breeding incentives, the value of yearlings bred by the Standardbred Breeders fell dramatically.

144. Indeed, SARP revenue represented such an important source of funding for the HIP – including the Standardbred Improvement Program and the Ontario Sires Stakes – that the HIP’s auditor noted in 2011 financial statements released after the announcement that “[t]he loss of revenue creates material uncertainty regarding the Horse Improvement Program’s ability to continue as a going concern.”

145. The sharp drop in yearling values extended far beyond the value of yearlings that were to be put up for sale beginning in Fall 2012, and included foals born in 2012 that would be sold as yearlings in 2013, and pregnant mares that would produce foals in 2013, which would be offered for sale in the fall of 2014. Moreover, broodmares owned by the Standardbred Breeders, whose value is a function of the first couple of yearlings they produce, also suffered an immediate and sharp drop in value that corresponded with the decrease in yearling value.

146. Because the March 12, 2012 announcement entirely undermined any expected future return on investment for breeding a mare in Ontario, breeding activities ground to a halt. Horses that were being boarded at certain of the Standardbred Breeders’ farms were removed, often to be

relocated to another jurisdiction. Yet another revenue stream for the Standardbred Breeders dried up.

147. Capital investments made by Standardbred Breeders in reliance on the representations of Ontario and the OLG and those parties' contractual, quasi-contractual and equitable obligations were effectively rendered non-recoverable. Expansions to stables made to accommodate an expected number of horses became redundant.

148. The Standardbred Breeders experienced a significant contraction in their breeding operations. For those among the Standardbred Breeders that hired extra farmhands to assist with these operations, they had to let them go, in some cases resulting in severance costs that had to be paid to the departing employees.

149. The ramifications of this significant contraction in the operations of the Standardbred Breeders had an equally harmful and foreseeable impact on the rural communities in which the Standardbred Breeders carried on business. Those who made a living from servicing the operations of the Standardbred Breeders, which include but are not limited to equine veterinarians, blacksmiths, hay and grain suppliers, and transport companies, also saw their own livelihoods significantly impacted, and in some cases, destroyed.

150. The March 12, 2012 announcement decimated the livelihoods of the Standardbred Breeders. The aftershocks continue to reverberate through their rural communities to this day.

151. After publicly characterizing the SARP as a "secret subsidy for a few very wealthy racetrack owners," Ontario and OLG paid \$80.6 million dollars in compensation to those racetrack owners, while refusing to even discuss compensation for the Standardbred Breeders.

152. Upon learning that the Standardbred Breeders intended to seek a judicial determination of their rights against Ontario and OLG, Ontario retaliated against the Standardbred Breeders. In particular, on March 11, 2014, the day after the commencement of the proceedings against OLG, Ontario announced that it would provide additional funds for the Horse Improvement Program for Thoroughbreds and Quarter Horses, but excluded Standardbreds. The next day, Ontario told *Trot Insider*, an industry publication, that it was not prepared to provide any enhancement to the Horse Improvement Program for the entire Standardbred sector while the Standardbred Breeders' claim was being pursued. Then, on March 31, 2014, Ontario announced additional compensation directed towards racetracks, but again excluded the Standardbred Breeders.

153. The conduct of Ontario and OLG in the lead up to and the aftermath of the March 12, 2012 announcement warrants the sanction of the Court with an award of punitive damages. The manner in which Ontario and OLG terminated the SARP revenue sharing partnership was arbitrary, capricious, irrational and indicative of bad faith.

154. The conduct of Ontario and OLG once they began to consider, and later resolved to implement the decision do away with SARP revenue sharing, breached their equitable obligations owed to the Standardbred Breeders. The words and actions of Ontario and OLG occurred during the course of an existing legal relationship with the Standardbred Breeders, constitute a continuing course 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, OLG and Ontario are estopped from now refusing to pay compensation for the harm caused by their conduct.

### **The Aftermath of Ontario and OLG's Actions**

155. Ontario and OLG have been enriched as a result of the manner in which the SARP revenue sharing partnership was cancelled. 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 the Standardbred Breeders.

156. Ontario and OLG have also retained SARP revenues for themselves, without the need to share with the Standardbred Breeders. Since revenue sharing was discontinued as of March 31, 2013, Ontario and OLG have earned approximately \$1.6 billion from slot machines that continue to be located at the racetracks, which would have amounted to SARP revenue sharing of approximately \$320 million. 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, quasi-contractual and equitable obligations owed by Ontario and OLG. There is no juristic reason for this enrichment.

157. Ontario and OLG's breach of their common law, contractual, quasi-contractual and equitable obligations to the Standardbred Breeders also constitutes a legal wrong that grounds a cause of action in waiver of tort. As a result of this legal wrong, substantial benefits have flowed to Ontario and OLG, insofar as they no longer share any of the revenue from the SARP with the horse racing industry, including the Standardbred Breeders. This revenue, by OLG's own admission, served as a major economic stimulus for the overall agricultural industry in Ontario.

**Ontario Admits it Breached its Duties and Obligations to the Standardbred Breeders**

158. On or about January 25, 2013, the Ontario Minister of Agriculture, Food and Rural Affairs Ted McMeekin admitted that the “government dropped the ball” on the horse racing issue.

159. In or about February 7, 2013, Minister Duncan announced his resignation from politics.

160. Days later, Kathleen Wynne replaced Dalton McGuinty as Premier of Ontario. On May 16, 2013 Paul Godfrey was fired by Ontario as Chair of OLG.

161. Approximately one week later, Toronto City Council rejected OLG’s proposal to locate a casino in downtown Toronto by voting 40-4 against the proposal.

162. Since that time, Ontario has repeatedly acknowledged that the manner in which the SARP revenue sharing partnership was discontinued was wrong.

163. Premier Wynne admitted on September 16, 2013 that “the original changes to the Slots at Racetracks Program were not as well thought through as they needed to be.”

164. On or about September 17, 2013 Premier Wynne admitted that the cancellation of the revenue sharing partnership was “not necessarily in the best interests of the industry or rural communities.”

165. On October 14, 2013, Premier Wynne admitted that she sided with then-Minister of Agriculture, Food and Rural Affairs Ted McMeekin regarding the manner in which SARP was changed: “I can remember sitting in Cabinet meetings with Ted saying: ‘We’ve got to take a second look at this’ ... The way the SARP program was cancelled was not thoughtful.”

166. On November 13, 2013, Premier Wynne admitted in the Legislature that in the “cancellation of the [SARP] program, there was not due consideration of the impacts.”

167. Once it became clear to Ontario and OLG that they had failed to meet their common law, contractual, quasi-contractual and equitable obligations to the Standardbred Breeders owing to the way in which SARP revenue sharing was terminated, they commissioned additional studies, including a study by McKinsey & Company, in an attempt to understand the full extent of the economic harm their decision had caused.

168. Among other things, these studies confirmed that the standardbred sector – including the Standardbred Breeders – had been hit especially hard by the loss of SARP revenue, a fact that Ontario and OLG knew all along.

169. Ontario and OLG 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, Ontario and OLG determined that they would withhold compensation from the Standardbred Breeders, because the Standardbred Breeders were dispersed in small rural communities across Ontario, are vulnerable, and lack the economic and informational resources of racetracks, thereby making it more difficult for them to assert their rights.

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

April 14, 2014

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Court File No. 272/14

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**STATEMENT OF CLAIM**

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