

CATANA REPORTING SERVICES,
Tel: (613) 231-4664

800-170 Laurier Ave. W., Ottawa, ON K1P 5V5
1-800-893-6272
Fax: (613) 231-4605

1

Examination No. 17-1323

Court File No. 749-13

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

JEFFREY BOGAERTS

Applicant

- and -

THE ATTORNEY GENERAL OF ONTARIO

Respondent

CROSS-EXAMINATION OF JEFFREY BOGAERTS ON
AFFIDAVITS DATED JULY 31, 2014 and FEBRUARY 18, 2015
pursuant to an appointment made on consent of the
parties to be reported by Catana Reporting Services,
on August 30, 2017 commencing at the hour of 12:55
in the afternoon.

APPEARANCES:

Kurtis R. Andrews

for the Applicant

Don Pyper

for the Respondent

This Examination was taken down by sound recording by
Catana Reporting Services Ltd.

CATANA REPORTING SERVICES,
Tel: (613) 231-4664

800-170 Laurier Ave. W., Ottawa, ON K1P 5V5
1-800-893-6272
Fax: (613) 231-4605

2

INDEX

NAME OF WITNESS: JEFFREY BOGAERTS

CROSS-EXAMINATION BY MR. PYPER:

NUMBER OF PAGES: 40

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 17, 39

NO EXHIBITS

DATE TRANSCRIPT ORDERED: AUGUST 30, 2017

DATE TRANSCRIPT COMPLETED: SEPTEMBER 8, 2017

1

1 **JEFFREY BOGAERTS, SWORN:**

2 **CROSS-EXAMINATION BY MR. PYPER:**

3 1. Q. Good afternoon, Mr. Bogaerts.

4 A. Good afternoon.

5 2. Q. Just for the Record could I have your name
6 and spelling for the Record?

7 A. First name Jeff J-E-F-F, last name Bogaerts
8 B-O-G-A-E-R-T-S, middle initial D. for David.

9 3. Q. And I understand you are here to answer
10 questions in respect of two Affidavits sworn in this
11 proceeding, the first July 31st, 2014 ---

12 A. Yes.

13 4. Q. --- and the second is February 18th, 2015?

14 A. Yes.

15 5. Q. And are there any corrections you'd like to
16 make to the Affidavits?

17 A. Not at this time, no.

18 6. Q. No changes you'd like to make?

19 A. No.

20 7. Q. Okay. I understand you are a paralegal?

21 A. That is correct.

22 8. Q. You're still a paralegal, correct?

23 A. Correct.

24 9. Q. And what do you do as part of your
25 professional responsibilities?

1 A. I do provincial offences, criminal summary
2 convictions, and small claims court.

3 10. Q. Okay. And who is your current employer?

4 A. I am self-employed.

5 11. Q. You're self-employed. So you were never at
6 any time employed by your counsel in this proceeding Mr.
7 Andrews?

8 A. No, I was not.

9 12. Q. Okay. Do you have clients who interact with
10 the OSPCA, the Ontario Society for the Prevention of
11 Cruelty to Animals?

12 A. I do not have clients now, but I did have
13 clients when I worked for a law firm when I first
14 started.

15 13. Q. I see. When, can you give us a period of
16 time?

17 A. I've been licensed since 2015 and I was
18 working for Green and Associates law firm beginning in
19 2014 up until September of last year. And during that
20 time period I assisted Mr. Green with some OSPCA issues.

21 14. Q. Okay. Sorry, just help me with those time
22 lines, just trying to get context. You said you got
23 certified in 2015?

24 A. I wrote my exam and received my license from
25 The Law Society in May of 2015.

1 15. Q. Oh, okay.

2 A. And while I was going to school I was
3 working part-time for Mr. Green, Green and Associates,
4 which was in this building as a matter of fact.

5 16. Q. I see.

6 A. And then once I finished my schooling I
7 continued on as an apprentice so to speak up until I
8 received my license in 2015 at which time I became a
9 full-time paralegal and I worked for his office up until
10 September of 2016.

11 17. Q. Okay. So at the time you swore your first
12 Affidavit which is July 31st, 2014 you weren't a licensed
13 paralegal at that time?

14 A. No, no, not until May of 2015.

15 18. Q. But you say you were working part-time?

16 A. Yes, I did my entire field placement with
17 Mr. Green and when I finished my schooling there was a
18 timing issue with respect to writing the exam.

19 So I finished my schooling, passed all my exams
20 at the school, made application to The Law Society but
21 by the time I wrote or had scheduled to write the exam
22 it was into 2015.

23 19. Q. Okay. And I understand you said that when
24 you were working for Mr. Green that he had a number of
25 clients who were the subject of OSPCA investigations?

1 A. That's correct, yes.

2 20. Q. Charges?

3 A. Yes.

4 21. Q. Compliance Orders?

5 A. Yes.

6 22. Q. And so on. So would you say that
7 professionally your dealings with the OSPCA have always
8 been in opposition to OSPCA enforcement?

