

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

JEFFREY BOGAERTS

Applicant

-and-

THE ATTORNEY GENERAL OF ONTARIO

Respondent

**Application Record
Volume III**

THE ATTORNEY GENERAL OF ONTARIO

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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.

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NO EXHIBITS

DATE TRANSCRIPT ORDERED: AUGUST 30, 2017

DATE TRANSCRIPT COMPLETED: SEPTEMBER 8, 2017

1

JEFFREY BOGAERTS, SWORN:

CROSS-EXAMINATION BY MR. PYPER:

1. Q. Good afternoon, Mr. Bogaerts.

A. Good afternoon.

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

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

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

A. Yes.

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

A. Yes.

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

A. Not at this time, no.

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

A. No.

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

A. That is correct.

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

A. Correct.

9. Q. And what do you do as part of your
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 31. Q. Well, we'll get there.

5 A. Okay.

6 32. 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 62. 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 91. 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.

O

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.
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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

This is the Cross-Examination of **CONNIE MALLORY**, a representative of the Respondent herein, on her Affidavit sworn May 2, 2017, taken on consent at the offices of **Barrett Gunn Court Reporters**, 76 Prospect Street, Newmarket, Ontario, on the 7th day of September, 2017, at 1:00 p.m.

A P P E A R A N C E S:

KURTIS R. ANDREWS
(appearing by way of
video conference)

for the Applicant

HART SCHWARTZ

for the Respondent

BRIAN G. SHILLER

for the O.S.P.C.A

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none

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can be found on the following pages:

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1	137	15
2	138	21

LIST OF REFUSALS

The following refusals have been marked and can
be found on the following pages:

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1	13	23
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have been marked and can be found on the
following pages:

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*Undertakings, Questions under Advisement and
Refusals are provided as a complementary service
and are not necessarily accurate nor binding.*

1 **CONNIE MALLORY: SWORN**

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

3 1 **Q.** Inspector Mallory, may I call you
4 Ms. Mallory, Inspector Mallory, anything you
5 prefer?

6 **A.** Connie Mallory, Inspector Mallory
7 is fine.

8 2 **Q.** Okay. All right, Inspector
9 Mallory, can you just confirm your name and your
10 position with the O.S.P.C.A.?

11 **A.** It's Connie Mallory, and I'm the
12 Chief Inspector with the Ontario S.P.C.A.

13 3 **Q.** And for the purposes of your
14 affidavit, your testimony today, are you speaking
15 on behalf of the O.S.P.C.A.?

16 **A.** I am speaking on behalf of --

17 4 **MR. SCHWARTZ:** Well, she's speaking on
18 behalf of herself as a deponent who has
19 sworn an affidavit in these proceedings.
20 I'm not sure I understand the question.

21 5 **MR. ANDREWS:** Well, I guess I was under
22 the impression that the evidence is the
23 evidence of the O.S.P.C.A. organization,
24 and that she's -- so when she speaks and
25 provides answers it's on behalf of the

1 organization; am I wrong about that?

2 6 **MR. SCHWARTZ:** Well I don't know. Let's
3 see as we go along how that works out,
4 if there's questions that relate to her
5 duties, she can answer those. If there
6 are questions that involve binding the
7 O.S.P.C.A., she's not the Chair of the
8 board, she isn't the majority of the
9 Board, she couldn't do that. I think it
10 may depend on the question, but rather
11 than get caught up on her capacities
12 here today is as a witness for the
13 respondent, the respondent is the
14 Attorney General of Ontario. She's
15 agreed to be a witness for the Ontario
16 General of Ontario and has filed an
17 affidavit, and as the last paragraph of
18 her affidavit indicates it is in support
19 of or in response to the application
20 brought by Mr. Bogaerts, so I think
21 that's probably the framework under
22 which we are proceeding.

23 7 **MR. ANDREWS:** Okay. Well, I prepared my
24 questions under that premise, but it may
25 not make any difference, so as we are

1 going along, if you happen to notice
2 that a question, you know, seems more
3 directed at the organization as a whole
4 or something, I guess we can address it
5 when the time comes.

6 8 **MR. SCHWARTZ:** Sure, let's try that.

7 **BY MR. ANDREWS:**

8 9 **Q.** Okay, before we begin, Inspector
9 Mallory, are there any corrections or updates or
10 anything along those lines you wish to make to
11 your affidavit?

12 10 **MR. SCHWARTZ:** So we have reviewed the
13 affidavit. Is there any typo,
14 corrections, errors that we came across?

15 11 **THE WITNESS:** Not that I'm aware of.

16 **BY MR. ANDREWS:**

17 12 **Q.** Okay. Some of my questions will
18 be in the form of like a statement. You will
19 hopefully notice that -- you will hopefully
20 understand as I say it that I'm asking in the form
21 of a question, so I'll be making a statement but
22 it will essentially be a question from time to
23 time, and I will just ask in those situations to
24 confirm whether I'm correct or not.

25 **A.** Okay.

1 13 Q. Okay. So the O.S.P.C.A. operates
2 as a charity?

3 14 MR. SCHWARTZ: Are you asking whether
4 that is correct?

5 BY MR. ANDREWS:

6 15 Q. Yes.

7 16 MR. SCHWARTZ: So we should assume that
8 the word "correct" follows each
9 statement with a question mark?

10 BY MR. ANDREWS:

11 17 Q. Or I can do that. So the
12 O.S.P.C.A. operates as a charity, correct?

13 A. Yes, that is correct.

14 18 Q. And it operates independently
15 from the Ontario Government; is that correct?

16 A. That is correct.

17 19 Q. Now principally the O.S.P.C.A.,
18 as I understand it, operates when there's two key
19 components to it, and I would ask you to clarify
20 this if I'm wrong. There's the investigation
21 component and there's what I would term the
22 animal -- the animal rescue operation of the
23 O.S.P.C.A. Would that be a fair way to
24 characterize the organization?

25 A. The Ontario S.P.C.A. actually has

1 a couple of different components to it, so that
2 would be investigations, that would be sheltering,
3 rescue and relief as well as we have spay neuter
4 clinics.

5 20 Q. And, sorry, I didn't catch the
6 second one. You said there are investigations?

7 A. Investigations, sheltering, spay
8 neuter clinics.

9 21 Q. Okay.

10 22 MR. SCHWARTZ: And final one was rescue
11 and relief, correct?

12 23 THE WITNESS: Yes.

13 BY MR. ANDREWS:

14 24 Q. Thank you. And organizations --
15 like from an organization standpoint, are they --
16 are these essentially four components there your
17 description? From an organization standpoint, are
18 they separate in terms of how they operate or do
19 they sort of operate altogether? How would you
20 describe that?

21 25 MR. SCHWARTZ: Can you answer that
22 question?

23 26 THE WITNESS: I probably can answer that
24 question in two parts in that we all
25 operate under the Ontario S.P.C.A. We

1 have several separate departments, but
2 we essentially run under the operations
3 of the Ontario S.P.C.A.

4 **BY MR. ANDREWS:**

5 27 **Q.** So they would all operate under
6 one board of directors, sort of like that; would
7 that be correct?

8 **A.** That is correct, and a Chief
9 Executive Officer.

10 28 **Q.** Right.

11 29 **MR. SCHWARTZ:** Mr. Andrews, can I just
12 clarify if this is okay, and if it's not
13 tell me. When Ms. Mallory refers to the
14 Ontario S.P.C.A., are you referring to
15 the Act, *the Ontario Society for the*
16 *Prevention of Cruelty Act* or are you
17 referring to the organization? I'm not
18 sure what the "A" stood for in that
19 answer.

20 30 **MR. ANDREWS:** Are you putting that to
21 Inspector Mallory?

22 31 **MR. SCHWARTZ:** I'm asking her if she
23 could clarify if that would be helpful.

24 **BY MR. ANDREWS:**

25 32 **Q.** That's fine, if you could

1 clarify.

2 **A.** Yes, that would be helpful to
3 answer your question to determine whether you were
4 referencing the Act or the organization itself.

5 33 **Q.** I see. Okay, I think you
6 answered it the way I intended. I was referring
7 to the organization, the one that's created under
8 the Act, but nevertheless, the organization.

9 34 **MR. SCHWARTZ:** Connie, when you refer to
10 the Ontario S.P.C.A., you mean the
11 organization?

12 35 **THE WITNESS:** The organization, yes.

13 36 **MR. SCHWARTZ:** Don't forget, you can
14 take notes if it's a long question.

15 37 **THE WITNESS:** Okay, thank you.

16 **BY MR. ANDREWS:**

17 38 **Q.** Okay. So in essence I think we
18 established they operate under one board of
19 directors, and if you can't answer this, that's
20 fine, but if you can, then please answer.

21 39 Financially speaking, the revenues,
22 expenses, the financial workings of the
23 organization, do they operate separately or do
24 they sort of -- do they operate under one general
25 revenue account, or can you describe that to me

1 all.

2 **A.** So the Ontario S.P.C.A. has a
3 financial department. Each department within the
4 organization has its own budget to maintain, and
5 there are GL codes that are established for each
6 revenue item, or expense item in most cases.

7 40 **Q.** Do finances flow from one
8 department -- when I say department, I assume you
9 are talking about those four areas that we
10 mentioned at the beginning here -- do revenues
11 flow between those two departments or are they
12 really distinct?

13 **A.** Well, I think that that may be a
14 question for the Finance Department. I believe
15 that, like all of the expenses and revenue is
16 administered by our Finance Department, and if you
17 are asking how many bank accounts the organization
18 has, I can't answer that, but I know that they
19 administer all of the expenses and revenues for
20 our organization.

21 41 **Q.** So the entire O.S.P.C.A.
22 organization --

23 **A.** Yes.

24 42 **Q.** -- correct?

25 **A.** Yes.

1 43 Q. Okay. All right, and I don't
2 need a precise number here, but under the
3 investigations component, what would be the
4 approximate annual budget for that department?

5 A. I would -- I don't have that
6 number at the top of my head. I would have to
7 look at what our total budget is for
8 investigations.

9 44 Q. Could you tell me if it would be
10 more than a million dollars?

11 A. Yes, it would be.

12 45 Q. Would it be more than -- you can
13 pick -- we can round it off to like a million
14 here -- more than 2 million, or can you say more
15 than any particular million, just to give us an
16 idea? I really don't need to be precise with it.

17 46 MR. SCHWARTZ: And please only if you
18 know.

19 47 THE WITNESS: I can -- it would be our
20 budget for investigations, it's really
21 hard to break down, because our budget
22 also includes a portion of the money
23 that we get from government is sent out
24 to our affiliates, so it is over
25 \$3 million, for sure.

1 **BY MR. ANDREWS:**

2 48 **Q.** Okay. If it ends up being --
3 let's say if it ends up being substantially more
4 than that, if you could check and if it ends up
5 being say over \$4 million, could we have an
6 undertaking to clarify that answer?

7 49 **MR. SCHWARTZ:** I'm going to give it a
8 refusal. I don't see how it's germane
9 or relevant to any issue in the
10 litigation, and, in particular, to any
11 issue relating to the validity of the
12 statute, so I'm allowing for this line
13 of questioning, I've given you wide
14 latitude, but whether the budget is a
15 million, 2 million, 3 million or
16 4 million, it doesn't seem to me to have
17 any bearing at all on whether the
18 statute is the criminal law power or
19 whether the statute violates the
20 *Charter*, so I will issue that as a
21 refusal to the request for an
22 undertaking.

23 --- Refusal No. 1 ---

24 **BY MR. ANDREWS:**

25 50 **Q.** Okay. Now you mentioned the

1 money from the Ontario Government. Can you tell
2 me how much you get from the Ontario Government on
3 an annual basis?

4 **A.** Up until 2016, we received
5 \$5.5 million from the Ontario government.

6 51 **Q.** And, sorry, up until -- say that
7 one more time, please.

8 **A.** The last remuneration we received
9 was in 2016.

10 52 **Q.** Okay. Do you expect to receive
11 any this year?

12 **A.** Yes, we do.

13 53 **Q.** Okay. How much did you receive
14 in 2016?

15 **A.** \$5.5 million.

16 54 **Q.** 5.5?

17 **A.** Yes.

18 55 **Q.** Okay. And do you expect to
19 receive a similar amount this year?

20 **A.** Yes, we do.

21 56 **Q.** And what's that money to be used
22 for?

