

March 19, 2013

Letter from Ombudsman regarding complaints about OLG Slots at Racetracks Program
Re: Our File No.: 256320

I am writing to provide you with the results of our review of complaints about the decision to end the Ontario Lottery and Gaming Corporation's "OLG Slots at Racetracks Program." After thorough consideration of the issues raised, we have decided not to conduct a formal investigation, for the reasons set out below.

The Ombudsman's Authority

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an Officer of the Ontario Legislature, independent of political parties and the government administrators he oversees.

The Ombudsman has the authority to conduct impartial reviews and investigations of complaints about the administrative conduct of Ontario's governmental organizations. He also has the discretion to decline to investigate in appropriate circumstances. If the Ombudsman conducts a formal investigation, he may make recommendations to address any concerns he identifies. However, he has no authority to compel government officials to undertake any particular course of action.

The Ombudsman does not substitute his views for the judgment of elected representatives, who are responsible for setting broad public policy. Under the *Ombudsman Act*, his investigations focus on government administration.

When our Office receives complaints, assigned staff members carry out a detailed analysis to determine if an investigation is warranted. We obtain information from the individuals raising concerns, relevant government officials, and other sources, to assist with our assessment.

Our Review

Since the Ontario government announced the end of the OLG Slots at Racetracks Program on March 12, 2012, our Office has received more than 350 complaints and submissions about the decision, including yours.

In response to the large volume of complaints and submissions, the Ombudsman assigned investigators to conduct a preliminary assessment of the issues.

Ombudsman investigators interviewed dozens of individuals, including horse owners, trainers, industry association representatives, and many others whose livelihoods are closely linked to the industry. They also interviewed senior officials at the Ministry of Agriculture, Food, and Rural Affairs (OMAFRA) and Ontario Lottery and Gaming Corporation (OLG). In addition, they conducted an extensive review of published materials relating to the Slots at Racetracks Program and the industry, and considered submissions obtained by the OLG during consultations with stakeholders in 2011.

History of the Program

In 1998, the OLG began entering into agreements with the owners of racetracks in Ontario, allowing the OLG to operate gaming facilities at racetracks. Under these agreements, racetracks shared in the revenue from OLG slot machines and were able to offer increased “purses” (awards for race winners), benefitting those involved in the broader horse racing industry.

In July 2010, the Government of Ontario asked the OLG to review its operations to maximize its revenue.¹ The OLG consequently embarked upon a strategic business review of its entire operations. During its review, the OLG consulted with approximately 50 organizations between January and June 2011, including horse racing industry stakeholders.² The OLG invited the organizations to provide submissions on the future of Ontario’s commercial and charitable gaming. The OLG considered these submissions before making recommendations to the government.

Our review of the OLG’s consultation records revealed that a number of stakeholders from the horse racing industry identified how important the OLG Slots at Racetracks Program’s revenues were to the continued success of individual racetracks and to the broader industry.

¹ <http://news.ontario.ca/mof/en/2012/03/olg-to-modernize-gaming.html>

² The list of the organizations involved in these consultations can be found on pages 23–24 of the resulting report, *Modernizing Lottery and Gaming in Ontario*. See: http://www.olg.ca/assets/documents/media/strategic_business_review2012.pdf.

In February 2012, the Report from the Commission on the Reform of Ontario's Public Services (generally known as the Drummond Report) suggested that OLG slots should be placed in locations that would be more convenient and profitable and that the OLG Slots at Racetracks Program should be reviewed and adjusted to realign with present-day economic and fiscal realities.³

In March 2012, the OLG submitted its report, entitled *Modernizing Lottery and Gaming in Ontario*, to the government. In its report, the OLG noted its 2011 consultations had revealed a broad consensus that the lottery and gaming sector needed to change. The OLG recommended three key changes to its approach to lotteries and gaming in the province: Becoming more focused on the customer, expanding the role of the private sector in delivering lotteries and gaming, and reviewing the role of the OLG as an overseer of lotteries and gaming. The OLG specifically referenced the OLG Slots at Racetracks Program, indicating that locating slots at racetracks impedes its ability to serve customers closer to where they live, and is therefore not responsive to customer need. It also observed that the current program limited flexibility and the funding formula restricted the OLG's ability to maximize revenues for key government priorities. It concluded that the Slots at Racetracks Program should be drawn to a close.⁴

On March 12, 2012, the Ontario government acknowledged receipt of the OLG's report and stated that it was directing the OLG to implement some of its proposals, including ending the Slots at Racetracks Program, effective March 31, 2013.⁵ The Ontario Legislature considered that decision as part of the 2012 budget process. During the hearings into Bill 55, the *Strong Action for Ontario Act (Budget Measures) 2012*, the Standing Committee on Finance and Economic Affairs received submissions from stakeholders, including those involved in the horse racing industry.⁶

Impact on the Horse Racing Industry and The Government's Response

During our review, we heard concerns that without the revenue provided to the racetracks and the broader horse racing industry through the Slots at Racetracks Program, the horse racing industry in Ontario could not survive in any meaningful form. We were told that tens of thousands of jobs were at risk, as well as the continued prosperity of many communities across the province. Many of those interviewed by our investigators also felt that there had been little or no consultation with

³ See <http://www.fin.gov.on.ca/en/reformcommission/index.html>

⁴ See http://www.olg.ca/assets/documents/media/strategic_business_review2012.pdf. The OLG's statement about drawing the Program to a close can be found on page 13.