9 A. I would not say entirely so. I was on the
10 Board of Directors for a period of time for Lanark
11 Animal Welfare Society and in that perspective my job
12 was to promote animal welfare and to interact with the
13 OSPCA, not myself personally but as a member of the
14 Board of Directors.

15 23. Q. Okay. Is that an affiliate of the OSPCA,
16 the Lanark ---

17 A. I believe they are. I don't know if they
18 still are, I'm not on the Board of Directors any longer.

19 MR. ANDREWS: I can clarify if you wish,
20 Counsel.

21 MR. PYPER: Sure.

22 MR. ANDREWS: The Lanark Animal Welfare Society
23 used to be an affiliate of the OSPCA and then they
24 withdrew their affiliation. It would depend on Mr.
25 Bogaerts timing though whether he was on the Board at

1 the time that they were still an affiliate.

2 MR. PYPER: Not a problem, just trying to get
3 some context.

4 BY MR. PYPER:

5 24. Q. I understand you own some animal?

6 A. Correct. I've owned animals pretty much all
7 my life; dogs, cats, birds, fish, birds that have fallen
8 out of the trees, you know, things like that.

9 25. Q. Okay. So what I'm hearing from you is pets,
10 is that right?

11 A. Personally, on a personal basis, yes, it
12 would be pets.

13 26. Q. Okay. They're not agricultural animals?

14 A. No, they're not agricultural animals. No,
15 I've never been in an agricultural position or owned a
16 farm or have been in any way -- now, not to say that I
17 haven't gone to farms and helped friends over the past
18 decades but I've not owned or been commercially involved
19 in agriculture involving animals.

20 27. Q. Right, okay. And I think you've actually
21 mentioned this in one of your Affidavits but my
22 understanding is you've never personally been searched
23 by the OSPCA?

24 A. No, I have not.

25 28. Q. Or been the subject of a Compliance Order or

1 had animals seized?

2 A. No, I have not.

3 29. Q. Nothing, okay. So I'm going to submit to
4 you that the Ontario Society for the Prevention of
5 Cruelty to Animals Act doesn't really have application
6 to you in your personal life?

7 A. I would have to tend to disagree with you on
8 that point. Any piece of legislation whether it's
9 Federal, Provincial, or in my local municipality that
10 has or potentially has a direct effect upon me is
11 something that I would be either interested in or I
12 could be affected the same way as if I was driving down
13 the 401 with a driver's license at any time I could be
14 stopped by an OPP officer and the vehicle could be
15 reviewed or my license could be reviewed, my insurance
16 could be reviewed, and therefore I'm subject to that
17 legislation.

18 The OSPCA could at any time on a complaint from
19 the local neighbor show up on my doorstep. So as long
20 as the legislation is in place in my opinion I can be
21 subject to it.

22 30. Q. That's fine. I'm going to refer you to
23 paragraph 9 of your first Affidavit. And I don't
24 actually anticipate asking any questions about the
25 second Affidavit, just to forecast that, so I think

1 we'll probably be living inside the 2014 Affidavit.

2 A. 2014, yes, paragraph 9 and Exhibit G or
3 Exhibit H?

4 Q. Well, we'll get there.

5 A. Okay.

6 Q. I just have some questions if you can try
7 and clarify what you set out in this paragraph. So
8 paragraph 9 says,

9 "The OSPCA's bylaws set out the
10 corporate structure and voting
11 procedures. Among the voting rules
12 set out by the bylaws, the bylaws
13 set out provisions which give more
14 power to members (branch affiliates)
15 that raise greater revenues".

16 So I'd just like you to help me with that if you can and
17 I think that you're referring to Exhibit G which are the
18 bylaws. I confess I didn't see anywhere in there that a
19 bylaw giving more power to members that raise greater
20 revenue; I think that's what your assertion is in that
21 paragraph.

22 And if you would, Mr. Andrews, I'd appreciate it
23 if the Witness could look at the exhibit and tell me
24 where he sees it; I'd rather you not assist him with
25 respect to finding where his assertion is in the

1 exhibit.

2 MR. ANDREWS: That's fine, I suppose. It might
3 just speed things up a little bit if we both look
4 through; there's several pages here.

5 MR. PYPER: Fair enough. I mean he's sworn the
6 Affidavit and made the assertion in the paragraph that
7 there is a bylaw giving "more power to members that
8 raise greater revenue". So if you'd like to say that
9 he's not directly aware of where that is an exhibit and
10 you'd like to then assist that's fine.

11 THE WITNESS: Clarification question?

12 BY MR. PYPER:

13 33. Q. Sure, yes, absolutely.

14 A. When you're referring to "members who are
15 affiliates of the OSPCA" are you referring to those
16 private organizations that are animal rescue groups and
17 they are affiliated to the OSPCA and therefore their
18 revenue that they receive is greater than those who are
19 not affiliates, is that it?

20 34. Q. I'm just trying to parse what you've put in
21 your paragraph there.

22 A. Okay.

23 35. Q. So it says, "members (branch affiliates)" so
24 if you'd like to clarify what you meant by that, that's
25 fine.

1 A. Okay. I think if I could speak to the
2 second sentence in that paragraph.

3 36. Q. Okay. So among the voting rules?