23 **A.** The money is used for our call
24 centre, it is for two dedicated zoo inspectors,
25 it's for our major case management team, it is for

1 the operations of investigations, and a portion of
2 which is sent to our affiliate societies. It is
3 also for work in Northern Ontario as well as First
4 Nations communities.

5 57 Q. And can you tell me again, just
6 doing your best to estimate, I don't need a
7 precise number, but obviously don't answer if you
8 don't know at all, but your investigations budget,
9 you mentioned it's for sure over 3 million. How
10 much of your investigations budget would be paid
11 for through that money?

12 58 MR. SCHWARTZ: I don't think the witness
13 said for sure it was over 3 million. I
14 think she said approximately, but let's
15 not quibble.

16 59 MR. ANDREWS: I think she actually said
17 for sure over 3 million, but I don't
18 want to argue the point.

19 60 MR. SCHWARTZ: Okay, so sorry, I
20 interrupted the question, and perhaps I
21 ought not to have. Could you repeat it,
22 please.

23 BY MR. ANDREWS:

24 61 Q. Sure. And just to make sure we
25 are clear, Inspector Mallory, I think you said

1 it's over 3 million for sure, was that -- am I
2 repeating that correctly?

3 **A.** That is correct.

4 62 **Q.** Okay. And what portion of the
5 investigations budget would the money from the
6 Province cover, if you can answer?

7 **A.** It is roughly about \$2 million.

8 63 **Q.** Okay, so approximately 2 million
9 of 5.5 goes to your investigation budget?

10 **A.** Yes.

11 64 **Q.** Okay. And am I correct that the
12 remainder, which would be at least in excess of a
13 million dollars, is money that the O.S.P.C.A.
14 would raise themselves?

15 **A.** That is correct.

16 65 **Q.** Okay. And can you answer if that
17 process is a challenging one for the organization?

18 **A.** Well, there are things that are
19 put in place for raising money for the Ontario
20 S.P.C.A. We are a charity, so it is part of the
21 work that we do to raise money to do -- provide
22 the services that this organization does.

23 66 **Q.** So some of the charitable
24 donations that come into the O.S.P.C.A., they go
25 towards the investigations budget; would that be

1 correct?

2 A. That is correct.

3 67 Q. And the O.S.P.C.A., it has a
4 Public Relations Department?

5 A. Yes, we do.

6 68 Q. And I don't want to make any
7 suggestions here, but through that department, is
8 that the department that handles -- the Public
9 Relations Department, does that handle the
10 publication of the media releases of the
11 organization?

12 A. We refer to it as our
13 communications department, and, yes, it puts out
14 media releases.

15 69 Q. And those media releases are
16 issued on its website?

17 A. Generally, yes.

18 70 Q. Do they get issued directly to
19 the media as well?

20 A. Not always. It depends on -- it
21 depends on the situation.

22 71 Q. Sometimes does it go out -- I'm
23 not sure what the name of the organization is --
24 but through the Newswire service?

25 A. Yes, sometimes we would put

1 releases out through the Newswire.

2 72 Q. The Communications Department and
3 through the same part of the website that you
4 issue these media release, does the O.S.P.C.A.
5 also issue calls for donations?

6 A. We put out lots of different
7 media releases, so could you please clarify.

8 73 Q. Well, sometimes there will be a
9 communication on the O.S.P.C.A. website, and
10 correct me if I'm wrong, please, that calls for a
11 need for donations for the organization as they go
12 through this same process in those media releases
13 on your website.

14 A. So to be clear, you mean to the
15 organization as a whole?

16 74 Q. Yes.

17 A. Yes, there are on occasions we
18 would put releases out asking for donations for
19 the organization as a whole.

20 75 Q. And that would be appear on the
21 same part of your website?

22 A. I believe the statement that we
23 use on any of our media releases, or most of our
24 media releases, there is a paragraph on the bottom
25 that indicates that the Ontario S.P.C.A. is a

1 charitable organization.

2 76 **Q.** Okay. And I'll just give you a
3 heads up, there's a large thunderstorm rolling
4 through here right now so hopefully we won't have
5 any power issues, but nevertheless, we'll carry
6 on.

7 77 **MR. SCHWARTZ:** Mr. Andrews, can I just
8 ask if we could just suspend for one
9 minute.

10 --- discussion off the record ---

11 --- upon resuming ---

12 **BY MR. ANDREWS:**

13 78 **Q.** Inspector Mallory, can you speak
14 to whether when there is an especially high
15 profile case underway -- and I'll use the
16 Marineland as an example -- do you see a spike in
17 donations to support the O.S.P.C.A. organization
18 as a whole?

19 79 **MR. SCHWARTZ:** Do you know?

20 80 **THE WITNESS:** I don't know that
21 information.

22 **BY MR. ANDREWS:**

23 81 **Q.** Okay. From time to time,
24 Inspector Mallory, will the O.S.P.C.A. promote a
25 specific case as being the reason for a need for

1 donations and I'll use an example. There's a case
2 perhaps involving a lot of animals, like a puppy
3 mill or something like that. Will the O.S.P.C.A.
4 sometimes promote specific cases as needing
5 donations to support the animals that may be
6 involved?

7 **A.** Any investigation that is
8 ongoing, the information that is shared with media
9 is very limited.

10 82 **Q.** But sometimes, Inspector Mallory,
11 a communication will go out to the public asking
12 for donations in order to help support the needs
13 of the organization with respect to a specific
14 case, that has happened in the past, correct?

15 **A.** Of recent years I'm not aware of
16 that we have publicly asked for donations for the
17 care of animals that we have removed as a result
18 of an investigation.

19 83 **Q.** But it has happened in the past?

20 **A.** I'm not aware as I've only been
21 Chief since 2010, and during my tenure as Chief
22 Inspector, when it comes to investigations, the
23 information that we release is very limited. We
24 generally will only issue a release when a person
25 has been charged, and when that occurs, the name

1 is rarely released. And then, again, during a --
2 if there is a conviction, then we would put out a
3 media release, and during those -- within those
4 media releases, there is never an ask for
5 charitable money or supplies or anything such as
6 that.

7 84 Q. Okay, thank you. In the
8 O.S.P.C.A., any reports that are given to people
9 that donate to the O.S.P.C.A., you do promote or
10 inform them of the number of investigations that
11 the organization has been involved in over the
12 years; is that correct?

13 A. Yes, we do.

14 85 Q. And the same with the number of
15 animals seized by the organization; is that
16 correct?

17 A. Yes, we do. It's a means in
18 which we like to let the donors know how their --
19 some of their donation dollars are being spent.

20 86 Q. And also the number of charges
21 that are laid over the course of the year,
22 correct?

23 A. Again, yes, it's a means of which
24 to inform our members on the activities that the
25 organization does with their donor dollars.

1 87 Q. Okay. But not convictions, I
2 don't think that's put in materials, is it?

3 A. No, it is not.

4 88 Q. Okay. Now costs recovery,
5 Inspector Mallory, when I refer to costs recovery,
6 I'm talking about restitution, or when statement
7 of accounts are paid by people who have had
8 animals seized by the S.P.C.A., that money, can
9 you tell me if it goes into the general revenue
10 account of the organization or does it go into a
11 special account, do you know?

12 A. Any money that is received is
13 coded with a special GL code, and it's kept track
14 of, and where -- what account it goes into, I
15 can't answer that, but I know it is -- there is a
16 designated GL code for tracking.

17 89 Q. Okay. But ultimately that money
18 would go into -- it would be mixed in with the
19 regular revenues of the organization; do you know
20 that?

21 90 MR. SCHWARTZ: Sorry, Mr. Andrews, it
22 may just be my not having heard the
23 first question. Are we referring here
24 to expenses or revenues?
25

1 **BY MR. ANDREWS:**

2 91 **Q.** We are talking about -- well,
3 what we are talking about are the I guess you
4 could turn it around within the organization in
5 the form of costs recovery, and this can come in
6 the form of payments or statements of accounts
7 that have been issued to animal owners and
8 restitution orders against animal owners?

9 92 **MR. SCHWARTZ:** And this is distinct from
10 revenue from the sale of an animal?

11 93 **MR. ANDREWS:** No. This has to do with
12 when the animal is taken or seized by
13 the S.P.C.A., the S.P.C.A., if they
14 incur costs associated with that
15 animal --

16 94 **MR. SCHWARTZ:** Yes.

17 95 **MR. ANDREWS:** -- I don't know if it
18 happens every time, I doubt it, but from
19 time to time at least they will receive
20 money from the animal owner to pay for
21 those expenses, and also the courts will
22 sometimes order restitution be paid to
23 the O.S.P.C.A. for the care of their
24 animals.

25 96 **MR. SCHWARTZ:** I just wanted to be clear

1 that we were not referring to funds
2 obtained from the sale of an animal to a
3 third party.

4 97 **MR. ANDREWS:** No, I'm going to ask that
5 separately in a moment.

6 98 **MR. SCHWARTZ:** Okay.

7 99 **MR. ANDREWS:** But right now I'm just
8 talking about the costs recovery. So
9 the O.S.P.C.A.'s cost associated with
10 care of animals that they have had in
11 their possession.

12 100 **MR. SCHWARTZ:** Do you know the answer?

13 101 **THE WITNESS:** So as I answered earlier,
14 it's tracked through a GL code, and --

15 **BY MR. ANDREWS:**

16 102 **Q.** Yes.

17 **A.** -- the number of bank accounts
18 that our Finance Department manages, I have no
19 idea. I'm not responsible for that.

20 103 **Q.** Okay, thank you.

21 104 **MR. SCHWARTZ:** And, Ms. Mallory, a GL?

22 105 **THE WITNESS:** It's a general ledger.

23 106 **MR. SCHWARTZ:** General ledger, thank
24 you.
25

1 107 **MR. ANDREWS:** Yes. Thanks for that
2 clarification, Hart.

3 108 **THE WITNESS:** Sorry.

4 109 **MR. SCHWARTZ:** It's okay.

5 **BY MR. ANDREWS:**

6 110 **Q.** With respect to cost recovery,
7 let's just stay on that for a moment. In the
8 past, inspectors time has been included in those
9 statements of account issued to animal owners. I
10 think you have mentioned in your affidavit that
11 that has changed; is that right?

12 **A.** Yes, that is correct. We
13 recognized that officer time is not part of caring
14 for the animal, which allows us to recover costs,
15 so we have removed the inspector agent's time from
16 the cost of recovery form that goes to an animal
17 owner who has had their animal removed.

18 111 **Q.** Why did you make that change?
19 Did it have anything to do with any court
20 proceedings or anything along those lines?

21 **A.** It was due to a decision made by
22 the Animal Care Review Board.

23 112 **Q.** And when did that change?

24 **A.** Oh, gosh, I honestly can't
25 remember. I would have to go back and look at

1 previous copies. It was a couple of years ago.

2 113 Q. Approximately a couple of years
3 ago?

4 A. Yes.

5 114 Q. That's good enough.

6 A. Okay.

7 115 Q. When it comes to the costs of
8 care, and I'm going to speak to dogs and cats for
9 a moment specifically, because as I understand it,
10 when you care for dogs and cats -- horses and
11 cows, this is going to be a different story,
12 right, but when you care for dogs and cats,
13 there's a standard daily rate that you charge
14 people when you have possession of their animals;
15 is that correct?

16 A. Yes, that is correct.

17 116 Q. Can you tell me what it is for
18 dogs and cats?

19 A. May I look at -- it's in my
20 affidavit. May I look at the form?

21 117 Q. Absolutely, any time you need to.

22 118 MR. SCHWARTZ: You can look at your
23 affidavit at any point.

24 119 THE WITNESS: Okay, thank you. Can you
25 tell me what tab that is on? I had

1 where everything was --

2 120 **MR. SCHWARTZ:** In your index.

3 121 **THE WITNESS:** Index, and I shredded it.

4 I have it.

5 122 **MR. SCHWARTZ:** Tab E?

6 123 **THE WITNESS:** Yes.

7 **BY MR. ANDREWS:**

8 124 **Q.** Just tell me the page number at
9 the top, please.

10 **A.** It's page 687.

11 125 **Q.** Yes, I have that now, thank you.

12 **A.** Okay, so boarding costs are
13 charged out at \$25 per day. There is an
14 additional fee of \$10 added to that if the animal
15 requires the administration of any type of medical
16 treatment.

