



COMMISSION HEARING

TORONTO, ONTARIO – JANUARY 5, 2011

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;
AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY
ONTARIO HARNESS HORSE ASSOCIATION (OHHA)**

The Ontario Harness Horse Association (“OHHA”) appealed the Director’s decision of December 10, 2010, with respect to the Ontario Racing Program 2011. By way of Notice of Motion, the ORC Administration sought to have the appeal filed by OHHA dismissed arguing that the Panel lacked the jurisdiction to reverse the Commission’s Policy Decision on the Framework.

On January 5, 2011, a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling, Vice-Chair James Donnelly and Commissioner John Macdonald was convened to hear the Motion.

Maureen Harquail appeared as Counsel for the Administration and Andrew Finkelstein appeared as Counsel for OHHA.

Upon hearing the evidence of Steven Lehman, Chief Administrative Officer of the ORC and upon reviewing the exhibits filed and upon hearing the submissions of Counsel for the Administration and Counsel for OHHA, and Chris Kruba, the Panel rules as follows:

- i) There is no jurisdiction either in totality or substantial result to reverse the Framework as an ORC Policy.
- ii) It does have jurisdiction to alter race dates within the Framework.
- iii) The Panel therefore has jurisdiction to hear the appeal on the merits, and to grant relief within the Framework.

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

Dated at Toronto this 14th day of January, 2011.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



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REASONS FOR DECISION

1. The ORC Administration, upon motion, seeks an Order dismissing OHHA's appeal from the Ontario Racing Program decision by the Director on December 10, 2010.

2. That appeal framed by OHHA prior to consulting counsel was:

"It is the OHHA position that there should be no change to the Ontario Horse Racing Model and that the moratorium on race dates should be extended for the 2011 racing season until further studies and consultation are complete."

3. Counsel for OHHA filed an amended Notice of Appeal requesting that the Director's Order be varied to require certain tracks to provide additional live racing dates in 2011 as follows:

Total Live Race Dates

Woodbine	135 days minimum with winter racing 5 days per week
Mohawk	108 days minimum
Flamboro	225 days minimum through 12 months
Western Fair	130 days minimum
Windsor	111 days minimum
Woodstock	27 days minimum
Dresden	25 days minimum
Georgian	105 days as per the Director's Order but through 12 months (2 days per week).

4. The amended Notice of Appeal also seeks an Order prohibiting redistribution of purse money among tracks.

5. The Motion proceeded on January 5, 2011. The decision was reserved with the matter returnable before the Panel on January 24, 2011.

6. The issue of late filing was resolved by the Panel at the opening of the Hearing. No such issue remains.

7. The thrust of the Administration submission was that this panel has no jurisdiction to reverse the Commission's Policy Decision on the Framework, the implementation of which interconnects racing across Ontario. The Administration position as outlined by CAO, Steve Lehman was that substantial alteration of that interdependent structure would precipitate a destructive domino effect on the entire program.



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8. In fallback position, the Administration contended that by reason of OHHA's participation in the development of, and its support for the Framework, OHHA should now be estopped from opposing that Framework or its effect. This submission fails as will be discussed in the reasons to be delivered.

9. In order that the parties may have reasonable opportunity to consider their positions, the decision on the Motion is released now. The opportunity to deliver full reasons on the Motion is reserved; such reasons to be released with the reasons on the substantive issue on the appeals. At this stage, appeals relating to Flamboro, the Northern Horsemen's Association and Hiawatha, remain to be heard (the Sudbury appeal having been withdrawn).

10. The Director's decision was in the context of the Framework for race date allocation approved by the ORC Board on September 9, 2010. The rationale for that Framework is summarized in the opening paragraphs of the Director's Decision under the rubric, "Overview" and need not be repeated here.

11. The background leading to the Framework is reviewed in the November 29, 2010 Notice to the Industry (Exhibit 1, tab 6). That notice is appended to these Reasons to demonstrate:

- The exhaustive and extensive collaborative consultation and planning process leading up to the Framework.
- The goals identified through that process.
- The scope and industry-wide effect of the inter-dependent schedule

12. As communicated to the industry by "Notice" November 29, 2010, the Framework:

"Is being used for the first time to set standardbred race dates. It is acknowledged that this is an initial step in the continuing process of consultation and collaboration with the racing industry."

13. Implicit in that Framework is the right of the Director to assign race dates and undoubtedly to revise as inequities within the Framework may be perceived. The Panel having a statutory right of review must have that same jurisdiction.

14. Accordingly, the Panel rules:

- There is no jurisdiction either in totality or substantial result to reverse the Framework as an ORC Policy.
- It does have jurisdiction to alter race dates within the Framework.



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15. The Panel therefore has jurisdiction to hear the appeal on the merits, and to grant relief within the Framework.