4 A. No, no, it's on the next page, paragraph 9,
5 sentence number 2.

6 37. Q. Oh, you're on the opposite page?

7 A. Yes.

8 38. Q. That's fine. I have some questions about
9 that sentence too.

10 A. Okay

11 39. Q. So it would be preferable if we can kind of
12 just work our way through the first one and then we'll
13 get there. It's fine; if you don't know where it is in
14 the exhibit, you can just say that and then Mr. Andrews
15 can possibly assist.

16 A. Specific to that, no, I do not know the
17 specific section of the bylaws.

18 MR. ANDREWS: It has been some time since the
19 Affidavit was sworn so it takes a little time to
20 refresh.

21 MR. PYPER: That's fine.

22 MR. ANDREWS: And Jeff if you need some
23 assistance you can just mention that you need some
24 assistance.

25 BY MR. PYPER:

1 40. Q. Yes, just put it on the Record and we can
2 continue.

3 A. I think this goes to Article No. 3 on page
4 111; Article 3, Section 3.2.

5 41. Q. Okay?

6 A. This speaks to where the more active, the
7 more involved the local affiliate is the more revenue
8 that comes back to them in what it is that they're
9 doing.

10 I'm going by interpretation here. My
11 interpretation may not be correct but my interpretation
12 is that as an affiliate of the OSPCA being a private
13 organization brings in more animals but they have rescue
14 and good for them that there is more financial
15 assistance coming back to that affiliate than to someone
16 who is not as active.

17 42. Q. Okay. And what I'm hearing you say is that
18 that's your interpretation because I note we're looking
19 at 3.2(b); there's a table there and I would have
20 thought perhaps you were referring to as well, it's
21 adjunct to it, 3.2(f) that speaks about dues but it
22 doesn't anywhere talk about giving power just to parse
23 your words more specifically.

24 MR. ANDREWS: Jeff, if you need some assistance,
25 I can answer it as well.

1 THE WITNESS: Yes, again you're asking more of a
2 legal kind of interpretation. I'm not trying to be
3 difficult.

4 MR. ANDREWS: Jeff, counsel is saying if you
5 need assistance you just need to ask for it and put it
6 on the Record.

7 THE WITNESS: All right. Well, then I would be
8 asking counsel for assistance here.

9 MR. ANDREWS: May I speak?

10 MR. PYPER: Sure, yes, absolutely.

11 MR. ANDREWS: At Section 3.2 there is a table
12 there that has Class A members who have paid annual dues
13 between those dollar figures there and then
14 correspondingly beside that table it says the number of
15 votes that they have. Do you see that, Counsel?

16 MR. PYPER: Yes.

17 MR. ANDREWS: And then down below where it talks
18 about dues it says,

19 "The Director shall have the power to
20 determine the annual dues payable by
21 each Class A member in a manner in which
22 the dues shall be payable. Such dues
23 shall be levied equally among all Class A
24 members based on each Class A member's
25 revenues".

1 So that's where the link is between revenues and voting
2 rights.

3 BY MR. PYPER:

4 43. Q. Okay. So I mean to get back to the
5 questions with the Witness, you've said you've
6 interpreted this document. I'm not trying to ask you a
7 legal question but you've offered an interpretation;
8 you're equating power with votes. That's the
9 interpretation because it doesn't say "power" in the
10 document itself, that's correct?

11 A. Yes, along those lines, yes.

12 44. Q. And noting what it says on page 112 of the
13 Application Record,

14 "Such dues shall be levied equitably
15 among all Class A members based on
16 each Class A member's revenue".

17 Don't you think it's fair to assume that a larger
18 affiliate like Toronto is going to have more revenue
19 than Ingersoll? I don't even know if there's an
20 affiliate in Ingersoll.

21 A. Yes, of course. The animal rescue
22 organizations across the province of Ontario vary in
23 different sizes; that's a given.

24 45. Q. Right.

25 A. And the amount of revenue that they take in

1 is going to be based on the population of that area. If
2 you've got a town of 10,000 it's not going to have the
3 same revenue going into a local rescue than it would be
4 in the City of Toronto.

5 46. Q. Right.

6 A. So in terms of revenue, of course Toronto
7 will have a higher revenue income stream than a smaller
8 community.

9 47. Q. So what you're saying is that it makes
10 sense, it's a reasonable conclusion that a larger
11 affiliate by virtue of the population base will have
12 greater revenue than a smaller one?

13 A. Yes.

14 48. Q. Is that a fair assertion to make?

15 A. Yes.

16 49. Q. And that's irrespective of some sort of
17 incentive structure to enforce; that's just based on the
18 number of people living in a particular area?

19 A. Yes, it's a population density issue.

20 50. Q. Okay, thank you. Let's get to the second
21 sentence -- I mean the first one is actually struck out
22 to be technical. And I'm referring to paragraph 9 but
23 on page 35 of the Application Record,

24 "Such revenues include proceeds from
25 seized animals and donations inspired

1 by promoting investigations and
2 charges laid against people".