17 126 **Q.** Okay. And this covers dogs and
18 cats and what other animals, basically small pets;
19 would that be a way to describe it?

20 **A.** Yes.

21 127 **Q.** Okay. And I see that also on
22 here is the old fees for agent inspector time?

23 **A.** Yes. So we maintain this
24 standing order because we often do other work and
25 are commissioned to do other work, and so this is

1 really a guideline, so that everybody is
2 consistent with charging out their fees.

3 128 Q. Okay. So \$60 per hour for
4 agents, \$70 an hour for inspections, and what's a
5 CMT number?

6 A. That's our case management team
7 number.

8 129 Q. Okay. I see, so those three
9 costs used to be charged to animal owners, but
10 they are no longer charged; is that right?

11 A. They are no longer charged. We
12 no longer charge those fees, no.

13 130 Q. But all three of them used to be
14 charged?

15 A. Yes.

16 131 Q. Okay, thank you. Now --

17 A. And if I could elaborate too,
18 often times we would charge those, but more times
19 than not we would not actually collect those. In
20 any type of negotiation through -- with the
21 owners, we would more times than not drop those
22 fees from the cost of recovery.

23 132 Q. Okay. That would be at the
24 discretion, but when you talk about those
25 negotiations, Inspector Mallory, that would be

1 done at the discretion of the O.S.P.C.A; would
2 that be correct?

3 **A.** Prior to the changes, they would
4 be in as a result of communications with the owner
5 and other parties who may be involved.

6 133 **Q.** But ultimately that would be
7 decided by the O.S.P.C.A. if you agreed to that
8 through those negotiations?

9 **A.** Yes, and as I indicated earlier,
10 often times we did agree to drop those fees.

11 134 **Q.** Okay. So I'm just going to move
12 now to talking about the proceeds from the sale of
13 seized animals.

14 **A.** Okay.

15 135 **Q.** Now would those be treated
16 similarly? By that I mean they would go into a
17 special GL account?

18 **A.** What generally happens with
19 animals that are sold, when they are -- when they
20 become, at the end of the investigation where they
21 can be put up for adoption, then those animals
22 would go into our sheltering system, and as I had
23 indicated earlier, there is a GL code that for
24 each of those items, so for the adoption of
25 animals, et cetera.

1 136 Q. Okay. But the monies from the
2 sale of seized animals, I mean at some point they
3 may be held in trust so to speak at some juncture,
4 but ultimately they would be released to be used
5 to cover expenses or what have you with respect to
6 those animals; is that correct?

7 137 MR. SCHWARTZ: So, Counsel, you are now
8 referring to the trust in section 15 of
9 the Act?

10 BY MR. ANDREWS:

11 138 Q. Yes, we are talking about the end
12 of the Act -- previously I was talking about --
13 just to clarify for the sake of the record,
14 previously I was talking about cost recovery, I
15 was talking about section 15(1). Now I'm talking
16 about under the Act, section 15(2).

17 A. So, yes, of course, if there were
18 any funds in excess of the expenditures, then that
19 money would be put in trust to be sent to the
20 owner. I am only aware of one occasion where that
21 has ever occurred, and that was many years ago
22 with beef cattle that were removed. They were
23 rehabilitated and at the time that they were ready
24 to go for market, the market value of beef animals
25 was higher than, normal and there was an excess of

1 revenue over expenditures, and that money was
2 returned to the owner.

3 139 Q. Okay. So just one time in your
4 experience?

5 A. That is correct.

6 140 Q. When animals are sold, is there
7 any obligation or is there a policy of the
8 O.S.P.C.A. to provide the previous owner with a
9 statement of account showing the proceeds from the
10 sale and the costs with respect to the animal that
11 those proceeds were being used to pay?

12 A. There was no obligation at that
13 time when the animal becomes in the position that
14 it can be adopted out by the Society to do that
15 sort of thing.

16 141 Q. Okay. Just to put it another
17 way, does the O.S.P.C.A. ever provide the previous
18 owner, by that I mean the person who had the
19 animal taken from them, with a statement of
20 account or any other information for that matter,
21 showing when the proceeds of the sale and the
22 costs of the care, are they ever provided with
23 that information?

24 A. No, they are not. Because at
25 that point in time, when the animals can go for

1 adoption or can be sold, they have relinquished
2 ownership of those animals.

3 142 Q. Okay. I apologize, I have to
4 bounce back just a bit, because there's one
5 question I missed there when we were interrupted
6 with the computer feed, so I'm just going to step
7 back for a second, back to the flat rate for care
8 that we were talking about. I think it's \$25 a
9 day?

10 A. Yes.

11 143 Q. Is that -- that number was
12 determined by the O.S.P.C.A. based on what
13 typically would be charged for kennel fees; would
14 I be correct to say that?

15 144 MR. SCHWARTZ: Do you know?

16 145 THE WITNESS: I do know. That number
17 was developed as a result of reaching
18 out to other animal control facilities,
19 veterinary facilities, boarding
20 facilities, and that was the number, the
21 amount that was being used by most
22 facilities. And so we incorporated that
23 as being competitive or a compatible
24 with everyone else.
25

1 **BY MR. ANDREWS:**

2 146 **Q.** Okay. So that would be the same
3 as, for example, a boarding facility if you had to
4 have your dog looked after while you were on
5 vacation, similar?

6 **A.** As I indicated, earlier, yes, we
7 reached out to boarding facilities to see what
8 their rate was. It was important that we didn't
9 pull a number out of a hat, that we stayed
10 comparable with other facilities.

11 147 **Q.** So it would be similar or
12 competitive to those numbers for like a boarding
13 facility, just to be clear?

14 **A.** Yes.

15 148 **Q.** Okay. And those boarding
16 facilities, you are talking about ones that do it
17 as a business; is that correct?

18 **A.** Could you clarify that. Could
19 you say that again.

20 149 **Q.** When we talk about boarding
21 facilities, we are talking about boarding
22 facilities that operate as a for-profit business;
23 would that be correct?

24 **A.** I guess that would be their
25 intention.

1 150 Q. Right.

2 A. Yes.

3 151 Q. I just want to be clear that's
4 what we are talking about, because obviously there
5 are boarding facilities that operate as a
6 business.

7 A. Yes, and --

8 152 Q. -- right?

9 A. And, again, reaching out to other
10 shelters and other facilities that do this type of
11 work, would have been included in researching fee,
12 but most of them, yes, were for profit.

13 153 Q. Okay. thank you. All right, I'm
14 going to shift gears a little bit now. I want to
15 talk to you a bit about section 13(6) of the
16 O.S.P.C.A. Act. I presume, Inspector Mallory, you
17 are very familiar with that section?

18 A. Yes, m'hmm.

19 154 MR. SCHWARTZ: You have it there. It's
20 under --

21 155 THE WITNESS: It's standard, so I'm fine
22 here.

23 Yes, I am.

24 BY MR. ANDREWS:

25 156 Q. So, okay, so when I ask you

1 questions about this part of the legislation, what
2 I'm really asking for is your understanding as the
3 Chief Inspector of how some of this works, okay.

4 **A.** M'hmm, yes.

5 157 **Q.** So section 13(6), and the way
6 it's written, it can theoretically -- so
7 section -- again, just to recap, section 13(6)
8 with is provision that permits -- I mean it speaks
9 for itself, I'm paraphrasing here, but essentially
10 it allows the O.S.P.C.A. to reattend properties to
11 check for compliance?

12 **A.** Yes, that is correct.

13 158 **Q.** The way it's written, and your
14 understanding of it, is that you can go back --
15 you can go back and check for compliance you know
16 at any time that there's an outstanding order,
17 correct?

18 **A.** So, yeah, section 13 says that we
19 may go back and check compliance of an order, that
20 is correct.

21 159 **MR. SCHWARTZ:** Sorry, was the question
22 at any time? You mean like 4:30 in the
23 morning?

24 **BY MR. ANDREWS:**

25 160 **Q.** Yes, at any time.

1 **A.** Oh, well it doesn't define a
2 time, but we certainly wouldn't go into a property
3 at those kinds of hours. We would follow daylight
4 generally speaking for a number of reasons; for
5 the safety of our officers, for visibility, lots
6 of things, so it would be during daylight hours.

7 161 **Q.** Right. But that type of a
8 decision, that would be a policy of the
9 O.S.P.C.A --

10 **A.** Yeah --

11 162 **Q.** -- you are able to establish that
12 for yourself?

13 163 **MR. SCHWARTZ:** I'm going to instruct the
14 witness not to answer the question. I
15 think there may be legal interpretations
16 involved here.

17 164 **MR. ANDREWS:** That's fine. I just
18 really want her understanding of it
19 though, and nothing is going to be
20 binding on her from a legal
21 interpretation standpoint anyways. I
22 just --

23 165 **MR. SCHWARTZ:** Sorry --

24 166 **MR. ANDREWS:** I just want to understand
25 her understanding of things and

1 ultimately the question I just asked was
2 that as she understands it, and the way
3 it is in fact in practice, that the
4 O.S.P.C.A. sets their own policies on
5 what's appropriate in terms of time to
6 go in and check for compliance.

167

MR. SCHWARTZ: I think the
8 interpretation of the provision and
9 whether it allows the authority to
10 determine compliance with the order at
11 any time is a legal question, and so it
12 may be subject to legal argument that
13 other statutes use the term "at any
14 time," or set specific times. There may
15 be a common-law presumption that this is
16 not in the middle of the night. And I
17 don't think this witness, who is not a
18 judge or even a lawyer, is in a position
19 to comment on what the provision means.

20 She has given her evidence, as
21 you have indicated, regarding her
22 understanding as to how they use it, but
23 whether that -- and that is during
24 daylight hours. Whether that is
25 grounded in a policy that may be

1 informed by legal advice or legal
2 interpretation, I don't want her to
3 speculate upon. So I am objecting to
4 the extent that it requires an
5 interpretation of whether or not this
6 provision allows for midnight raids, for
7 example, and I don't know that it does
8 and I think it's subject to legal
9 argument.

10 --- Refusal No. 2 ---

11 168 **MR. ANDREWS:** Okay. And my concern is
12 only things got a little muddled here in
13 terms of what I was asking and what was
14 the answer. I'm going to try and put it
15 a different way, Hart.

16 169 **Q.** As Chief Inspector, Inspector
17 Mallory, when agents and inspectors go in, in
18 terms of the practice of the O.S.P.C.A., you have
19 determined that internally, by that internally,
20 the organization, on when you can go in; would
21 that be fair to say?

22 170 **MR. SCHWARTZ:** By when, do you mean time
23 of day?

24 171 **MR. ANDREWS:** Yes.

25 172 **MR. SCHWARTZ:** Well, whether it's

1 internal to the organization or whether
2 it's informed by legal advice as to
3 whether it could allow for the middle of
4 the night is something that I'm going to
5 ask the witness not to answer, because I
6 think it's speculative. She's given her
7 answer that their practice is to do it
8 during daylight hours. Whether that's
9 based on policy or based in legal
10 interpretation, I'm going to ask her not
11 to not answer.

12 --- Refusal No. 3 ---

13 173 **MR. ANDREWS:** You won't let her answer
14 whether or not there is a policy that
15 they follow, an O.S.P.C.A. policy?

16 174 **MR. SCHWARTZ:** Yes, I'll let her answer
17 whether there's a policy but whether the
18 reason is only the policy I won't let
19 her answer, but, yes --

20 175 **MR. ANDREWS:** I'll --

21 176 **MR. SCHWARTZ:** -- is there a policy that
22 says you should do it during the day, I
23 think that's a fair question, and we
24 have put a policy in the affidavit as an
25 exhibit.

1 177 **THE WITNESS:** Through training, officers
2 are taught to go during daylight hours,
3 and it's based on for the safety of
4 officers.

5 **BY MR. ANDREWS:**

6 178 **Q.** Okay, thank you. Now another
7 question about that same section, because there's
8 nothing in there that says you know when it comes
9 to deadlines, compliance deadlines, there's
10 nothing in that section that says it needs to be
11 done by a certain -- you know, you can't have a
12 compliance time of two months or six months or a
13 year. Is there a policy that you follow in terms
14 of how long those deadlines can be set for
15 compliance, which essentially sets the timelines
16 when 13(6) applies when you can re-enter the
17 property?