⁵ <http://news.ontario.ca/mof/en/2012/03/olg-to-modernize-gaming.html>

⁶ A list of organizations that provided input to the hearings can be found here:

http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2600&detailPage=bills_detail_related.

stakeholders prior to the government’s decision to end the program and that the announced end date did not allow the sector sufficient time to adjust.

The estimated loss of revenue to the industry is about \$345 million per year.⁷

On June 7, 2012, during the Standing Committee’s hearings into the budget bill, OMAFRA announced the creation of a three-member Horse Racing Industry Transition Panel.⁸ The panel members were all former cabinet ministers from various political parties, with some knowledge of the industry. The government directed the panel to work with the horse racing industry to establish a new model for horse racing and to determine how to allocate transitional funding to the industry. It asked the panel to report to the Minister of Agriculture, Food and Rural Affairs with its recommendations.

The panel met with some 42 stakeholders, including representatives of the horse racing industry, before providing an interim report to the Minister on August 17, 2012.⁹ In that report, the panel noted that it would be a mistake to reinstate the Slots at Racetracks Program, as it “had provided far more money to the industry than was needed to stabilize the industry.” However, it stated that some form of public funding was necessary to ensure the industry remained sustainable. The panel said \$50 million in transition funding earmarked by OMAFRA would not be enough to allow the industry to adjust to a sustainable future in the face of such an immediate loss of revenue. It recommended further research and analysis so a new partnership or framework could be established for the industry, and between the industry and government. This interim report was made public on the OMAFRA website.

The panel then held further consultations before submitting its final report to the Minister on October 15, 2012.¹⁰ In that report, also available on the OMAFRA website, the panel made a number of recommendations, including that a new “sustainable horse racing model” be established, based on a racing calendar with fewer (800) race days per year. It also recommended a change to the governance structure for the industry, and that the government negotiate with an alliance of willing racetracks to create a secretariat to set race dates and purses, and administer branding and marketing. In addition, it recommended that the horse racing industry be allowed to offer new gaming products, subject to legislation and necessary approvals.

⁷ This figure is cited in both the OLG’s *Modernizing Lottery and Gaming in Ontario* report and the August 17, 2012 Interim Report of the Horse Racing Industry Transition Panel.

⁸ <http://news.ontario.ca/omafra/en/2012/06/panel-to-work-with-industry-on-future-of-horse-racing.html>

⁹ See <http://www.omafra.gov.on.ca/english/about/transition/interimreport08172012.pdf>. See the Appendix on pages 41-45 for a list of stakeholders consulted.

¹⁰ See <http://www.omafra.gov.on.ca/english/about/transition/finalreport10232012.htm>. See Appendix A for a list of the stakeholders consulted by the panel prior to the completion of the final report.

We have been advised that the panel has been asked by OMAFRA (renamed the Ontario Ministry of Agriculture and Food, or OMAF, as of February 2013) to continue to work with stakeholders from the industry as they assist the government and the owners of Ontario's racetracks in negotiating a new framework for horseracing in Ontario, and in dealing with issues surrounding the allocation of transitional funding.

On March 8, 2013, Premier Kathleen Wynne, who is also Minister of Agriculture and Food, announced that the government had reached tentative transition funding agreements with the owners of six racetracks, and that negotiations with the owners of other racetracks were ongoing.¹¹

The OLG has also been in negotiations with racetrack owners with a view to continuing slot operations at some racetracks beyond March 31, 2013, under new agreements. We understand that as of March 9, 2013, the OLG had reached agreements in principle with the owners of all 14 racetracks that currently host its slots facilities. The OLG has provided the owner of each racetrack with a Letter of Intent, and has advised that it expects to finalize these agreements by March 25, 2013.¹²

Further, on March 8, 2013, Premier Wynne also announced that in consultation with the Ontario Horse Racing Industry Association, the government will integrate horse racing with the provincial gaming strategy to ensure the horse racing industry has access to future streams of revenue.¹³

Results of Our Review

In this case, it is clear that the Ontario government's decision to end the Slots at Racetracks Program was made in the wake of recommendations in the Drummond Report and after the OLG's strategic business review, which included stakeholder consultation. A standing committee of the Legislature also considered this issue as part of its review of the 2012 budget bill. The decision to cancel the program was taken by the Government of Ontario as a matter of broad public policy, as opposed to a decision made in the course of the administration of a governmental organization. It is not the type of decision that would normally be subject to scrutiny by the Ombudsman.

¹¹ <http://news.ontario.ca/omafra/en/2013/03/four-more-race-tracks-sign-funding-agreements.html>

¹² See <http://news.ontario.ca/omafra/en/2013/01/horse-racing-in-ontario-to-continue.html> and http://media.olg.ca/?p=nmm_news_detail&i=1ea94fe6-59ac-42a3-b2a2-ce5d65028684.

¹³ <http://news.ontario.ca/omafra/en/2013/03/four-more-race-tracks-sign-funding-agreements.html>



We recognize that the government's decision has created an enormous level of uncertainty in the horse racing industry. Negotiations are continuing with the industry in an effort to assist the horse racing sector with its challenges. The OLG has also been involved in separate negotiations with regard to the continuation of its slots facilities.

In light of all of these circumstances, our Office will not be conducting a formal investigation at this time.

Thank you for contacting the Ontario Ombudsman's Office.

Sincerely,

A handwritten signature in black ink, appearing to read 'André Marin', with a long horizontal flourish extending to the right.

André Marin
Ombudsman