3 Again, this is a sentence that qualifies the previous
4 sentence talking about raising revenue. Is it your
5 position that the OSPCA profits some seizing animals?

6 A. Without a doubt; 100 percent they profit
7 from the seizing of animals. And this speaks to one of
8 the specific reasons why this application has been
9 brought forward is that when an animal is seized by an
10 OSPCA regulator or enforcer whichever you want to call
11 them and charges are laid, if a person who owns the
12 animal and that animal has been confiscated there's a
13 five-day period by which the owner of the animal can
14 bring an application to the Animal Review Board to have
15 the animal returned or to question the regulator or the
16 officer taking the animal.

17 If the Animal Review Board doesn't go forward
18 with that what happens next is that the animal can be
19 sold at profit even prior to Trial and even if the
20 person who is brought to Trial is found not guilty the
21 animal has been sold and is gone and cannot be returned
22 to them and that speaks specifically to the Crown not
23 ensuring that the animal or the property in question in
24 the Trial has been put into a secure environment so it
25 could be returned to the owner of the property.

1 So in this particular case with that sentence it
2 is in the best interests of the OSPCA to seize animals
3 and then sell the animals.

4 51. Q. That's the conclusion you're drawing. But
5 my question was your position is that the OSPCA profits?

6 A. Yes, they do.

7 52. Q. And how many animals does the OSPCA seize in
8 any given year?

9 MR. ANDREWS: I think that's an unfair question.
10 He wouldn't have knowledge of that, Counsel.

O

11 BY MR. PYPER:

12 53. Q. What is the basis for your assertion then?
13 You've given me an explanation but what is the
14 evidentiary basis for your conclusion that the OSPCA
15 profits from seizing animals?

16 A. Do I have a specific case; is that what
17 you're asking about?

18 54. Q. I'm asking for evidence in the sense of
19 numbers; dollar figures, the numbers of animals seized?

20 A. I can't give you a dollar figure because I
21 don't know what the animals are sold for. If it's a
22 horse of course the horse would be sold for a much
23 higher value; if it's a dog it could be sold at a lower
24 value, if it's a chicken it may be sold at a different
25 value.

1 So in terms of total amounts of money that have
2 been brought into the OSPCA on a yearly basis, I don't
3 have that figure and by a per animal basis, I don't have
4 that figure. Am I aware that animals have been sold
5 that have been confiscated? Yes, I am knowledgeable of
6 that.

7 55. Q. You'll agree that when the OSPCA seizes an
8 animal there's often costs associated with keeping that
9 animal?

10 A. That is correct.

11 56. Q. Medicine?

12 A. Correct.

13 57. Q. Food?

14 A. Correct.

15 58. Q. Shelter?

16 A. Yes.

17 59. Q. Is it not a reasonable conclusion that it
18 actually costs the OSPCA money when it seizes an animal?

19 A. Well, it goes back to the Crown's
20 responsibility that in the seizure of any property
21 regardless of whether it's an OSPCA application or
22 otherwise that there has to be a storage facility put in
23 place and it becomes the responsibility of the Crown to
24 ensure that whether they're seizing vehicles, firearms,
25 animals, or whatever that they have the ability to store

1 and protect it for the upcoming Trial and be able to
2 determine at the end of the Trial whether that property
3 is returned back.

4 Now if the OSPCA wants to confiscate animals for
5 an upcoming Trial then that's on them and they should
6 have the responsibility to ensuring that the animals are
7 looked after and fed and watered and cared for
8 accordingly.

9 Now, I will say if the person who's had the
10 animals confiscated from is found to be guilty then I
11 would expect that person to pay for those costs of the
12 animals being looked after. If the person is found not
13 guilty then why should that person pay for those costs?
14 It's on the OSPCA; it was their decision to confiscate
15 the animals.

16 60. Q. The question is it's reasonable to say that
17 in some cases the OSPCA in fact loses money when it
18 seizes an animal; is that an unreasonable or is that a
19 reasonable conclusion some of the time?

20 A. That would be a reasonable statement, yes,
21 that the OSPCA could lose money on certain seizures of
22 animals.

23 61. Q. Okay. We'll come back to this topic later
24 on; I just want to move on. We're talking about
25 revenues that the OSPCA you say generates donations

1 inspired by promoting investigations. Again it's the
2 same question; what evidence do you have that it
3 generates money?

4 MR. ANDREWS: Counsel, I just want to
5 distinguish one thing because you've used the word
6 "profit" and I believe the Affidavit uses the word
7 "revenues". And without getting into all the
8 particulars of the meaning of the words ---

9 MR. PYPER: That's fair.

10 MR. ANDREWS: --- there is a difference there.

11 MR. PYPER: There are no accountants in the room
12 so I apologize but you're correct, the Affidavit refers
13 to "revenues and proceeds" but the Witness's own
14 statement a few lines back I understand it was his
15 opinion that the OSPCA profits. So if he wants to
16 clarify that, that's fine.

17 MR. ANDREWS: I think it was put to him using
18 the word "profit" and Mr. Bogaerts is not an accountant
19 either so I'm a little concerned about some confusion
20 there.