18 **A.** Those timelines are determined by
19 the investigating officer based on their
20 observations or possibly based on recommendations
21 by a veterinarian, so there is no standard
22 timeline. Every situation that we come upon is
23 different, so establishing certain timelines
24 would -- just wouldn't make sense.

25 179 **Q.** Okay. And, again, speaking just

1 theoretically, those timelines could be months?

2 **A.** It would have to be based on the
3 situation.

4 180 **Q.** But it could be?

5 **A.** Depending on the situation, it's
6 possible.

7 181 **Q.** And would it be possible for
8 something to be a year?

9 **A.** If you are referring to maybe
10 the, you know, part of the order is to construct a
11 barn, then it would be reasonable to give an
12 individual a year to do that. Again, the timeline
13 is based on the circumstance.

14 182 **Q.** Okay. And throughout that
15 timeline, even if it was a year, 13(6) would still
16 apply for entry powers?

17 **A.** That is -- the 13(6) says that we
18 may enter upon a building or place to comply
19 whether an order has been complied with. So, yes,
20 if we wrote an order out, then we would definitely
21 go back and check compliance of that.

22 183 **Q.** Okay, thank you. Now in your
23 affidavit, paragraph 17, you get into some
24 details, and I'll let you pull that out before I
25 carry on. Just let me know when you are ready.

1 **A.** Yes, I have it in front of me.

2 184 **Q.** Yes. You talk about when you go
3 to a person's dwelling to check for compliance
4 with an order, that of course would be following
5 with section 13(6) of the *O.S.P.C.A. Act*, that you
6 will not enter the property without consent unless
7 you have a warrant?

8 **A.** That is correct.

9 185 **Q.** Okay. And that's a policy of the
10 *O.S.P.C.A.* that you follow?

11 **A.** That is correct. And it's based
12 on the ability to check animals in distress. It
13 clearly says that we can enter any building or
14 place with the exception of a dwelling. So we
15 take that into consideration on 13(6) when we go
16 and check compliance.

17 186 **Q.** I'm sorry, can you direct me to
18 where it says that about the exception of the
19 dwelling in the Act I don't know if you have copy
20 of the Act here.

21 **A.** I do.

22 187 **MR. SCHWARTZ:** I'm not going to have the
23 witness interpret the statute. 12(6)
24 refers to dwellings distinct from
25 buildings and places. I think we can

1 read the statute for itself, but I'm not
2 going to have her interpret 13(6).

3 188 **MR. ANDREWS:** That's no problem. I just
4 want to make -- I just got a little
5 confused, Hart. Can you tell me where
6 it says that in the Act?

7 189 **MR. SCHWARTZ:** So, for example, 12(6),
8 in terms of immediate distress, entry
9 without a warrant, the legislature makes
10 it very clear that it talks about
11 there's an animal in immediate distress
12 in any building or place other than a
13 dwelling.

14 190 **MR. ANDREWS:** Yes.

15 191 **MR. SCHWARTZ:** And 13(6) uses only the
16 terms building or place, and there's a
17 legal argument that building and place
18 is something other than a dwelling, if
19 you read the Act as a whole, but that's
20 a legal argument that we'll make that
21 the 13(6), as interpreted, does not
22 contemplate entry into a dwelling, and
23 that's consistent with the manual which
24 is found at Exhibit D of Ms. Mallory's
25 affidavit. But I'm not going to have

1 her make the legal argument. I'll make
2 it in court, and you can make a contrary
3 one.

4 192 **MR. ANDREWS:** Sure, and that's fine,
5 Hart. And, as you know, when we engage
6 in these cross-examinations, if
7 something like this comes up and we have
8 a question that touches on a legal issue
9 as this, you, as counsel, are able to
10 answer that, and you have done that, so
11 then I have a better understanding of
12 the statements that were made in the
13 affidavit, because they are there.

14 193 **MR. SCHWARTZ:** Yes, they are.

15 194 **MR. ANDREWS:** So now I have a better
16 understanding. So thank you, Hart, for
17 that.

18 **BY MR. ANDREWS:**

19 195 **Q.** Inspector Mallory, again,
20 speaking from a policy standpoint, just give me
21 one moment, please.

22 **A.** Yes.

23 196 **Q.** Right. So at Exhibit D in your
24 affidavit, I'm referring specifically to the
25 record page 679, if you want to turn to that.

1 **A.** I have it. Which paragraph?

2 197 **Q.** So it would be the fifth
3 paragraph down, if you include even the small
4 paragraphs there. It starts with, "When checking
5 to see if an order has been complied with."

6 **A.** Yes, I'm just reading it.

7 198 **Q.** Okay. Once you have read it,
8 I'll ask you a specific sentence in there. Just I
9 want to ask you to elaborate a little bit.

10 **A.** Okay. Please ask the question
11 or --

12 199 **Q.** Yes. So sentence says: "If the
13 owner cannot be persuaded that the law requires
14 compliance and cooperation, it may be necessary to
15 obtain an Ontario S.P.C.A. search warrant to
16 complete the job."

17 200 Can you just elaborate a little bit on
18 how an agent or inspector would go about
19 persuading the person that the law requires
20 compliance and cooperation?

21 **A.** All of our agents and our
22 inspectors are taught to educate people about
23 acceptable practices, so they will use tools such
24 as the standards of care, codes of practice, take
25 some time to educate on what is required to be

1 done, and it's only then that if that doesn't
2 happen, if there is a complete denial of not
3 taking those steps, would we need to possibly get
4 a search warrant for them to do the job, bring
5 back a veterinarian, something to that nature.

6 201 Q. Okay. It says, "if the owner
7 cannot be persuaded that the law requires
8 compliance and cooperation" Would that include
9 persuading the person to provide consent to enter
10 the premises?

11 A. Whenever an officer attends a
12 property, they are taught that they are to give
13 informed consent, and so the property owner will
14 be advised that at any time they can ask the
15 officer to leave, and they will do so.

16 202 Q. Okay. Are they informed as a
17 practice that they can say, no, and it would
18 require the S.P.C.A. to get a warrant to come
19 back?

20 A. Yes, if they say, no, we are not
21 allowing you on the property, an officer may or
22 may not let the individual know that they will be
23 returning with a search warrant. They are not
24 obligated to do that, but they may do that.

25 203 Q. Are they informed -- okay, that's

1 fine. Now this particular item that you have in
2 your affidavit at Tab D, it's an excerpt from
3 your -- help me out -- it's the investigations and
4 policy manual?

5 **A.** It's part of our -- it's a policy
6 and procedures manual that is used for training
7 and referencing our agents and inspectors.

8 204 **Q.** Okay. And that would be -- this
9 document, including this section that you provided
10 to me here, this would be -- this would not be a
11 public document, it wouldn't be publicly
12 accessible, correct?

13 **A.** No, it is not.

14 205 **Q.** Okay. Still talking about
15 section 13(6) of the *O.S.P.C.A. Act*, it talks
16 about other persons as he or she considers
17 advisable in terms of going back onto the
18 premises?

19 **A.** Yes.

20 206 **Q.** Do you know, you are familiar
21 with that wording obviously?

22 **A.** Yes, I am.

23 207 **Q.** So as a policy of the *O.S.P.C.A.*
24 and how you operate, so would the people that
25 could fall under that be at the complete

1 discretion of the O.S.P.C.A. officer, or do you
2 have a policy on any limitations on who would come
3 in?

4 **A.** It is, as it says in the Act, any
5 person -- they can enter either alone or
6 accompanied by one or more individuals or any
7 persons as he or she considers advisable, and that
8 would depend on the situation. There's not a
9 policy as to who you can take. Sometimes it can
10 be -- it may change, depending on the situation.
11 I'm happy to give you an example.

12 208 **Q.** And that would include --

13 209 **MR. SCHWARTZ:** Sorry, I don't know if
14 the witness finished her answer.

15 210 **MR. ANDREWS:** I apologize. I'm sorry,
16 it got choppy here. I thought she was
17 done.

18 211 **MR. SCHWARTZ:** Okay.

19 212 **THE WITNESS:** I said I'm happy to give
20 an example.

21 **BY MR. ANDREWS:**

22 213 **Q.** Okay, yes, please.

23 **A.** So if it was a situation,
24 hoarding situation where there was hundreds of
25 cats in a residence, and we had been advised

1 through Social Services that an individual may
2 have a mental health concern, then we would bring
3 somebody along with us to help her, help them and
4 support them and be there for them to allow any
5 types of needs that they may need. So that's just
6 a situation where it may not be another agent or
7 an inspector or even a veterinarian, it may be
8 somebody totally different.

9 214 Q. Like a social worker?

10 A. Social worker, police officer who
11 has special training in those types of situations.

12 215 Q. Social worker sounds like a great
13 idea. Sorry, I apologize for that, but it does
14 sound like a good idea to me. So veterinarian,
15 social worker. Have you ever had college students
16 enter the property under that provision?

17 A. Often times we do have students
18 through a -- that may be participating in Police
19 Foundations program, animal behaviour, something
20 that would be -- there would be some interest in
21 animal welfare, and, yes, they may attend.

22 Generally speaking, when that occurs, we
23 would advise the property owner that we have a
24 student who has come with us, they are sitting in
25 our truck, we would like to bring them on the

1 property so that they can observe our actions or
2 any undertakings that we may be doing today.

3 216 Q. And also enter the property?

4 A. And also enter the property.
5 Permission is always asked of the homeowner.

6 217 Q. Always asked before a student
7 would enter their home; is that correct?

8 A. Yes, yeah, or it may be advised
9 that I would like to introduce you to a student
10 who is attending with us, are you okay with them
11 attending for observation purposes?

12 218 Q. All right. I'm going to just
13 shift again to a slightly different topic, all
14 right. So, Inspector Mallory, I'm just going to
15 provide a little explanation ahead of my question
16 to understand where I'm coming from. So under
17 different sections of the Act there are provisions
18 that essentially allow an agent or inspector to do
19 something where they are in the belief -- sorry,
20 where there's a reasonable belief that the animal
21 is in distress, which I'm sure you are aware.

22 219 And so what I'm going to be asking you
23 is under these different sections of the
24 legislation whether or not in practice the
25 O.S.P.C.A. has a policy to confirm that the animal

1 is in fact in distress with a veterinarian, or,
2 alternatively, whether the policy is to simply
3 leave that to the individual agent or inspector.

4 220 Do you follow what I'm saying?

5 **A.** Are you asking that an agent or
6 inspector must always confirm with a veterinarian
7 that there is distress?

8 221 **Q.** Well, I don't want to get mixed
9 up with what they have to do under law. I want to
10 deal with basically the policy or the practice of
11 the S.P.C.A.. Maybe I'll ask the first question
12 and it might become more clear.

13 222 So, for example, when issuing an order,
14 a compliance order under section 13, is there a
15 policy or practice that the S.P.C.A. operates
16 under where essentially the merits of the order
17 are confirmed by a veterinarian?

18 **A.** That's a pretty broad question,
19 so are you suggesting every single order be
20 approved by a veterinarian or the merits of it be
21 approved? I'm not quite understanding where you
22 are coming from.

23 223 **Q.** Well, we could put it that way,
24 because as I am sure there are times when it may
25 be checked by a veterinarian, so you can just

1 answer yes or no whether it's done every single
2 time. Is it done every single time -- is the
3 merits of an order always checked by a
4 veterinarian?

5 **A.** Well, I would like to expand a
6 little bit to say that agents and inspectors are
7 not veterinarians, so when --

8 224 **Q.** Right.

9 **A.** -- it comes to certain
10 situations, part of the order may be to have a
11 veterinarian check an animal. It depends on the
12 situation. But sometimes, no, it's not necessary
13 for a veterinarian to attend. An order may be
14 written for an individual to provide a doghouse
15 for a dog. A veterinarian certainly would not
16 need to confirm the merits of whether or not that
17 was necessary. That would be up to the animal
18 owner to maybe reach out to their veterinarian to
19 see -- to educate themselves on what is
20 appropriate and adequate.

21 225 **Q.** All right. So what I'm hearing
22 from you is that there are times when orders will
23 be issued to an individual and a veterinarian will
24 not necessarily be involved; is that correct?

25 **A.** Correct.

1 226 **Q.** And that can include general
2 care, like orders respecting general care, for
3 example, food, water, grooming, and this sort of
4 thing?

