



COMMISSION HEARING

TORONTO, ONTARIO – FEBRUARY 23, 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  
GREAT CANADIAN GAMING CORPORATION**

Great Canadian Gaming Corporation (“GCGC”) appealed from the terms and conditions of its Licence to Operate a Racetrack for Flamboro Downs (“Flamboro”) and the terms and conditions of its Licence to Operate a Racetrack for Georgian Downs (“Georgian”). Specifically, GCGC appealed the following terms and conditions:

Flamboro Downs

- 16) The Association will cooperate with a financial examination of the company, its parent company and any of its associated or related companies for the purpose of determining or evaluating the financial condition of the Association.

Georgian Downs

- 17) The Association will cooperate with a financial examination of the company, its parent company and any of its associated or related companies for the purpose of determining or evaluating the financial condition of the Association.

On February 23, 2011, a Panel of the Ontario Racing Commission (“ORC”) consisting of Chair Rod Seiling, Vice-Chair James Donnelly and Commissioner John Macdonald was convened to hear the appeal.

Angela Holland appeared as counsel for the Administration and Bruce Barbour appeared on behalf of GCGC.

Upon hearing the testimony of Steve Lehman – Chief Administrative Officer of the ORC, upon reviewing the exhibits filed and upon hearing the submissions of counsel for the Administration and of Mr. Barbour, the Panel denied the Appeal.

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

Dated at Toronto this 21<sup>st</sup> day of March 2011.

BY ORDER OF THE COMMISSION

  
John L. Blakney  
Executive Director



### REASONS FOR DECISION

1. The appeal by the Great Canadian Gaming Corporation (“**GCGC**”) is from the terms and conditions of its Licence to Operate a Racetrack for Flamboro Downs (“**Flamboro**”) and the terms and conditions of its Licence to Operate a Racetrack for Georgian Downs (“**Georgian**”). GCGC appealed portions of the terms and conditions which are the issues to be considered and such terms are as follows:

#### Flamboro Downs

16) The Association will cooperate with a financial examination of the company, its parent company and any of its associated or related companies for the purpose of determining or evaluating the financial condition of the Association; and

#### Georgian Downs

17) The Association will cooperate with a financial examination of the company, its parent company and any of its associated or related companies for the purpose of determining or evaluating the financial condition of the Association?

2. The appeal was heard on February 23, 2011. The decision was reserved with reasons to follow.

3. Angela Holland appeared as counsel for the Ontario Racing Commission (“**ORC**”) and Bruce Barbour, the Executive Director of GCGC, appeared on its behalf. At the commencement of the hearing Ms. Holland and Mr. Barbour agreed that the evidence introduced at the hearings on January 24 and 26, 2011 (Ruling Com Gen 002/2011) would be accepted as evidence in this hearing. That hearing was titled “IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY THE ONTARIO HARNESS HORSE ASSOCIATION, GREAT CANADIAN GAMING CORPORATION, AND THE NORTHERN HORSEMEN’S ASSOCIATION” (the “**O2 Hearing**”).

#### **Background**

4. Mr. Steve Lehman, CAO for the ORC, was the only witness and he testified setting out the background for this hearing as he had done for the O2 Hearing. He pointed out that there was a need for full financial disclosure with respect to each of Flamboro and Georgian as well as GCGC with the latter producing consolidated financial statements. The statements were needed for each track separately with neither Flamboro nor Georgian operating independently from GCGC in his opinion.

5. The GCGC have two licenses from the ORC as Great Canadian Gaming Corporation operating as Flamboro Downs Limited, including Great Canadian Gaming (Ontario) Ltd., and Great Canadian Gaming Corporation operating as Georgian Downs Limited, including Great Canadian Gaming (Ontario) Ltd. (Exhibits 8 and 7). The ownership is set out in the chart that was introduced by GCGC as Exhibit 6.



6. He pointed out that there was no real shareholder equity shown for Georgian and Flamboro and you would have to look through to the parent company to request information as in his view Georgian and Flamboro did not operate independently of GCGC. There were management fees and contracts for services and other items within the parent company control. He advised that the ORC has received consolidated financial statements of GCGC and at one time also unaudited statements of Georgian and Flamboro. What he needed was “not to see one pocket only-must see all the pockets”. The GCGC financial statements do not give the full picture. He expressed the opinion that it was reasonable for financials to be seen to show the full position, provide transparency and accountability, as it would be for the other regulatory body involved in the Slots at Racetrack Program, the Ontario Lottery and Gaming Commission.

7. On cross-examination, Mr. Lehman acknowledged that he received GCGC financial statements regularly and that those were accepted as coming from a respected firm of auditors. He pointed out that on consolidation by GCGC there would be eliminations and aggregations with respect to items like revenue and expenses and other items for which he could not answer without seeing all the information. He understood that GCGC might not want some items disclosed but he needed to see the whole picture to be fully informed as to the financial picture relating to Georgian and Flamboro.