21 MR. PYPER: It wasn't put to him as a trap; none
22 of us are accountants in the room.

23 MR. ANDREWS: Oh, of course not, of course not.

24 BY MR. PYPER:

25 Q. I did want to clarify though whether you

1 meant something different when you said "revenues and
2 proceeds". I'm again not an accountant; that means
3 money is going somewhere. Profit usually means you're
4 in the good from the end of the transaction.

5 So you can clarify your previous statement if
6 you'd like. Are you of the opinion that the OSPCA
7 profits from seizing animals?

8 A. Well, based on just what has transpired and
9 again I'm not an accountant but I would state that if
10 you were to look at every individual seizure of animals
11 as an individual case on a case by case basis the OSPCA
12 could lose money, it could be revenue or neutral or they
13 could profit from that particular case.

14 Without looking at their balance sheet, whether
15 they lose money overall by the end of the year or
16 whether they profit by the end of the year that would be
17 based on looking at their balance sheet.

18 But in general terms, each case would have to be
19 looked at on an individual basis to determine whether
20 the revenue that they received from that case would be
21 identified as either a loss, neutral, or profit.

22 63. Q. Okay. So to clarify your evidence now is
23 that you're not sure whether on a global level all
24 things considered, the OSPCA profits from animal
25 seizures?

1 A. Without looking at their balance sheet and
2 if the OSPCA would be prepared to release their balance
3 sheet and if they do then I could look at the balance
4 sheet.

5 64. Q. But you don't know?

6 A. Do I know right now as of this date whether
7 they profit or not in terms of a balance sheet? No, I
8 do not.

9 65. Q. Yes, thank you. Since we're on the topic
10 it's the same question so you can say "yes" or "no"
11 because you're referring to revenues and proceeds and
12 the final part of the sentence says, "and charges laid
13 against people".

14 So is that an opinion you have about revenue and
15 proceeds and potentially profit from the OSPCA laying
16 charges against people? Can you just help me with what
17 your interpretation is there?

18 A. Well, I can give you a real world example if
19 that would be of assistance.

20 66. Q. Sure.

21 A. Okay. The OSPCA website back in July 2015
22 indicated that there was charges brought against a
23 family up in the North Bay area, just a little south of
24 North Bay. There were 71 animals that were seized and
25 pictures of the animals were posted on the OSPCA

1 website. They were somewhat graphic and they did say,
2 "If you're going to look at these pictures it is of a
3 graphic nature".

4 But it's also on the same page -- or sorry, not
5 the same page, the same website where the OSPCA looks
6 for donations from the public for pursuing the
7 protection of animals and the investigation of animals.

8 I would say that posting those types of graphic
9 pictures would pull at the heartstrings of people and
10 therefore they would tend to donate to the OSPCA to keep
11 that kind of situation from occurring and allow
12 investigators to go out and investigate and so on.

13 So I'm not saying that they can't do it; I'm
14 suggesting that posting those types of pictures prior to
15 the finalization of that particular case without full
16 disclosure of the case, I thought it was kind of a
17 little -- I don't know, irresponsible or preliminary to
18 the conclusion of the case.

19 67. Q. Okay. But I guess I'm going to conclude
20 this particular question the same way I did as the last
21 one; that's an assumption you're making because you
22 haven't seen any sort of figures that suggest that the
23 OSPCA gets proceeds when it lays charges against people,
24 it's an assumption that you're making?

25 A. In terms of donations from that kind of a

1 scenario I can't speak to that unless I have access to
2 their books ---

3 68. Q. It's in your Affidavit.

4 A. --- their financial records, then yes.

5 69. Q. It's an assertion you're making in your
6 Affidavit, that's the reason I'm asking.

7 A. Yes.

8 70. Q. Let's move on to paragraph 11. Okay, well
9 we've tilled some of this soil as it were because I see
10 we have again the phrase "proceeds from seized animals"
11 so I won't kind of go over the same line of questioning
12 that we've just been over.

13 But there is an interesting comparison in that
14 sentence in the sense that you say, "Proceeds from
15 seized animals and revenues associated with recovering
16 costs associated with seized animals". Those are two
17 different things?

18 A. Proceeds from seized animals and revenues
19 associated with recovering costs; I would look at those
20 as being two separate issues, yes.

21 71. Q. Okay. Just explain that for me?

22 A. So in the case of seized animals if they go
23 to Court and they're found guilty -- sorry, let me back
24 up just a little bit. The proceeds from the seized
25 animals; it can be sold on the Internet; those animals

1 can be put up for sale.

2 This goes back to the Animal Review Care Board
3 in the five-day period by when the OSPCA seizes an
4 animal. If the animal is not returned or if the person
5 does not make the application in that five-day period,
6 the OSPCA can then sell the animal for proceeds to cover
7 their costs. So that's on that one side.

8 The other side referring to revenue associated
9 with recovering costs, that would go to Court cases
10 where the Court would state that the person dealing with
11 the property who owns the animal would have to pay back
12 to the OSPCA all food, medical, housing, tech fees, vet
13 fees, transportation costs, and so on.