5 **A.** Well, the example I gave was a
6 good one, that a doghouse, like that wouldn't be
7 necessary for a veterinarian to confirm the merits
8 of it, and it could as well be water, it could be
9 food, if there's no food present.

10 227 **Q.** Grooming?

11 **A.** Yes, grooming.

12 228 **Q.** Any others that come to mind
13 that -- and I don't mean for you to think of every
14 single one, but just the common ones?

15 **A.** Nail trimming, hoof trimming,
16 cleanliness of the environment, ventilation.
17 There are a numbers of things.

18 229 **Q.** And all of those would require
19 consultation with a veterinarian, correct?

20 **A.** No.

21 230 **Q.** Okay. That question was in
22 respect to the issuance of orders under
23 section 13.

24 231 And how about in determining whether an
25 order has been complied with, so if we are talking

1 about that type of order, and the O.S.P.C.A felt
2 that the order had not been complied with, say,
3 for example, the owner believes it has been
4 complied with, is it necessary for a vet to get
5 involved at that point?

6 **A.** Not necessarily. If we are
7 talking about an environment that is not liveable
8 for an animal where there is -- that the
9 environment is bad, then, no, it's not necessary
10 for a veterinarian to agree that there's been no
11 compliance and the environment is poor. Sometimes
12 we will take a veterinarian, but not always.
13 Again, it depends on the situation, and we see all
14 different levels in severity of what environmental
15 issues might be.

16 232 **Q.** Just to use your example, so when
17 you say an environment is not liveable, that would
18 be a determination made by the agent or inspector,
19 am I correct on that when you say that?

20 **A.** Yes. And as I had alluded to,
21 sometimes a veterinarian would attend and provide
22 their opinion, but it's not always necessary.

23 233 **Q.** And, again, I'm just going to
24 frame this with respect to the provisions of the
25 *O.S.P.C.A. Act* that involve obtaining a warrant.

1 In order to obtain a warrant -- and I'll just pull
2 that section up -- is it 12, section 12?

3 **A.** Yes.

4 234 **Q.** So when it comes to providing
5 information to a Justice of the Peace or a
6 Provincial Judge in order to obtain a warrant, am
7 I correct that it wouldn't be necessary to have a
8 veterinarian involved in determining whether or
9 not the animal is in distress in some situations
10 at least?

11 **A.** Well, again, the Act says that an
12 agent or inspector -- so, can you clarify, are you
13 talking about prior to getting a warrant, or
14 justifying a warrant?

15 235 **Q.** Well, at the point where they go
16 to obtain a warrant, like the examples we have
17 just talked about; environment, food, water,
18 grooming, this sort of thing, again, talking about
19 the practice of the S.P.C.A., prior to going to
20 seek a warrant to enter a property, is there any
21 review by a veterinarian of the determinations of
22 the S.P.C.A. agent or inspector in concluding that
23 this warrant is necessary?

24 **A.** No, it is not always necessary.
25 It's important that the agent or inspector before

1 they go to a Justice of the Peace have reasonable
2 grounds to believe that there is an animal in
3 distress. And they would also have to -- an agent
4 would not be able to get a warrant without first
5 seeking guidance, supervision from an inspector.
6 So the basis upon getting a warrant is reasonable
7 grounds, that there is distress.

8 236 **Q.** Right. But in assessing that,
9 it's not necessary for the agent or inspector to
10 consulted with a veterinarian, correct?

11 237 **MR. SCHWARTZ:** Yes --

12 238 **THE WITNESS:** I think I've answered
13 that --

14 239 **MR. SCHWARTZ:** -- I was going to say
15 that. I think that's been asked and
16 answered, and the answer is correct --

17 240 **THE WITNESS:** Yes.

18 241 **MR. SCHWARTZ:** -- correct?

19 **BY MR. ANDREWS:**

20 242 **Q.** Thank you. I'm going ask you the
21 same thing again with respect to the same context.
22 When it comes to seizing an animal under
23 section 14, if I'm not mistaken --

24 **A.** Yes, it is section 14.

1 243 **Q.** -- it talks about relieving
2 distress. Again, seizure of an animal can take
3 place in some situations without consultation with
4 a veterinarian; is that correct?

5 244 **MR. SCHWARTZ:** Just a second, Counsel.
6 Counsel, I think this is a legal
7 determination. I'm looking at it myself
8 right now, with your question in mind.
9 I think it's arguable, maybe, maybe not,
10 maybe wrong, that sub-sections (a) and
11 (b) are conjunctive as opposed to
12 disjunctive. Certainly 14(1)(a) does
13 require a veterinarian to examine the
14 animal. So I'm going to let the
15 legislation speak for itself. If it is
16 disjunctive then you are right, a
17 veterinarian can be used, but it doesn't
18 have to be. If it's conjunctive and you
19 are wrong, or not you are wrong, but a
20 veterinarian would have to be used.

21 **BY MR. ANDREWS:**

22 245 **Q.** Sure. Let me put it a different
23 way. In practice, Inspector Mallory, are there
24 situations where animals are seized without
25 consulting a veterinarian?

1 246 **MR. SCHWARTZ:** Under --

2 247 **MR. ANDREWS:** I'm speaking factually, if
3 there are situations where animals are
4 seized --

5 248 **MR. SCHWARTZ:** Not necessarily under
6 this provision though. There are other
7 provisions, for example.

8 249 **MR. ANDREWS:** Yes.

9 250 **MR. SCHWARTZ:** Okay, I'll let her answer
10 the question if she knows the answer.

11 251 **THE WITNESS:** There are other provisions
12 and, other circumstances where it would
13 not be necessary for a veterinarian to
14 recommend the removal of an animal. An
15 example of that would be a situation
16 where someone is physically abusing an
17 animal, kicking, punching an animal or
18 under other law, an animal may be
19 removed, such as the Dog Animals
20 Liability Act [sic].

21 **BY MR. ANDREWS:**

22 252 **Q.** I don't know, maybe my question
23 isn't clear. So in the same way that we have
24 orders that are issued involving certain
25 situations where a vet need not be involved, in

1 that same sort of way, I presume that essentially
2 the same situations again may give rise to the
3 removal of an animal under section 14 without
4 consulting a veterinarian --

5 253 **MR. SCHWARTZ:** So --

6 **BY MR. ANDREWS:**

7 254 **Q.** -- because ultimately the section
8 talks about for the purpose of relieving the
9 animal of distress or so provided with food care
10 or treatment, right --

11 255 **MR. SCHWARTZ:** I think the witness may
12 know the legal answer, and it may be
13 that 14(1) is disjunctive. It probably
14 is as I look at it, but I'm not going to
15 ask her not to answer under section 14,
16 because I think it's potentially subject
17 to legal argument. As you know,
18 Counsel, as an expert in this area,
19 there are other provisions of the Act
20 that also allow for the taking of
21 animals, including dealing with in 12(6)
22 dealing with immediate distress.

23 256 **MR. ANDREWS:** Okay.

24 257 **MR. SCHWARTZ:** So I'm just going to stop
25 it here.

1 **BY MR. ANDREWS:**

2 258 **Q.** All right, that's fine. I'm
3 going to ask again a very similar question, but
4 slightly different. So once the animal is seized,
5 and let's take out the factor of the payment of
6 costs and things for a moment, but the decision to
7 return the animal to an animal owner, that would
8 fall under the discretion of the O.S.P.C.A,
9 correct, or does the O.S.P.C.A have a policy to
10 involve a vet in that decision?

11 259 **MR. SCHWARTZ:** Just to clarify, when you
12 say would be up to the O.S.P.C.A, I mean
13 I think Ms. Mallory earlier said there's
14 agents, there's inspectors. Can we
15 clarify whom in the O.S.P.C.A would be
16 doing that, at what level if that's
17 okay?

18 **BY MR. ANDREWS:**

19 260 **Q.** Sure. Agents and inspectors,
20 would it be at their discretion to return the
21 animal?

22 **A.** Yes, it would. Before an animal
23 was returned though, they were removed because the
24 animal is in distress, so the distress would have
25 to be eliminated, and if there was orders written,

1 then there would have to be compliance. So
2 discretion used by the officer sometimes under
3 consultation with a veterinarian or maybe a senior
4 officer.

5 261 Q. But are they sometimes not
6 necessarily involving a veterinarian?

7 A. That is correct.

8 262 Q. Okay. Generally speaking, from a
9 policy standpoint, Inspector Mallory, where an
10 animal is seized, and after being seized it's
11 determined that it is in reasonable health, and
12 that the circumstances where it came from are not
13 an issue, but the O.S.P.C.A has incurred costs in
14 relation to the animal. Am I correct that it will
15 not be returned unless the statement of account is
16 paid by the owner?

17 A. Generally speaking, there is a
18 expectation that the cost of care expenses
19 incurred by the Society be paid prior to the
20 animals being returned, however, there has also
21 been situations where animals have been removed
22 and they have been returned to an individual at no
23 cost. As an example, there was a cat that was
24 removed, because it was seizuring, that the cat
25 was owned by an elderly woman who lived alone, she

1 couldn't afford veterinarian care. We removed the
2 cat, took the cat to a veterinarian with the
3 expectation that the cat would probably not
4 survive. However, the cat did survive, and
5 knowing the situation, we returned the cat at no
6 cost to the woman. So it isn't always that we
7 don't return, but, generally speaking, there is an
8 expectation of payment.

9 263 **Q.** If an animal is seized, and it's
10 essentially determined that it probably didn't
11 need to be seized, there may have been a
12 reasonable belief, but ultimately it was not the
13 correct choice to seize the animal. When costs
14 are incurred, you require or is there a policy on
15 requiring that owner to pay the money before the
16 animal is returned?

17 264 **MR. SCHWARTZ:** Sorry, you are not
18 talking here about the power of the
19 Animal Care Review Board?

20 265 **MR. ANDREWS:** No.

21 266 **MR. SCHWARTZ:** You are saying if it
22 never goes to the Animal Care Review
23 Board?

24 267 **MR. ANDREWS:** Yes. Ultimately the
25 animal was taken but it was determined

1 after it didn't need to be taken --

2 268 **MR. SCHWARTZ:** So --

3 269 **MR. ANDREWS:** -- a cost occurred.

4 270 **MR. SCHWARTZ:** -- that's a hypothetical.

5 I mean --

6 271 **MR. ANDREWS:** Yes.

7 272 **MR. SCHWARTZ:** -- I don't know that that
8 has ever occurred. Okay. Can you
9 answer that hypothetical?

10 273 **THE WITNESS:** Um, I can answer that
11 hypothetical. And if an agent or an
12 inspector removed an animal in error,
13 absolutely that animal would go back
14 without costs to the owner.

15 **BY MR. ANDREWS:**

16 274 **Q.** Okay, thank you. Now the next
17 question I'm going to ask has to do with
18 section 14(1.1), which is the section that
19 provides essentially the procedure for applying to
20 the Justice of the Peace for an order for the
21 Society to keep an animal?

22 **A.** Yes.

23 275 **Q.** If you wish to have a look at
24 that for a moment, and then let me know when you
25 are ready, I'll ask the question.

1 **A.** I'm ready for the question.

2 276 **Q.** Okay. Can you provide me with an
3 example of when the Society will use this section
4 for such an order?

5 **A.** This particular section is used
6 very rarely, and, generally speaking, we would
7 only apply for an order to keep if there were --
8 the individual was charged and there was a concern
9 for a repeat commission of the offence. And or if
10 the animal may be harmed, if it was returned. So
11 an example of that would be an animal who has been
12 physically abused and has received injury.

13 277 **Q.** Inspector Mallory, it's my
14 understanding that you -- that the S.P.C.A. seizes
15 an animal would not return it if there was still a
16 distressful situation, or had not been corrected?

17 **A.** So your question does not relate
18 to this particular section.

19 278 **Q.** Yeah, I guess I'm just trying
20 to -- I'm trying to establish when this section
21 would be used when you consider that you already
22 stated that you wouldn't return it to a situation
23 where it would be put into distress anyways.

24 279 **MR. SCHWARTZ:** Sorry, Counsel, I'm not
25 sure if you are giving evidence or

1 asking a question.

2 280 **MR. ANDREWS:** Well, I'm just trying to
3 get clarification or have the witness
4 expand a little bit, because I'm
5 confused. The answers just don't seem
6 to match up. Let me try and put it a
7 different way.

