

**ROBERT and BLAIR BURGESS SUBMISSION TO THE STANDING
COMMITTEE of FINANCE and ECONOMIC AFFAIRS (ONTARIO)
PANEL ON RACING**

We respectfully submit this brief for your consideration at this difficult time. Our family has enjoyed the standardbred business and its many challenges for the past 43 years but never a challenge as serious as that caused by the precipitate termination of the Slots at Racing program.

Back in 1972 I drafted and submitted to the then Government of Ontario a brief which, when accepted, resulted in the establishment of the Ontario Sires Stakes, Ontario's enormously successful breeding incentive program.

Hopefully, we can achieve similar success in our presentation today. My son Blair trains a public stable of 40 horses (with substantial family ownership) and we are owners of a 45 broodmare band. Blair and I take sole responsibility for all opinions expressed in this brief.

We have reviewed the OHRIA current status report available on the Harness Edge website covering the lengthy interview of Sue Leslie by Harold Howe on July 5, 2012. We are extremely impressed by the progress OHRIA has made to date and the tenacity and professionalism of their efforts on behalf of the horse industry generally.

However, we are concerned that OHRIA may have strayed from what we believe should be the one central thesis of any negotiations OHRIA will have with the Government and with the OLG .

1. In our opinion, that one central thesis is that any settlement the racing industry makes must be tied DIRECTLY to the future revenues flowing from SLOT MACHINES installed at racetracks.

2. Ms. Leslie, on the other hand, made multiple references in her interview to a possible settlement with the OLG that would be tied to gambling in some other form. We do not agree.

We do however agree with her second reference in which she confirmed the very important need for racing to be included in the overall gaming strategy of the Province. We understand that this inclusion of racing in Ontario's overall gaming strategy will be a very important part of any overall settlement we should hope to achieve with the Government.

Indeed, had racing been part of the Province's overall gaming strategy, as recommended by Stanley Sadinsky in his 2008 report to Government, it is quite unlikely that the surprise announcement of the termination of the Slots at Racetracks program would have occurred. To foster a close relationship of racing with gaming is therefore consistent with the views of Mr. Sadinsky as expressed in his 2008 report.

3. Any possible accommodation from the OLG may sound appealing at this time of extreme stress for those in the racing industry. However, some type of vague arrangement involving the gaming strategy of the Province in some unspecified manner will not, in our opinion, save the horse industry on its own. Having our essential funding derived from the Slots at Racetracks program must be re-established in our current negotiations with Government in a new form that will be satisfactory to all parties. Racing's funding in Ontario must depend upon its unique relationship with its slots history which is also traditional for most of our racetrack competitors in the Eastern United States.

4. Furthermore, as an integral and important part of the gaming strategy of the Province of Ontario racing should continue, like the rest of gaming, under the jurisdiction of the Minister of Finance.

5. We believe that there are four good reasons why our settlement must be tied to slot machine revenues:

A. This revenue stream from racetracks is proven with 12 years of Ontario net revenues exceeding one billion dollars. It is very dependable and predictable and the only form of gaming that has been a success for the OLG in Ontario;

B. For the racing industry to receive dollars from elsewhere in the Ontario gambling sector would always be vulnerable and open to attack as a subsidy (which, in reality, is what in fact such an unrelated payment would be);

C. The racino model is becoming more popular in the United States and becoming more appealing and more acceptable to the US casino industry. For example, there is presently a fourth Pennsylvania standardbred racino planned for the new Valley View Downs track to be located in Southern Pennsylvania. Also two new racinos are now operating or proposed in Ohio at Scioto Downs in Columbus and at Northfield Park in Cleveland. (Incidentally, the Ohio government share of revenues from the Northfield Park racino is proposed at only 33% as the joint operators, Northfield Park on behalf of itself and its horsemen and the Hard Rock Café will share 67% of the revenues under their arrangement with the Ohio government). Buffalo Raceway in Hamburg, New York is now a racino. The Delaware North Companies Gaming and Entertainment, operating as Hamburg Casino, have entered into a long term agreement with the Erie County Fairgrounds to operate that track as a racino with appropriate contractual protection for both stakes and overnight racing. We understand other New York tracks have entered into similar arrangements. Details of the Buffalo Raceway revenue split are set out below in Paragraph 22 of this brief ;and

D. Most importantly, slots are now integrally linked with racing as they are located in racing's buildings, serve racing's customers and depend upon racing's parking facilities. The sharing of these revenues is logical. Nothing else is.

6. Where are we now in the settlement process? How close are we to an absolute train wreck for both the Government and for the Ontario horse racing and breeding industries?