14 MR. PYPER: Okay.

15 MR. ANDREWS: We're touching on some legislative
16 components here too, Counsel, because in the OSPCA Act
17 it has provisions in there to sell animals like in the
18 section where if the costs are not paid within a certain
19 amount of time they can sell the animals; then you have
20 the proceeds from the animals there.

21 And then you've also got the provisions in the
22 Act which allows them to bill for the costs of caring
23 for the animals. So you've got they can collect money
24 by selling the animals and they can collect money by
25 issuing a statement of account.

1 MR. PYPER: I'm not asking for an interpretation
2 of the legislation; I'm just trying to figure out what
3 he means between proceeds from seized animals and
4 revenues associated with recovering costs associated
5 with seized animals.

6 There seems to be a distinction there but I
7 don't need to explore it any further because I think the
8 Witness has said in any event he's of the opinion that
9 the OSPCA occasionally makes money from seizing animals.

10 MR. ANDREWS: Well, I don't ---

11 MR. PYPER: We don't need to go back over the
12 transcript but it'll speak for itself.

13 MR. ANDREWS: Right. I think he wasn't able to
14 -- actually, I think it was that he didn't know, he
15 wasn't able to speak to whether they were profiting from
16 it because he doesn't have their balance sheets.

17 MR. PYPER: Right.

18 MR. ANDREWS: And his testimony was that he
19 knows that they do collect money by selling animals and
20 they do seize animals and so on and so forth.

21 MR. PYPER: Okay, that's fine.

22 BY MR. PYPER:

23 72. Q. The sentence starts, "The OSPCA is on
24 record"; I assume that that's referring to the exhibit
25 attached thereto Exhibit L a transcript by Connie E.

1 Mallory?

2 A. Yes.

3 73. Q. Sorry, that's correct?

4 A. Yes. Yes, sorry.

5 74. Q. So when you say on the Record, you're
6 referring to the sworn testimony of Connie Mallory in
7 Exhibit L?

8 A. Yes.

9 75. Q. Okay. So I'm going to suggest to you that
10 in fact this transcript does not support the proposition
11 that the OSPCA collects money or has proceeds left over
12 from seized animals.

13 MR. ANDREWS: I don't think the Affidavit says
14 that.

15 BY MR. PYPER:

16 76. Q. "The OSPCA is on record confirming
17 that proceeds from seized animals and
18 recovering costs associated with seizing
19 animals are entered into the OSPCA general
20 revenue accounts."

21 MR. ANDREWS: Right.

22 BY MR. PYPER:

23 77. Q. Well, assist me with that?

24 A. Well, it would go into the general revenue
25 account and then it would be ---

1 78. Q. Assist me where the OSPCA is on record as
2 saying that? So I guess I'm asking you to refer to the
3 exhibit because I don't see it.

4 MR. ANDREWS: Okay, we'll just take a moment.

5 MR. PYPER: Yes, and take your time. It's not
6 particularly long.

7 THE WITNESS: And to clarify your question
8 you're asking if in the transcript Ms Mallory is saying
9 that the funds go into the general revenue?

10 BY MR. PYPER:

11 79. Q. That's right; is the OSPCA on record
12 confirming the proposition that follows?

13 MR. PYPER: Well, in fairness it would be
14 helpful if the Witness was identifying for himself those
15 parts of the transcript but Mr. Andrews has referred him
16 to part of the transcript.

17 MR. ANDREWS: Go ahead and read it. I presume
18 if he has some difficulty finding it he can ask for
19 assistance again?

20 THE WITNESS: May I have some assistance in
21 finding that section?

22 MR. ANDREWS: Is that okay, Counsel?

23 MR. PYPER: That's fine.

24 MR. ANDREWS: All right. I believe it starts on
25 page 402 of the Record down at Line 19. It says,

1 "Our primary source of income is through
2 donor dollars. Our other revenues may be
3 restitutions to cover already incurred
4 expenses through animal protection services".

5 Followed by that is the question,

6 "Restitutions include bills that you issue
7 to people for example when you seize animals
8 from them?"

9 Answer, "Cost of boarding animals, cost of
10 veterinary care, cost of medicines".

11 Question, "Do they reflect the invoices that
12 you send to people that you seize animals
13 from?"

14 "Yes, if we incur costs for boarding then
15 we would include that. We've already had
16 to pay those costs out so we would include that
17 in an invoice or the cost of removal".

18 Question, "It would also include when you
19 seize animals and subsequently sell those
20 animals?"

21 And it says,

22 "No, if we sell animals there is a balance
23 remaining to the good let's say of those
24 costs we've incurred, then the money would
25 be put in trust for the animal owner and

1 be returned from that. So we in a sense
2 do not make a profit off the sale of
3 animals that are removed".

4 Question, "So when you sell an animal you
5 say put that money in trust, withdrawals
6 perhaps taken if there was a cost to board
7 an animal, for example?"

8 Answer, "Sorry, can you repeat that?"

9 " My understanding of what you just said is
10 that you take the money from the sale of an
11 animal and you put that money in trust.