8. Mr. Lehman acknowledged that GCGC is a publicly listed corporation and is subject to the filing requirements of the Ontario and British Columbia Commissions. He could not say whether or not information provided to him might be in contravention of any security statutes or regulations nor did Mr. Barbour provide any examples of where there might be a contravention of any disclosure law or rules. The information from filings with such Commission, if made available to the ORC, may not be sufficient for the ORC to fulfill its duties as the regulator pursuant to the *Racing Commission Act* (the “Act”).

9. His interest is to determine the financial support required by GCGC for each of Georgian and Flamboro as well how management operated each to promote their respective tracks. Mr. Barbour did agree that he was the Executive Director of both Georgian and Flamboro and that Chris Roberts (in the Hearing Room at the time) and the Race Secretary also worked for both tracks when he was arguing that those tracks ran independently.

### **The Director’s Decision**

10. The Executive Director exercised his discretion that the terms and conditions of the licenses for Georgian and Flamboro should provide that they both cooperate with a financial examination of each of them, their parent company or any associated or related company. There was very little information presented with respect to Great Canadian Gaming (Ontario) Ltd. other than set out in Exhibit 6 with little comment as to its position in the management scheme of things other than being the direct holding company for Georgian and Flamboro and 100% owned by GCGC. That entity would also be required to provide financial information to the ORC and explain, if necessary, how it functions in a financial way involving Georgian and Flamboro.

11. The Director has powers under section 18 of the Act as follows:

- (1) The Director may make those inquiries and conduct those investigations into the character, financial history and competence of an applicant for a licence or the renewal



of a licence that are necessary to determine whether the applicant meets the requirements of this Act and the regulations.

- (2) If the applicant is a corporation or partnership, the Director may make the inquiries into or conduct the investigations of the officers, directors or partners of the applicant.

12. In the O2 Hearing decision in paragraphs 71 and 72 there was a reference to the OLG Siteholder's Agreement and the requirement to "promote". Such agreement is to "Benefit the agricultural sector in Ontario through support to the horse racing industry." The ORC does not become involved in the contractual relations of a business nature by any licensee unless there is a possible violation of the Act or the Rules of racing or their actions whereby there is an activity that is not in the best interests of racing, the public or horse people. In the O2 Hearing the panel of the ORC made certain suppositions as to the possible positions that could be taken by Flamboro that could result in a substantial reduction in the losses which they indicated had occurred (see paragraphs 73 through 75 of the O2 Hearing decision).

13. In the comments in O2 Hearing starting at paragraph 75 we have the focus on Mr. Lehman's analysis and further comments in paragraphs 75, 76 and 77.

"Flamboro's financial statements are what they are. The issue is why are they that way?"

76. In order to answer the "why" raised by Mr. Lehman, the ORC must have access to financial information from the parent company which controls Flamboro's passage to profitability. If that disclosure demonstrates verification of the hardship, then further consideration may be appropriate. Without that disclosure the hardship claim stands unresolved.

77. No claim based on impecuniosity has been advanced. In such circumstances the Director may consider alternatives to keep the enterprise in business.

#### **Argument and cases referred to**

14. Mr. Barbour reviewed the argument referred to in the GCGC Factum (Exhibit 4) that the ORC was attempting to "pierce the corporate veil". There were cases referred to in the Factum and set out in detail in the Brief of Authorities (Exhibit 5). While the cases were reviewed in some detail by Ms. Holland in the examination-in-chief of Mr. Lehman and Mr. Barbour thought the cases had some applicability, the Panel is of the opinion that the cases are not relevant. All the cases basically deal with an attempt to hold a parent company liable where there were obligations incurred by a subsidiary. There is no veil involved as the dealings are direct with GCGC as the licensee.

15. Under Section 7(c) of the Act, the Commissioner has power:

"(c) to licence persons to operate race tracks, at which horse racing in any of its forms is carried on, and to impose the terms on a licence that the Commission considers expedient;"



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16. The licenses are those held by the parent company, GCGC (Exhibits 7 and 8) operating effectively under the names of its subsidiaries. The Panel is of the opinion that the requirements for both Georgian and Flamboro as set out in paragraphs 17 and 18 respectively of the Terms and Conditions are reasonable to permit the ORC to have full financial information in order to understand the operations of GCGC as it relates to the operations of its subsidiaries.

### In Summary

17. In discharge of the Commission's governance obligation the Director issues licenses and imposes conditions necessary to determine compliance with standards. For that purpose he may make enquiries relating to character, financial history and competence.

18. Such enquiries may properly relate to tracing funds to determine true ownership, integrity issues or financial hardship. Published information in compliance with Securities Commission regulations may be insufficient for those purposes. Aggregation and elimination of income or expense streams in those published reports may obscure specific financial aspects. Separation of those issues may require additional disclosure.

19. The Panel finds that:

- The condition in issue is reasonable and relevant to the licensing issue.
- Full disclosure of such information is necessary for the proper discharge of the Director's duty.

20. Accordingly the Director has jurisdiction to impose the condition. GCGC by virtue of its licensee status is obliged to comply.

21. The Appeal is dismissed.

DATED this 21<sup>st</sup> day of March 2011.

Chair

Vice-Chair

Commissioner