7. Both the OLG (according to its annual reports for the years prior to its announcement of its new land-based gaming modernization plan) and the Ontario Government were always very pleased with the continuing success of their Slots at Racetracks program. As well they should have been, as the Slots at Racetracks program's financial results for all 10 years exceeded by a wide margin the results of all of the other entities under the OLG umbrella. That margin has continued to increase steadily.

8. As reported by OHRIA in its submission to you -“For more than 10 years the Slots at Racetracks program has been a highly successful partnership. In the past 10 years alone the Slots at Racetracks program has delivered in excess of \$9 billion dollars to the Province of Ontario, net of all commissions earned and OLG expenses.” Accordingly, because the entire industry revolves around the fall yearling auction sales the answer on the timing of a settlement for the breeding industry is that a satisfactory resolution must be reached no later than August 30, 2012, approximately two weeks before the yearling sales commence. Timing of the balance of the agreement between the Government and the racing industry is also very critical.

9. My experience as a lawyer is that 95% of all litigation and most other legal disputes eventually are resolved through serious settlement negotiations. If we wait and the Government waits until March 31, 2013 to have a messy and perhaps violent settlement the racing and breeding industries may never recover. It is also very clear that the reputation of the Government of Ontario for decency and fairness may suffer.

10. In our opinion, the Government will be very remiss if it does not take careful note of Woodbine Entertainment's CEO Nick Eaves' extremely clear statement of WEG's future policy made on June 12, 2012 at the Pepsi North America Cup draw. After this speech no one can question how WEG will react if it is not accorded the respect WEG deserves from government and the OLG .

11. This important future policy statement by Mr. Eaves is reproduced verbatim below:

Mr. Eaves vowed that WEG would put "every resource into demonstrating why it is that over the past 12 plus years Ontario has emerged as a leader in the North American racing and breeding industry. It's because of our passion, it's because of our investment, it's because of the creativity and energy we brought to the industry."

"Believe me, none of us are going to allow any of that investment, any of that effort and the success that has resulted from it, go dismantled, we're not going to let that happen".

12. For our Government to dismantle WEG and by doing so blow up the 600 million dollars it receives annually from WEG under the Slots at Racetracks' program would be radical and senseless. It would seem that if the Government were to truly consider the will of the people it could not even consider permitting such an unnecessary disagreement with a respected non-profit corporation like WEG to occur at a annual budgetary cost of 600 million dollars.

13. The OLG , with its gaming modernization strategy, misguidedly created the current crisis all by itself with a strategy designed ostensibly only for the benefit of Toronto developers and American casino operators. Intentionally or otherwise, there was little consideration or attention paid by the OLG to the dreadful impact of this plan on the racing industry and on the Government.

14. Now the gaming modernization strategy that the OLG sold to the Government is in a complete and utter shambles.. A number of Ontario municipalities have formally rejected the OLG's overtures for a casino. To the best of our knowledge the OLG has not even reached the planning stage on any new buildings in which to install its slot machines. Where would all of these slot machines go if there is no settlement prior to March 31, 2013? Coincidentally, we understand that they have forged ahead with a major OLG expansion of slot-like gaming machines at Mr. Larry Tanenbaum's expanding bingo empire, where the owner- operator takeout is reportedly 47%! The takeout to racing under the current Slots at Racetrack agreements is 20% split equally between the tracks and the horsemen.

15. At the same time a new casino to be located anywhere downtown in Ontario has little more appeal to neighbours and surrounding property owners than an incinerator or an abattoir. The American Casino Guide reports that the North American casino market is now very saturated as 42 of the 52 states already have casinos with Las Vegas as the only destination casino.

16. The OLG itself has already experienced the pains of market saturation in Windsor where, according to its annual reports for 2009/10 and 2010/11, the profit at their Caesar's Windsor casino has declined from 800 million dollars a year to 100 million dollars last year when three new casinos were opened in Detroit.

17. An op ed article written by the distinguished architect and town planner A. J. Diamond (and three other experts) appearing in the July 9 edition of the Globe and Mail should be required reading on the subject of new casinos in Ontario.

It is titled "CITIES BEWARE: THE HOUSE ALWAYS WINS." Among many negative conclusions reached by Mr. Diamond on the 29 casinos planned by the OLG for Ontario is his commentary on Atlantic City that reads as follows. "The once great seaside destination of Atlantic City with its grand boardwalk, bet the farm on a cluster of casinos, and the prosperity they would bring. What they have instead is a decimated downtown and a deteriorated city surrounding the walled casino enclaves and their parking lots. Financial support by the state and local authorities is necessary to rescue these derelict areas." Mr. Diamond goes on to cite examples of similar urban blight created by casinos in Halifax, Windsor, St. Louis and Detroit.