12 As I understand your answer you'll take
13 away from that money any costs for boarding
14 or any of those sorts of restitution type
15 expenses?"

16 Answer, "It's we have expenses and I have
17 to tell you it's very, very rare that we
18 would ever and in fact I can only recall
19 one case where there was an excess of
20 funds that was transferred over to an
21 owner and that was say many, many years
22 ago".

23 "So you say it's very rare that you'd ever
24 give money back to a person?"

25 "It's very rare, usually expenses far exceed

1 any sort of revenues."

2 "So what we have then for the source
3 of income for your enforcement budget
4 is donor dollars, restitution costs
5 which may or may not come directly
6 from the person or it may come from
7 the sale of the animal".

8 "Anything else that contributes to the
9 money that you use for your enforcement?"

10 "We receive government funding for our
11 training".

12 "That doesn't go to enforcement, though".

13 "No, it goes to specifically the training".

14 "Back to my original question then. Your
15 budget for enforcement is funded exclusively
16 from your own fundraising?"

17 Just bear with me for a minute because I don't want to
18 just be reading a bunch of stuff here that's not getting
19 to the point of it.

20 MR. PYPER: I think we've covered the part that
21 I'm interested in but please satisfy yourself.

22 MR. ANDREWS: Yes. Counsel, you may have to
23 take an undertaking on this one. Just give me one more
24 minute.

25 MR. PYPER: Sure.

1 MR. ANDREWS: There's a number of a pages here,
2 I may have overlooked it. Okay, Counsel, I think some
3 of the questioning got a little sidetracked as you go
4 through the transcript here but it looks like at page
5 404 of the Record, Line 12 is a question,

6 "So what we have then for the source
7 of income for your enforcement budget
8 is donor dollars restitution costs
9 which may or may not come directly
10 from the person or it may come from
11 the sale of the animal. Anything else
12 that contributes to the money that you
13 use for your enforcement?"

14 "We receive government funding for our
15 training".

16 "That doesn't go to enforcement though?"

17 "No, it goes specifically for training".

18 "Back to my original question then.
19 Your budget for enforcement is funded
20 exclusively from your own fundraising?"

21 Answer is, "Yes".

22 And this may be cleared up during the examinations of
23 Inspector Mallory when you have that opportunity but
24 ultimately, you know, what we've gleaned from this is
25 that the money from the seizure of animals and costs

1 collected through statements of account go into a
2 general account -- the revenues or proceeds, whatever
3 you want to call them, and those ultimately go to the
4 enforcement budget.

5 MR. PYPER: Okay. Well, let's not have argument
6 about what it means but I would point out that nowhere
7 do I see it say "proceeds" or "revenues"; I see the word
8 "restitution".

9 Again I'm not an accountant but that means money
10 you are not making; there's not left over, you'd have
11 more money than if you had seized the animal in the
12 first place or you have less money than if you had
13 seized the animal, you've taken a loss.

14 MR. ANDREWS: Well, the word "restitution" is
15 used by the SPCA as a synonym to the question of costs;
16 that's what it means.

17 MR. PYPER: I don't want to get into an argument
18 on the Record with you about your interpretation of the
19 transcript at this point.

20 MR. ANDREWS: Well, it's also in the legislation
21 they talk about restitution.

22 MR. PYPER: Well, this is an examination of your
23 Witness.

24 MR. ANDREWS: Okay.

25 BY MR. PYPER:

1 80. Q. So let's focus on some of the other evidence
2 that's in this transcript. At Question 54 which is on
3 page 403, Ms Mallory is asked,

4 "And you'd also include when you seize
5 animals and subsequently sell those
6 animals?"

7 "No, if we sell animals and there is a
8 balance remaining to the good let's say
9 of the costs we've incurred then that
10 money would be held in trust".

11 That to me sounds like they never profit from the
12 seizing of an animal; if there's money left over it's
13 returned. Is that a fair reading of that question?

14 MR. ANDREWS: Just to be clear what you're
15 asking him is to interpret what Ms Mallory said on the
16 transcript? Because I think it speaks for itself.

17 MR. PYPER: His evidence is that money that the
18 society gets from seizing animals is put into its
19 general accounts. My suggestion to the Witness is that
20 there's never money left over.

21 BY MR. PYPER:

22 81. Q. Is that fair to say?

23 A. I can't speak to the ---

24 MR. ANDREWS: Yes, I think you're speculating.
25 You're asking a speculative question in some ways.

1 MR. PYPER: Then in what way does the transcript
2 -- if it speaks for itself then how is it an exhibit
3 that's able to bolster his sworn statement?

4 MR. ANDREWS: It speaks for itself. The
5 transcript speaks for itself that's being put to the
6 Court.

7 MR. PYPER: So at Question 57, "Usually the
8 expenses far exceed any sort of revenues". That's not
9 relevant to ---

10 MR. ANDREWS: That's what Inspector Mallory
11 said. There's no debating that, it's in the transcript.

12 MR. PYPER: That's fine.

13 BY MR. PYPER:

14 82. Q. At paragraph 12 you say that the OSPCA is
15 suffering from increased financial deficits in recent
16 years. Sorry, I'll rephrase that,

17 "In recent years the OSPCA has been
18 suffering from increased financial
19 deficits".

