



Volume XVII Number 7

December 2022

## Contracts

# Letters of Intent

By

**Amanda Carpenter, Lawyer**

[amanda@defranlaw.com](mailto:amanda@defranlaw.com)

In *Seelster Farms et al. v. Her Majesty the Queen and OLG*, 2020 ONSC 4013, the Ontario government was sued by breeders of the racehorses used at Ontario racetracks. The horse breeders were upset as programs to encourage their business set up by the province pursuant to a Letter of Intent were cancelled without reasonable notice for the breeders to modify their investments. As a result, they sued Ontario under various heads of action, being breach of contract, negligence and negligent representation. While the claims for negligence and negligent representation were dismissed, the claim for breach of contract was successful.

Viewed historically, the lawsuit was set in the context of financial difficulties for the horseracing industry in 2012 and the fact that \$345 million flowed annually from government programs and tax breaks, which had been noted in the Drummond Report. In circumstances favourable to the industry, the provincial government cancelled its support without notice. Initiated in 1998, the government programs and tax breaks were designed to provide stimulus to the horse industry which had fallen into decline as other legalized forms of gambling were taking off in Ontario. The government's principal program to assist the horseracing industry involved placing video terminals and slot machines at racetracks, allowing the industry to benefit from a 20 percent share of the profits generated by these machines. This became a very successful program that generated substantial funding for the industry, providing the means to invest in itself and support horse breeders with a five-year breeding cycle for their horses.

In order to substantiate their claim against the government for breach of contract, the horse breeders were required to prove the Letter of Intent the government signed in 1998 to establish the above-mentioned program constituted a legally binding contract. They argued it was a contract because it contained the essential terms of the agreement. These included terms such as the amount of revenue that would go to the horse industry; and details of how the program would be implemented, specifically, through various site holder agreements the Ontario Lottery and Gaming Corporation would enter into with racetracks. Furthermore, the Letter of Intent identified the parties, and included offer, acceptance and consideration, and used language indicating it was intended to be a binding agreement. In its opinion, the court agreed with the horse breeders, finding the Letter of Intent was indeed a



contract and since a longstanding contractual relationship with no fixed termination date was established, the plaintiffs required reasonable notice of termination so they could modify their business. If reasonable notice could not be provided, then damages were required, which the court awarded to the plaintiff.

In summary, it is interesting to note that the horse breeders were not party to the Letter of Intent. However, in this case, the court chose to relax the longstanding contractual principle of privity of contract whereby only parties to a contract can sue under it. The court did so since the horse breeders were a party the contracting parties intended to extend the benefit of the program.

At De Francesca Law, we are always available to assist you in drafting agreements and Letters of Intent with your best interests and the current law in mind. Otherwise, there is always a risk of unintended outcomes and associated costs which should be avoided.