8 281 **MR. SCHWARTZ:** Sure.

9 **BY MR. ANDREWS:**

10 282 **Q.** Okay, first of all, to the best
11 of your knowledge, has this section ever been used
12 to obtain such an order?

13 283 **MR. SCHWARTZ:** Are we referring here to
14 the time that Ms. Mallory has been Chief
15 Inspector? Because, as you know, the
16 O.S.P.C.A. goes back many decades.

17 **BY MR. ANDREWS:**

18 284 **Q.** Right. Although this section I
19 think has been there since 2008, and I'm really
20 asking her if she has any knowledge of it ever
21 being used in any capacity at all?

22 **A.** I do have knowledge of it being
23 used, and as I had indicated, the section of the
24 Act is very -- is pretty clear on when you would
25 obtain an order to keep an animal, and as I had

1 indicated in my earlier example, that would be a
2 situation where an individual has been charged, an
3 animal has been removed because of physical
4 injury, and there is a concern that there will be
5 repeat offence occur and the animal will be
6 subject to further harm.

7 285 Q. Okay.

8 A. You said --

9 286 Q. And so it wouldn't be -- so in
10 practice then this section isn't used -- this
11 section isn't otherwise used where animals are
12 seized under 14, section 14 (1)?

13 A. Not all the time, no. A great
14 deal of consideration is given when we are
15 considering getting an order to keep an animal.

16 287 Q. But, again, you only know of one
17 example of that and you gave that example?

18 A. Well, I know there are others,
19 I'm just using that one as an example.

20 288 Q. I see, okay. We can move into a
21 slightly different area here. Okay, now just bear
22 with me a little bit here. Inspector Mallory,
23 some investigations that the S.P.C.A. may
24 undertake can involve covert surveillance of a
25 suspect; would that be fair to say?

1 **A.** I'm not sure if I'm understanding
2 your question.

3 289 **Q.** Sure, I'll give you an example.
4 So it's possible that if there's a location where
5 maybe a complaint has come in with respect to an
6 animal, that the S.P.C.A. may be from an adjoining
7 property, or public property or somewhere where
8 the O.S.P.C.A is allowed to be, I'm not suggesting
9 they are doing anything wrong here. They may
10 conduct some surveillance of the situation without
11 the animal owner even knowing about it; would that
12 be correct?

13 **A.** So if I could answer this with so
14 that it will help with some clarity. So if we
15 receive a complaint where there may be a dog in
16 the back yard that doesn't have a doghouse, we
17 would not go to the back yard of that house. You
18 know, our right of entry is pretty clear, but if
19 there is a neighbour, and from the neighbour's
20 property it would be easy to observe a dog out the
21 back without a doghouse, we may do that, or ask
22 the neighbour if they have, but to do a covert
23 surveillance, that is not something that we would
24 normally undertake.

25 290 **Q.** But you may through the course of

1 an investigation observe a situation or a
2 property, you know, without the owner of the
3 animal being aware, it's possible?

4 **A.** Well, the owner would be aware,
5 because we would -- we would leave a notice on the
6 door to suggest that we were there and we had a
7 concern.

8 291 **Q.** Well, let's say you didn't have a
9 concern, you just went by the property and you
10 made some observations. It's possible that they
11 might not know that?

12 292 **MR. SCHWARTZ:** Sorry, Counsel, I'm just
13 having a bit of difficulty because I'm
14 not sure I or maybe the witness
15 understand what you mean by covert. It
16 brings up --

17 **BY MR. ANDREWS:**

18 293 **Q.** Secretly or something where the
19 person wouldn't -- the person who's the subject of
20 the investigation wouldn't know about it?

21 **A.** I --

22 294 **MR. SCHWARTZ:** So I think the witness
23 has answered they leave a notice on the
24 door when they have come by, but I'll
25 let her -- her question is are there

1 instances where the person wouldn't know
2 they were the subject of an inquiry,
3 let's call it that; is that right?

4 295 **MR. ANDREWS:** Sure, sure.

5 296 **MR. SCHWARTZ:** Okay.

6 297 **THE WITNESS:** So the Ontario S.P.C.A.
7 does not do secretive surveillance of a
8 property.

9 **BY MR. ANDREWS:**

10 298 **Q.** Okay. Are there times when you
11 may conduct an investigation and the person who is
12 the subject of it may not know of every step of
13 the way?

14 299 **MR. SCHWARTZ:** How can she know what
15 someone else knows?

16 300 **MR. ANDREWS:** I don't think I quite
17 understand what you are saying, Hart.

18 301 **MR. SCHWARTZ:** Let me just finish. For
19 example, if a note is left on the front
20 door but the person's child or teenager
21 comes and takes the note off the door,
22 the person would never know, but she
23 cannot know what will happen in the
24 house. She can't know what's --
25

1 302 **MR. ANDREWS:** I understand what you are
2 saying.

3 303 **Q.** All right, well, there would be
4 some situations at least, Inspector Mallory, and
5 I'm putting this to you to confirm. There would
6 be at least some situations where through the
7 process of an inquiry or investigation a person
8 may not know of all of the actions that the
9 O.S.P.C.A has taken. That may involve going to
10 the property and it may involve making inquiries
11 with third parties even. There are situations
12 like that, I presume.

13 304 **MR. SCHWARTZ:** Again, I'm not sure I
14 understand the relevance of the
15 question. I think it goes without
16 saying that everything the inspector
17 does is not going to be known to the
18 target of the investigation, such as
19 consulting with the veterinarian,
20 consulting with a senior investigator,
21 consulting with Ms. Mallory, checking
22 the manual, checking with the police or
23 a Crown Attorney. All of those things
24 that go on in the background, unless
25 there are charges and disclosure, may

1 not be known. I think that goes without
2 saying.

3 305 **MR. ANDREWS:** Okay, and witnesses too,
4 just to throw everything into that,
5 Hart, would that fall into there too, I
6 presume?

7 306 **MR. SCHWARTZ:** What, confidential
8 informants?

9 307 **MR. ANDREWS:** About anybody for that
10 matter. I'm talking about like you did
11 a good job of listing the things that
12 I'm thinking about, right. But, you
13 know, there could be interviews with
14 third party witnesses with respect to a
15 certain person, third situation, that,
16 again, without charges, they wouldn't be
17 disclosed to the individual, but say
18 people --

19 308 **MR. SCHWARTZ:** I'm going to instruct the
20 witness not to answer. If there is
21 charges, there are *Stinchcombe*
22 disclosure obligations that the
23 O.S.P.C.A., like any prosecutorial
24 authority would have to reveal its
25 situation and its files. If there are

1 not charges, what is and isn't available
2 involve, to my mind, questions of law.

3 309 **MR. ANDREWS:** Right, but you had said,
4 Hart, and I'm really kind of putting it
5 to you at this point rather than the
6 witness --

7 310 **MR. SCHWARTZ:** Yes.

8 311 **MR. ANDREWS:** -- that it goes without
9 saying that the consultation with the
10 veterinarian, and the consultations
11 that -- the other parts of the
12 investigation that may take place, you
13 said it would go without saying that the
14 subject to the investigation aren't
15 going to know all of those things unless
16 they are charged, and then it would come
17 out through disclosure.

18 312 **MR. SCHWARTZ:** And even then it may not.
19 There may be privileged discussions with
20 counsel or with the Crown, and those
21 would be not disclosed.

22 313 **MR. ANDREWS:** They could. And I'm just
23 saying added in there would be possibly
24 interviews that may have taken place
25 with third parties, like witnesses. I

1 think we are talking about the same
2 thing. I'm just asking you, Hart, to
3 agree with that, or that it would fall
4 into there as well? I think it's
5 plainly obvious, but I just wanted to
6 make sure I understand you correctly.

7 314 **MR. SCHWARTZ:** Could we go off the
8 record for a second.

9 315 **MR. ANDREWS:** Sure.

10 --- Off the record ---

11 --- Upon resuming ---

12 316 **MR. SCHWARTZ:** I don't want to speak for
13 the organization in terms of what their
14 practices are, so I'll let Ms. Mallory
15 answer whether there's any policy when
16 charges aren't laid in terms of sharing
17 information or not with a person who
18 might have been a target in the past.

19 **BY MR. ANDREWS:**

20 317 **Q.** Okay, thank you.

21 **A.** It kind of complicated that a
22 little bit.

23 318 **MR. SCHWARTZ:** She's thinking about the
24 answer.
25

1 **BY MR. ANDREWS:**

2 319 **Q.** All right.

3 **A.** So if there are no charges laid,
4 and the Ontario S.P.C.A. is conducting an
5 investigation, then, yes, there may be interviews
6 with other witnesses, with police, and
7 veterinarians, and we would not always -- we would
8 not disclose that information to the accused if
9 there was no charges. It would not be necessary.

10 320 **Q.** Okay. So in that sort of
11 situation, what do you do with all of that
12 information? Essentially what do you with that
13 file of information?

14 **A.** Sorry, just a moment.
15 --- cell phone interruption ---

16 321 **MR. SCHWARTZ:** What do you do with that
17 information where no charges are laid?
18 Is that fair to say, Counsel?

19 **BY MR. ANDREWS:**

20 322 **Q.** That's fair to say that way, yes.

21 **A.** That information would be stored
22 on a secure server for a period of two years, and
23 then it's destroyed.

24 323 **Q.** And, Inspector Mallory, the
25 subject of an investigation wouldn't be --

1 wouldn't have any -- the subject of investigation
2 like that, a person who may have been subject to
3 investigation where you have kept that file, no
4 charges were laid, he wouldn't be -- he or she
5 wouldn't be entitled to access to that file; would
6 that be fair to say?

7 324 **MR. SCHWARTZ:** Don't answer that.

8 Entitlement is a question of law, and
9 she's not here to opine on legal
10 matters.

11 --- Refusal No. 4 ---

12 **BY MR. ANDREWS:**

13 325 **Q.** If requested by an individual to
14 have their file, would you give it to them?

15 326 **MR. SCHWARTZ:** Again, don't answer it.

16 There may be litigation privilege,
17 solicitor client privilege,
18 confidentiality, informant privilege.
19 There may be a number of legal reasons
20 why information couldn't be provided.
21 Again, it would be contrary to law and I
22 don't want her to speculate on the
23 operation of a law.

24 --- Refusal No. 5 ---
25

1 **BY MR. ANDREWS:**

2 327 **Q.** Does the O.S.P.C.A. have any
3 organizational policy on sharing that information?

4 328 **MR. SCHWARTZ:** By "that information,"
5 you mean all of the information I've
6 just described, including privileged
7 information?

8 **BY MR. ANDREWS:**

9 329 **Q.** By that I mean the information
10 that would otherwise be in a disclosure package
11 had there been charges.

12 **A.** No, I do not believe there is a
13 policy to that.

14 330 **Q.** All right. And, Hart, would you
15 allow me to ask her if the O.S.P.C.A. would
16 provide that information to a person if it was
17 requested? And by that I mean the contents of
18 disclosure package of the charges.

19 331 **MR. SCHWARTZ:** Again, I think it's
20 speculative. I don't know that anyone
21 has ever asked, but the witness has
22 answered that they don't have a policy
23 in place, perhaps they would create one
24 in that situation.

25 But, sure, ask the question

1 and I just think it may be speculative.

2 **BY MR. ANDREWS:**

3 332 **Q.** Well, let's put this a different
4 way. To the best of your knowledge, has that
5 information ever been provided to somebody upon
6 request?

7 333 **MR. SCHWARTZ:** Well, that assumes there
8 has been a request.

9 334 **MR. ANDREWS:** Yes.

10 335 **MR. SCHWARTZ:** So why don't we break it
11 down. Can we ask first if there's ever
12 been a request?

13 336 **MR. ANDREWS:** Certainly.

14 337 **THE WITNESS:** We will often get a
15 request from someone who is being
16 investigated for the name of the
17 informant.

18 **BY MR. ANDREWS:**

19 338 **Q.** Okay. Has anyone essentially
20 asked for their investigation file?

21 **A.** I think that if I answered that I
22 would just be making an assumption. As I say,
23 generally, the request is for the name of the
24 informant.

25 339 **Q.** Okay. All right, to the best of

1 your knowledge and your experience, has a person's
2 investigative file ever been provided to them on
3 request?

4 340 **MR. SCHWARTZ:** Again, speculative. It
5 assumes there's been a request and the
6 witness has just said she can't answer
7 that as I understand it.