20 What years Sir, are you referring to?

21 MR. ANDREWS: Sorry, can you repeat that
22 Counsel?

23 MR. PYPER: I'm just wondering; he says "in
24 recent years" so I'm just curious to first understand
25 what years is he referring to?

1 MR. ANDREWS: Well, I guess he can go through
2 the years of the reports.

3 BY MR. PYPER:

4 83. Q. And that could be the answer. Are you
5 referring to the years of the reports that you've
6 attached as an exhibit?

7 A. I'm referring back to -- I think it's
8 specifically Exhibit M, the audited statement.

9 MR. ANDREWS: Which specifically show the years.

10 MR. PYPER: Right, okay. So those are from 2009
11 to 2012.

12 MR. ANDREWS: If that's what they are, yes.

13 MR. PYPER: That's my understanding.

14 THE WITNESS: Yes, December 31st, 2009.

15 BY MR. PYPER:

16 84. Q. Right. So you don't have any evidence about
17 the financial picture of the OSPCA from 2012 to the
18 present?

19 A. Not in terms of this particular audited
20 statement; no, I do not other than what was announced by
21 the legislature of Ontario which ---

22 MR. ANDREWS: Jeff, the question is do we have
23 any more evidence and if it's not in there the answer is
24 simply "no".

25 MR. PYPER: Yes.

1 THE WITNESS: Well, you ---

2 BY MR. PYPER:

3 85. Q. No, no, that's fine.

4 A. You asked me a question beyond 2012.

5 86. Q. I just asked if you have any understanding
6 of the financial picture of the OSPCA from beyond 2012.

7 A. In terms of this type of document or just in
8 general terms.

9 87. Q. Well, either is fine.

10 A. Well, it was announced by the Legislature of
11 the Province of Ontario a \$5 million donation to the
12 OSPCA.

13 88. Q. Right but that doesn't tell you whether
14 they're running a deficit, that doesn't give you a clear
15 picture of the books.

16 A. No. That's why I say the clarification is
17 no, I do not other than what's in the general news and
18 also by the Province of Ontario.

19 89. Q. Okay. So "recent years" refer to the years
20 of the exhibits and those are 2009 and 2012 we believe,
21 it's not a trick question. Okay. Are you aware of
22 whether there are audited financial statements available
23 for the years beyond 2012?

24 A. No, I do not.

25 90. Q. Would you agree that provincial rules that

1 -- I shouldn't say "provincial rules". Is there a moral
2 component with restricting nude entertainment?

3 MR. ANDREWS: Counsel, I think I can see where
4 you're going with this and we're getting into the realm
5 of ---

6 MR. PYPER: I'm not asking a federalism
7 question; I'm just asking him what his opinion is.

8 MR. ANDREWS: But that question is one that's
9 been before the Courts and Mr. Bogaerts' thoughts are
10 that, I mean what constitutes a moral issue is something
11 that is determined by the Courts and ultimately will be
12 determined in this case, too.

13 MR. PYPER: Well, it's in his Affidavit.
14 "Provisions interdict conduct in the
15 interest of public morals".

16 THE WITNESS: Which section is that?

17 BY MR. PYPER:

18 Q. That's paragraph 15.

19 A. Fifteen, okay.

20 MR. ANDREWS: But I think the question the way
21 it was put to him; you know there's cases on that as you
22 know. So it's ---

23 MR. PYPER: Well, I just was asking for a lay
24 opinion about, you know, whether prohibiting a doctor
25 from having sex with their patient is something that

1 touches on moral issues.

2 MR. ANDREWS: Again, those are the types of
3 things though that go through an analysis so the lay
4 opinion I think is irrelevant, is it not?

5 BY MR. PYPER:

6 92. Q. It may be. You can elect not to answer on
7 that basis if you so choose.

8 A. May I have a moment?

9 MR. PYPER: Sure.

10 MR. ANDREWS: Well, how about this? So we'll
11 put it on the Record that we object to the question on
12 the grounds that it touches on something that would be
13 considered a legal interpretation.

0

14 And then if you wish you can speak to him about
15 his own personal beliefs, if you wish.

16 MR. PYPER: I'm content with where we've got
17 today.

18 MR. ANDREWS: Okay.

19 MR. PYPER: Thank you, those are all my
20 questions.

21
22 --- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR
23 OF 1:47 IN THE AFTERNOON.
24
25

1
2
3
4
5
6
7
8

9 THIS IS TO CERTIFY THAT the foregoing is a
10 true and accurate transcription from the
11 Record made by sound recording apparatus
12 to the best of my skill and ability.

13
14

.....

15 Nancy Keirstead, Catana Reporting Services

16
17
18
19

20
21 Any reproductions of this transcript produced by Catana
22 Reporting Services are in direct violation of O.R., 587/91
23 Administration of Justice Act, January 1, 1990, and are
24 not certified without the original signature.

25