18. According to the OLG annual financial reports for 2009/10 and 2010/11 the OLG has loaned over 170 million dollars to Caesar's Entertainment, for working capital and renovations. It is very clear that supplying working capital to American enterprises is not a proper use of Ontario taxpayers' money. It also demonstrates the lack of financial stability of one of the OLG's proposed new partners.

19. The abrupt and unexpected cancellation of the Slots at Racetracks Program has had serious repercussions for all of the municipalities involved in racing. Their budgets are in jeopardy and many building projects are half completed with no availability of future funding. Cavan Monaghan Township, the Town of Milton and the municipalities involved with Hanover and Clinton Raceways are the best examples of this. It has been recently reported that six of these municipalities are petitioning this panel in support of racing.

20. As a direct result of the OLG's interference in racing it will be the Ontario Government (and its taxpayers) that will forfeit revenues of one billion dollars and tax remittances projected at \$261 million annually if the OLG gets its way. Ontario will also suffer a significant increase in unemployment with up to 60,000 full or part time jobs possibly in jeopardy. An increased demand for social services will also result from the very substantial job losses that will take place.

However, management of the OLG will be unaffected as they watch the carnage from the sidelines. It will be racing's problem and the Government of Ontario's problem. Not their's!

SEE BELOW FOR POSSIBLE SOLUTIONS FOR ONTARIO'S RACE TRACKS

Before proceeding we acknowledge and appreciate that it is perhaps presumptuous of the writers of this brief to make suggestions to either the Government of Ontario or to the directors and management of WEG .

However now is the time for us to move forward together. The exchange of concepts and ideas can only help to get us off dead centre.

21. Our suggested outline for the basis of a possible settlement for Woodbine and Mohawk that should be fair and equitable for all parties.

- A long term contract with no short term out clause.**
- WEG to take over the operation of all Woodbine and Mohawk slot machines.**
- OLG employees at Woodbine and Mohawk to be offered fair transition arrangements. Including all Ontario racetracks, this should save the OLG approximately 171 million in annual wages.**
- As recommended by Stanley Sadinsky in his 2008 report to Government, benchmarks and guidelines should be introduced to ensure that slot parlours are operated in a manner consistent with Government and OLG policy and in the best interest of racing.**

- With the approval of Government and the OLG , WEG should be entitled, but not required, to subcontract the operation of slot machines at Woodbine and /or Mohawk provided that WEG would be responsible for all costs under any subcontract.
- The parties should direct 10% of the net profits hereunder for purses (overnights and stakes sponsored by WEG) and should direct an additional 2% to the ORC or its successor in order to continue to fund the OSS programs. A further 3% or 4% should be directed to the local municipality in which the slot area is located.
- After appropriate costing and negotiation the division of the remaining net profits will have to be settled between the Government and WEG on a fair and equitable basis.

Other factors to negotiate:

- The introduction of other forms of gambling products.
- Arrangements for the purchase and maintenance of the slot machines.

22. Our suggested outline for a basis of settlement for the remaining Ontario tracks - using the Buffalo Raceway model as a guide for a racino.

- Terms and conditions set out in Paragraph 21 for a WEG settlement should apply, as applicable, to a negotiated settlement by any other Ontario track.
- Assuming the track owner does not wish to operate it's slot area it is imperative that it make arrangements with a gaming operator that can be approved by the Government and OLG . We understand that there are as many as five casino operators now interested in entering into arrangements of this nature with an Ontario racetrack to operate a racino.

- It is noteworthy that Ontario Agriculture Minister M. P. P. Ted McMeekin was quoted in the April 1, 2012 edition of the Hamilton Spectator as saying “ he hoped that the RFP (Request For Proposal) would be issued with a requirement for a horse racing component in a new deal”
- Clearly every arrangement is different and there are many racino funding models available for review. There are a substantial number of racinos currently operating in New York, Indiana, Ohio and Pennsylvania.
- For example, apparently in New York the State retains 65% of the net profits with the horsemen receiving 8% for overnight purses and 2% for stakes. The balance remaining is then divided between the track owner and the gaming operator on a mutually agreed basis.

23. Consistent with the main objective of the new OLG policy which is to increase revenues to Government we do not understand why any Ontario racetrack (properly operated according to reasonable benchmarks) should be forced to close.

In order to remain open these racetracks should be required to enter into an agreement with a gaming operator. Under such an agreement they would have to be real participants on a financial basis in the operation of the gaming site.

This would deliver much needed and totally incremental funds to Government and would protect employment.