8 **BY MR. ANDREWS:**

9 341 **Q.** She's also indicated that it
10 sounds like people had asked for information from
11 their file --

12 342 **MR. SCHWARTZ:** They have asked for the
13 name of the confidential informant,
14 which obviously as a matter of law could
15 not be shared.

16 **BY MR. ANDREWS:**

17 343 **Q.** How about this --

18 344 **MR. SCHWARTZ:** Sorry --

19 **BY MR. ANDREWS:**

20 345 **Q.** -- has a person's investigative
21 file ever been provided to a person? There's no
22 assumptions there.

23 **A.** No, it has not, and it just came
24 to memory. I do recall a situation where we were
25 investigating an individual, there was no charges

1 laid, however, there was a landlord tenant
2 dispute, and that individual asked us for a copy
3 of their file so that they could use it in court.
4 And our response to them was if they required that
5 information, then they would need to have the
6 officer subpoenaed to court and they would bring
7 that information with them.

8 346 **Q.** Okay. All right, and with that
9 one example, I think your answer was no to the
10 file being provided to somebody?

11 347 **MR. SCHWARTZ:** Well, no, the answer was
12 the answer. That it would be provided
13 on subpoena as one example.

14 **BY MR. ANDREWS:**

15 348 **Q.** Okay. So that would be the only
16 way?

17 349 **MR. SCHWARTZ:** Again, we are into
18 speculative territory. I mean the
19 witness can't recall any other --

20 350 **MR. ANDREWS:** It's very factual, Hart.
21 I'm asking if a file has ever been
22 provided to a person. She said that
23 there's a situation where it was asked
24 for and they said they would only
25 provide it through a subpoena --

1 351 MR. SCHWARTZ: Right.

2 352 MR. ANDREWS: -- and bring it to trial.
3 So I'm asking is that it, is that the
4 only situation where it's ever been
5 done?

6 353 MR. SCHWARTZ: But you also asked if
7 there was a policy in place and the
8 witness said there wasn't one. I'm just
9 a little bit concerned. There may be
10 other instances. It sounds like the
11 Society hasn't come up with an internal
12 policy, an internal Freedom of
13 Information policy if you want to call
14 it that. And so I don't want
15 speculating on situations that haven't
16 yet arisen.

17 BY MR. ANDREWS:

18 354 Q. I'm not asking for speculation.
19 I'm asking for her answer to the best of her
20 knowledge, if there was ever a situation where the
21 person's file has been given to the person?

22 355 MR. SCHWARTZ: Who hasn't been charged?

23 BY MR. ANDREWS:

24 356 Q. Who hasn't been charged. Just
25 factually to the best of her knowledge. I think

1 she said, no, and then she gave that example, but
2 I want to confirm that.

3 **A.** The answer is no.

4 357 **Q.** Okay, thank you. All right, so
5 one of the parts of the O.S.P.C.A. you had
6 identified earlier is a rescue and relief
7 department?

8 **A.** Yes.

9 358 **Q.** So now there are other rescue
10 organizations in the Province; that's correct?

11 **A.** Yes, there are.

12 359 **Q.** Now would it be fair to say the
13 O.S.P.C.A. is the largest animal rescue
14 organization in the Province?

15 **A.** I would say that we are one of
16 the larger. There are facilities that do a lot of
17 rescue work. I have no idea what their numbers
18 are. So to say that we were the largest, I cannot
19 confirm, but I can -- you know, I think I can
20 safely say we are one of the larger.

21 360 **Q.** And if I was to say province
22 wide, if you included the whole province in all of
23 your rescue facilities all across the Province and
24 if you don't know, that's fine, would you say that
25 you are the largest or would you still just say

1 you are the one of the largest?

2 **A.** I did answer to say that we were
3 one of the larger.

4 361 **Q.** Okay. Now some of these other
5 rescue organizations have been investigated by the
6 O.S.P.C.A.; is that correct?

7 **A.** There have been rescue
8 organizations that have been investigated by the
9 Ontario S.P.C.A, yes, that would be correct.

10 362 **Q.** And orders have been issued to
11 those organizations by the O.S.P.C.A?

12 **A.** That is correct.

13 363 **Q.** And by that, I mean compliance
14 orders under section 13?

15 **A.** Yes.

16 364 **Q.** And charges have been laid
17 against those types of organizations; would that
18 be correct?

19 **A.** Yes, that is correct.

20 365 **Q.** And sometimes convictions?

21 **A.** Yes, that would be correct.

22 366 **Q.** And can you just describe for me
23 how the O.S.P.C.A. polices its own rescue
24 operations?

25 **A.** How we police our own? So could

1 you elaborate a little bit more?

2 367 **Q.** Well, let's say somebody made a
3 complaint against your own rescue operations, how
4 would you proceed?

5 **A.** Well, that would be looked into
6 internally first to determine if there was a
7 concern, and if there was, it would be addressed
8 appropriately.

9 368 **MR. SCHWARTZ:** You're welcome to look at
10 your affidavit which deals with this in
11 some detail.

12 369 **THE WITNESS:** It would also be helpful.
13 You are talking about policing the
14 organization. Are you talking about the
15 organization as a whole, or are you
16 talking about a complaint against an
17 officer?

18 **BY MR. ANDREWS:**

19 370 **Q.** I'm talking about a complaint
20 against part of your rescue and relief part of the
21 organization.

22 **A.** I think I answered that question
23 then.

24 371 **Q.** Yes. When you say it would be
25 looked at internally first, how would you -- can

1 you just elaborate on that a little bit?

2 **A.** Well, all concerns are taken
3 seriously, so a person would be identified to look
4 into the matter, they may bring in a outside party
5 to look into the matter, and check out the
6 situation thoroughly to make sure that there were
7 no problems. And if there were, to address them
8 appropriately.

9 Some of our facilities are also
10 inspected by OMAFRA, because in some of our
11 facilities, we have pound contracts. So they
12 would be inspected by OMAFRA.

13 372 **MR. SCHWARTZ:** And OMAFRA is the Ontario
14 Ministry --

15 373 **THE WITNESS:** Ontario Ministry of
16 Agriculture and Food. And it would be
17 specific to the areas in which pound
18 animals were kept.

19 **BY MR. ANDREWS:**

20 374 **Q.** And to the best of your
21 knowledge, have you ever had a situation where a
22 situation has been investigated and the
23 individuals operating the rescue and relief
24 facility or looking after the animals were in
25 conflict in terms of whether there's a problem or

1 not?

2 **A.** So can you clarify if you are
3 talking about an outside -- another facility or
4 are you talking about our organization?

5 375 **Q.** Your organization. So when you
6 are working at this internally as you described
7 it --

8 **A.** Yes.

9 376 **Q.** -- to the best of your knowledge,
10 is there ever a situation where in looking at it
11 internally you have got an agent or inspector or
12 investigator feels there's a problem but the
13 personnel in charge of the rescue relief facility
14 or looking after the animals disagrees with that
15 inspector or agent or investigator in terms of
16 whether or not there's a problem?

17 **A.** There is certainly a chain of
18 command within the organization, so it would be
19 addressed appropriately through the chain of
20 command within the organization.

21 377 **Q.** So essentially a person -- the
22 person that's more senior would have the final
23 say; would that be fair to say?

24 **A.** Yes, that would be the case, and
25 or it may be determined to bring a third party

1 individual in.

2 378 Q. Okay. I'm just going to move
3 into a slightly different area again. So now the
4 O.S.P.C.A., as an organization, I'm talking about
5 describing now its full form, it's correct to say
6 that the O.S.P.C.A sets out its own mission?

7 A. Yes, the organization has its own
8 mission.

9 379 Q. And its set it out itself,
10 determined that internally?

11 380 MR. SCHWARTZ: I'm a little bit
12 concerned about the broad scope of the
13 word "mission". In the Act itself sets
14 out obligations and it even has a
15 objects clause, so I don't think it's
16 fair to say, for example, that the
17 O.S.P.C.A. could decide that its mission
18 was to run an amusement park or a
19 bakery. It's obviously confined to some
20 extent by its legislative obligations.

21 BY MR. ANDREWS:

22 381 Q. Sure. Let me narrow it down a
23 bit here for you. If you want to go to the record
24 at page 34, this is actually in Mr. Bogaerts'
25 affidavit.

1 382 MR. SCHWARTZ: I've got it here.

2 383 THE WITNESS: Okay.

3 BY MR. ANDREWS:

4 384 Q. What I'm speaking about
5 specifically is page 39. And I'm sure you can see
6 it's just a printout from the O.S.P.C.A's website
7 and it lists "Our mission, our vision, our goal?"

8 A. Yes.

9 385 Q. "Animal welfare philosophy of the
10 O.S.P.C.A." So when I speak about mission, I'm
11 really referring to this, what's stated there
12 in that document. And my question is did the
13 O.S.P.C.A establish that mission itself as an
14 organization?

15 A. The organization as a whole,
16 which includes senior management, board of
17 directors, staff, chief executive officer would
18 partake in developing this messaging.

19 386 Q. Yes. And the same would be said
20 for the vision, correct?

21 A. That is correct.

22 387 Q. And the goals of the O.S.P.C.A as
23 they are stated?

24 A. These are things that are
25 reviewed on a regular basis, you know, through a

1 strategic plan, and so they are openly discussed
2 with the Ontario S.P.C.A. as a whole, as I had
3 indicated through board members, through senior
4 management, through our chief executive officer.

5 388 Q. Okay. And the same would be said
6 for -- we have referred to policies at various
7 points so far through the cross-examination. Same
8 would be said for O.S.P.C.A policies of various
9 sorts?

10 389 MR. SCHWARTZ: Sorry, what do you mean
11 by same would be said, that they are
12 developed internally?

13 BY MR. ANDREWS:

14 390 Q. Yes, by the same components of
15 the organization that she's already described with
16 respect to goals and missions, et cetera.

17 A. Okay, so I'm not clear, because
18 you said goals. So the same as the goals and the
19 mission, but --

20 391 Q. Okay. Well, you had mentioned
21 that you have the board, you have got senior
22 management, you described a number of parts of the
23 organization, the administrative parts of the
24 organization --

25 A. Right, yes.

1 392 Q. -- executives and whatnot.

2 393 Anyways you described them for mission,
3 on how you developed the mission, how you
4 developed the goals --

5 A. Right.

6 394 Q. -- and I'm asking you if it's the
7 same, same essentially same process, same
8 contributors that establish the policies?

9 A. No. To develop the policies that
10 would not necessarily be the case. Depending on
11 the development of the policy, we may actually
12 utilize expertise from individuals who are not
13 employed by the Ontario S.P.C.A. So we would
14 just -- we would do a lot of background research
15 prior to any policies being developed. So, yes,
16 there would be an internal component, however,
17 there may also be advice, guidance given from a
18 third party.

19 395 Q. But I mean ultimately the
20 process, who is involved, that sort of thing is
21 determined internally, even though you may use
22 outside parties?

23 A. Are you talking about policy now?

24 396 Q. Yes.

25 A. The policy would be finalized

1 internally, but, again, it's developed through a
2 very broad piece of research before those policies
3 are implemented, and it would depend on what it's
4 related to; if it's related to a human resources,
5 if it's related to shelter, health and wellness,
6 if it's related to investigations.

7 397 Q. But ultimately the plan that
8 would be put into place in order to develop this
9 policy -- this is what I'm trying to ask --

10 A. I think I already answered
11 that --

12 398 Q. -- those are the decisions that
13 the O.S.P.C.A makes for itself independently,
14 correct?

15 399 MR. SCHWARTZ: Counsel, I think the
16 question has been asked and answered. I
17 don't think you are going to get any
18 more blood from the stone. The witness
19 has made it very clear that policy is
20 developed both internally and with
21 external assistance, and I assume that
22 would include sometimes even lawyers.

23 BY MR. ANDREWS:

24 400 Q. Right. Okay, but ultimately
25 those things we have just described, mission,

1 goals, policies, vision, these all operated
2 independently from the provincial government;
3 would that be correct?

4 **A.** Yes, they would act independently
5 of the Ontario Government.

6 401 **Q.** Thank you. Can you describe to
7 me the appointment process of the Chief Inspector?