Dated this 14th day of January 2011.

A handwritten signature in cursive script that reads "Rod Seiling".

Rod Seiling
Chair

A handwritten signature in cursive script that reads "James M. Donnelly".

James M. Donnelly
Vice Chair

A handwritten signature in cursive script that reads "John Macdonald".

John Macdonald
Commissioner

Attachment

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November 29, 2010

Notice to the Industry

Ontario Racing Program proposals circulated for public comment

The Ontario Racing Commission (ORC) is circulating proposals for a 2011 Ontario Racing Program for public comment. All interested stakeholders are encouraged to review these proposals and provide their comments to the attention of the Director by **Monday, December 6, 2010**.

The process of determining racing in Ontario has evolved significantly from that of prior years. Previously, applications received from racetracks, along with their business cases where appropriate, were distributed for comment. The process focused solely on racing at each racetrack.

This year – after considerable dialogue and input from industry working groups – an Ontario focused Standardbred racing program is also being circulated. This introduces an approach that goes beyond the single interests of one racetrack or horsepeople association. The proposed program introduces a true 'provincial approach' to racing which also accommodates regional considerations.

Based on an ORC Board-approved Framework that was developed through the year-long industry consultation process, the public is invited to comment on these 'alternative calendars.'

In October 2009, the ORC Board ordered a moratorium on race dates reductions and directed the Executive Director to work with the industry in the development of a new approach to serving the interests of Ontario horse racing and the public. Members of the racing community were challenged to think creatively and to work collectively, and were assured that there would be ample opportunity for input and comment.

The revised framework emerging from this consultation is customer-focused, aligns horse supply with customer demand, and confirms a commitment to live horse racing in Ontario.

As such, you will find the following information available on the ORC website for your review and comment this year:

- Race date applications, which have been submitted by the racetrack operators
- Business cases to support the racetrack application (where submitted by the racetrack operator)
- Ontario Racing Program calendars, as developed under the Race Date Review process
 - (a) compiled view of all Standardbred racetracks in a monthly view, and
 - (b) each of the separate Standardbred racetracks with an annual view.

Specific or general comments can be made on the applications from the racetrack(s), the business case, or on the alternative calendars.

The racetrack submissions, the efforts of the working groups, the approved Race Date Framework and other information developed during the consultation process can be found on the ORC web site by accessing the ***Notice to the Industry - Ontario Racing Program proposals circulated for public comment*** located under the ***What's New section*** on the main page of the ORC website at www.ontarioracingcommission.ca.

In general terms, to achieve the goals of this initial 2011 phase of the Ontario Racing Program, several initiatives will be introduced to the Standardbred industry that are intended to be "customer friendly" as well as enhance the fairness and equity in Ontario racing. It is proposed that these initiatives include:

- A classification of racing based on a hierarchical system of race cards and horse supply;
- Synchronized race date and post time scheduling;
- A purse management system to introduce a greater equity in purses
- Balanced conditions which will result in more balanced competition;
- Economic oversight, accountability and re-investment in live racing.

For more information on these initiatives, please refer to the approved framework document and other materials made available on the website.

In specific terms, some examples of these refinements include:

- Eligibility based on money earnings (rather than wins)
- Conditions based on last three starts
- Claiming race purses proportionate to claiming prices
- Consistency in allowances
- Consistency in qualifying times
- Increased diligence on the use of also eligible conditions

For more information on these initiatives, please refer to the document made available on the website entitled *Framework Technical Aspects*, which also includes a draft of a provincial Condition Book for discussion.

Since the framework is being used for the first time to the set Standardbred race dates for next year, it is acknowledged that this is an initial step in the continuing process of consultation and collaboration with the racing industry – but we cannot “take our eyes off the ball”. Industry representatives have committed to quarterly reviews of the framework and its application throughout 2011, and the ORC is dedicating resources to the continued development, monitoring and agile responsiveness to this new Ontario Racing Program.

Other initiatives being considered are Canadian-based incentives, such as changes to the preference rules or establishment of a purse bonus program, and a Guaranteed Starter Bonus Program at tracks challenged by horse supply issues.

As well, it is expected that throughout 2011, the industry consultations will focus on the further development of the Ontario Racing Program, reviewing the outcomes of various initiatives and changes and creating a system of performance indicators.

Input, comments or concerns regarding the race date calendars must be received by Monday, December 6, 2010 to be considered. Your submissions should be forwarded to the attention of the Director, as follows:

Attention: 2011 Racing Program Proposals – Public Comment
Email: sandy.anthony@ontarioracingcommission.ca
Facsimile: (416) 213-7827

For further information, please check our website www.ontarioracingcommission.ca or contact Wendy Hoogeveen, Director, Industry Development and Support, or Steve Lehman, Chief Administrative Officer.

John L. Blakney
Executive Director