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CASE SUMMARY: REGULATORY BODY CAN MODIFY LEGAL RIGHTS WHEN DOING SO IS IN THE PUBLIC INTEREST

**Administrative law – Decisions reviewed – Racing Commission – Jurisdiction –
Judicial review – Standard of review – Reasonableness – Government – Gaming
and betting**

Ontario Harness Horse Assn. v. Ontario (Alcohol and Gaming Commission), [2018] O.J. No. 4862, 2018 ONSC 5160, Ontario Superior Court of Justice, September 24, 2018, K.E. Swinton, A.C.R. Whitten and D.K. Gray JJ.

In the mid-1990s, the horse racing industry in Ontario was struggling.

The Ontario Horse Racing Industry Association (the “Association”) entered into a Memorandum of Understanding (the “MOU”) with the Ministry of Consumer and Commercial Relations and the Ontario Racing Commission (the “Commission”), the statutory body regulating horse racing.

The MOU came into effect in September 1996. It provided for a portion of the “pari-mutual tax” – a tax payable every time a wager was made at a track – to be allocated to industry organizations and to be used in specific ways to improve the circumstances of participants in the horse racing industry. At the time the MOU came into effect there were a limited number of industry organizations that would be the recipients of funds pursuant to the MOU.

Following the MOU, further industry organizations came into existence, and a dispute arose as to what industry organizations were entitled to benefit from the taxes allocated to the horse racing industry pursuant to the MOU. As a result, a substantial amount of tax proceeds of over \$2 million were held back pending resolution of the dispute. The funds had effectively “languished,” as a result of inaction in respect of the dispute.

Pursuant to the MOU, the dispute was to be resolved by the Association, by submitting the issue first to the Association’s Board or a committee appointed by the Board, and then to a single retired judge of the Ontario Court of Justice for alternative dispute resolution. Those disputes resolution processes were not engaged.

The Commission’s statutory mandate is to exercise its regulatory function in the public interest. In 2017, the Commission determined it was empowered under the *Racing Commission Act*, 2000, S.O. 2000, c. 20, and its power “to govern, direct, and control,” to resolve the dispute by recognizing an industry organization as being entitled to benefit from the taxes collected and allocating a portion of the taxes to them.

One of the industry organizations affected by the Commission’s decision sought judicial review, arguing the Commission exceeded its jurisdiction by unilaterally modifying the terms of the MOU.

The Court held the Commission was authorized under its power “to govern, direct, and control” to alter the existing regulatory landscape, including by modifying legal rights. Had the Commission done nothing, the dispute would have remained unresolved. In the circumstances, it was reasonable for the Commission to conclude the public interest required the resolution of the dispute by determining the appropriate allocation of the funds.

The Court dismissed the application for judicial review.

This case was digested by [Joel A. Morris](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Joel A. Morris at jmorris@harpergrey.com.