8 **A.** The appointment process, so could
9 you elaborate on that? Are you just simply asking
10 who appoints the Chief Inspector or the process
11 for which a person may become the Chief Inspector?
12 I'm not really clear on your question.

13 402 **Q.** Sure. Let's start with who
14 appoints the Chief Inspector?

15 **A.** The Chief Executive Officer will
16 appoint the Chief Inspector.

17 403 **Q.** When they appointed you, what
18 process did they go through to the best of your
19 knowledge, like what factors did they consider to
20 the best of your knowledge?

21 **A.** I was first put into an acting
22 position, because there was a gap in that
23 position, however, there was an open competition
24 for the Chief Inspector role, there was a series
25 of interviews, and I was fortunate enough to be

1 appointed into that role.

2 404 Q. The investigations policies and
3 procedures manual that you included in your
4 affidavit at Tab D --

5 A. Yes.

6 405 Q. -- is it fair to sort of
7 characterize that as the agent and inspector
8 training manual, or one of?

9 A. Yes, it is utilized for training.

10 406 Q. And I think -- I can't recall if
11 I asked this already, I think I may have asked it
12 in relation to just one part of it, but this
13 manual, this is not a public document, it's not
14 made available to the public; is that correct?

15 407 MR. SCHWARTZ: That's been asked and
16 answered.

17 BY MR. ANDREWS:

18 408 Q. I thought so, okay. I think you
19 said it was not made available to the public.

20 409 MR. SCHWARTZ: Sorry, you want
21 confirmation, that's correct, that was
22 the answer.

23 BY MR. ANDREWS:

24 410 Q. That's correct, thank you. I'm
25 going to take you to -- we are going to look at

1 Mr. Bogaerts' affidavit here. Tab 5(b), which
2 starts at page 45, are we there.

3 411 **MR. SCHWARTZ:** Yes.

4 412 **THE WITNESS:** Yes, we are there. I'm
5 just reviewing it.

6 **BY MR. ANDREWS:**

7 413 **Q.** Okay. And I just want, Inspector
8 Mallory, if you could just have a look at that and
9 so that you can identify whether you recognize it.

10 **A.** Yes, I do recognize that.

11 414 **Q.** Okay. Now, as I understand it, I
12 would ask you to confirm for me, this used to be
13 part of the agent and -- O.S.P.C.A agent and
14 inspector training manual; is that correct?

15 **A.** Yes, that is correct. It has
16 since been removed.

17 415 **Q.** Yes, that's also my
18 understanding. When was it removed?

19 **A.** I believe it was removed after
20 changes to legislation in 2009 this section was
21 removed, and then every officer was required to go
22 through a review of the updated training manual.

23 416 **Q.** Right. And it was removed after
24 the legislative changes in 2009, but I would like
25 to narrow this down a little bit, and maybe this

1 can help refresh your memory a little bit, because
2 it's my understanding, Inspector Mallory, from a
3 previous cross-examination, that it was removed in
4 2011 when the training manual was updated. Would
5 that be more accurate?

6 **A.** It may have been 2011. I know
7 that we started reviewing the training manual in
8 2010, and the completion of that may have
9 finalized in 2011.

10 417 **Q.** You say it may have, but I think
11 since your position is what it is, I think you
12 probably remember that it was 2011. Can you think
13 about that for a moment and answer?

14 **A.** It would be 2010 -- 2011. I
15 honestly cannot remember the exact date that it
16 was removed.

17 418 **Q.** All right, that's fine.

18 **A.** I know that we --

19 419 **Q.** Sorry, go ahead.

20 420 **MR. SCHWARTZ:** Sorry.

21 421 **THE WITNESS:** We started the review of
22 the training manual when I became Chief
23 Inspector, and that was 2010.

24 **BY MR. ANDREWS:**

25 422 **Q.** Okay --

1 423 MR. SCHWARTZ: Counsel --

2 BY MR. ANDREWS:

3 424 Q. -- so it was some time after
4 that --

5 425 MR. SCHWARTZ: -- I may have missed it,
6 but were you referring to previous
7 testimony this witness has given and
8 putting a prior statement to her, or is
9 it just from your memory?

10 426 MR. ANDREWS: Well, that's my memory of
11 a prior statement made.

12 427 MR. SCHWARTZ: Okay, I don't think much
13 turns on this, whether it's 2010 or
14 2011, but if you do have a prior
15 statement, you should put it to the
16 witness.

17 428 MR. ANDREWS: I don't have it handy, and
18 for my purposes, the answer is
19 sufficient.

20 429 MR. SCHWARTZ: Thank you.

21 BY MR. ANDREWS:

22 430 Q. Okay, now these animal welfare
23 position statements, and have you had a chance to
24 look through all of the pages in that? I just
25 want confirmation that you have had a look at all

1 of these pages and that this does fairly represent
2 a true copy of these animal welfare position
3 statements?

4 431 **MR. SCHWARTZ:** Have you had a chance to
5 look through these?

6 432 **THE WITNESS:** I have, and these
7 represent old, outdated position
8 statements of the Ontario S.P.C.A.

9 **BY MR. ANDREWS:**

10 433 **Q.** Okay. But at some point, these
11 were the -- would it be fair to say these were the
12 philosophical positions of the O.S.P.C.A,
13 organization as a whole?

14 **A.** My answer is the same. These are
15 old, outdated position statements of the Ontario
16 S.P.C.A.

17 434 **Q.** But at the time these were in the
18 investigator -- agent and investigator training
19 manual, investigators and agents were trained in
20 accordance with these position statements, that
21 would be correct?

22 435 **MR. SCHWARTZ:** Don't answer. Counsel,
23 we are dealing with the constitutional
24 validity of the Act as it is today, and
25 while I am having trouble understanding

1 the relevance of the position that the
2 O.S.P.C.A. may have taken in 2002, or
3 indeed at any point in the past, to the
4 validity of it today, I think the
5 witness has answered the question. This
6 is a prior statement. Justice Johnson's
7 ruling makes it clear that we are
8 dealing with the validity of the Act,
9 not the conduct of the O.S.P.C.A., and
10 so I'm not going to permit the witness
11 to go further on this, so it's a refusal
12 to that question.

13 --- Refusal No. 6 ---

14 436 **MR. ANDREWS:** That's fine. The only
15 thing I have to say to that on the
16 record is we did go through a fairly
17 comprehensive vetting of the relevancy
18 of documents that were included in the
19 records, in the applicant's record, and
20 a lot of things were struck out, and
21 this was not struck out, so I would take
22 from that that the Court is interested
23 in it, and that's why I'm asking
24 questions, in order to provide the Court
25 with more information --

1 437 MR. SCHWARTZ: Fair enough.

2 438 MR. ANDREWS: -- about this document.

3 439 MR. SCHWARTZ: Counsel, I should

4 indicate that we are going to need to

5 take a break at 3:15.

6 440 MR. ANDREWS: Okay.

7 441 MR. SCHWARTZ: I must make a phone call

8 on another file, and we could come back

9 if you don't mind at 3:25 or 3:30.

10 442 MR. ANDREWS: That's fine. It might

11 take us a little past 4:00 o'clock as

12 long as you are okay with that.

13 443 MR. SCHWARTZ: As long as the court

14 reporter is okay.

15 444 MR. ANDREWS: Is that okay?

16 445 COURT REPORTER: That's fine.

17 446 MR. ANDREWS: If you want to take that

18 break now then.

19 447 MR. SCHWARTZ: Would this be a good

20 time?

21 448 MR. ANDREWS: I have a few more

22 questions. My clock says 3:15.

23 449 MR. SCHWARTZ: We have two more minutes.

24 450 MR. ANDREWS: Well, let's take the break

25 now then.

1 451 **MR. SCHWARTZ:** Okay.

2 --- Whereupon recess commenced ---

3 --- Upon resuming ---

4 **BY MR. ANDREWS:**

5 452 **Q.** We were talking -- we were
6 discussing that document, the animal welfare
7 position statements --

8 **A.** Yes.

9 453 **Q.** -- that's at Tab 5(b) of the
10 record.

11 **A.** Yes.

12 454 **Q.** Now you have mentioned that these
13 were outdated philosophies of the organization?

14 455 **MR. SCHWARTZ:** I think that's been asked
15 and answered.

16 **BY MR. ANDREWS:**

17 456 **Q.** Well, I just want her to confirm
18 that I'm stating something correct here, just as I
19 lead into my question.

20 **A.** I stated that these were old and
21 outdated position statements.

22 457 **Q.** Yes, of the O.S.P.C.A?

23 **A.** Yes.

24 458 **Q.** Yes. Now do these types of -- do
25 philosophical questions such as these, you know,

1 on the appropriateness of the factory farming and
2 rodeos and these sorts of things, are these types
3 of philosophies still discussed from time to time
4 by the board or executive?

5 459 **MR. SCHWARTZ:** Sorry, we haven't
6 accomplished that Ms. Mallory is on the
7 board.

8 **BY MR. ANDREWS:**

9 460 **Q.** Well, I would expect that she
10 would be privy to know that these topics are still
11 discussed. If she's not, she can say so.

12 **A.** Well, I don't attend all board
13 meetings, so I honestly can't say whether they are
14 discussed or not. Specifically to these position
15 statements, I don't recall that they have been
16 referenced in a number of years.

17 461 **Q.** But similar things such as the --
18 again we'll use the Marineland example. There was
19 a lot of public statements from the O.S.P.C.A
20 about the care of orcas in captivity, so these
21 types of things still come up and are still
22 discussed by the O.S.P.C.A organization; am I
23 correct?

24 **A.** Could you like show me where the
25 O.S.P.C.A has discussed orcas in captivity.

1 462 Q. Well, there were media releases,
2 media statements made at the time when the
3 Marineland was under investigation; do you recall
4 that?

5 A. I recall lots of media
6 statements. I would like to be able to see one to
7 reference it to -- I don't want to speculate on
8 what was stated in those media releases.

9 463 Q. All right. Do you recall the
10 O.S.P.C.A. making statements about the
11 appropriateness of orcas in captivity? Do you
12 remember that? If you don't that's fine --

13 A. I do not remember us making a
14 statement on that.

15 464 Q. Okay. Are you aware of the
16 O.S.P.C.A lobbying the provincial government for
17 changes to the Act in order to cover orcas and the
18 care of orcas in captivity?

19 465 MR. SCHWARTZ: I think if there's been
20 confidential discussions with the
21 Province, that there may be issues of
22 public-interest immunity, but in terms
23 of any public discussions, I'll allow
24 the witness to answer.
25

1 466 **MR. ANDREWS:** So you said you would not
2 allow?

3 467 **MR. SCHWARTZ:** I won't allow her to
4 answer if there's been any private
5 discussions that would involve the
6 Minister, for example, that might
7 involve public-interest immunity, but if
8 there's been anything public, I'll allow
9 the witness to answer.

10 **BY MR. ANDREWS:**

11 468 **Q.** Okay.

12 **A.** The members of the Ontario
13 S.P.C.A., which included myself, and another
14 senior officer were on a committee to discuss the
15 keeping of orcas and marine mammals. We at no
16 time lobbied the government for change in that
17 respect, but we were part of a committee that had
18 other members on it from other associations.

19 469 **Q.** Okay, so you told me what you
20 didn't do. Can you tell me what contributions you
21 did make to these discussions?

22 **A.** It was just answer some questions
23 about scientific information that was put forth in
24 respect to the care of marine mammals.

25 470 **Q.** All right. And was the

1 organization involved in the changes to the
2 O.S.P.C.A. Act with respect to orcas?

3 A. Only as I had indicated.

4 471 Q. And are there other examples
5 since you have been Chief Inspector of similar
6 consultation with the Ontario Government in terms
7 of changes in the law?

8 A. I have not had any other
9 conversations with respect to changes in the law.
10 I can't speak to other members of the
11 organization.

12 472 Q. Okay. Sorry, I'm jumping around
13 just a little bit here. We had talked about
14 policies and stuff that are made internally
15 before. As I understand it, the O.S.P.C.A. over
16 the years have made decisions to equip their
17 agents and inspectors with different types of
18 equipment. As I understand it, they are of the
19 sort of personal protection type of equipment, and
20 an example of this would be like the flak jackets
21 that are worn by the officers. Am I correct that
22 the decision to wear this equipment is an internal
23 decision of the O.S.P.C.A?

24 A. Yes, in respect of the personal
25 protective equipment, yes, it was a decision of

1 the Ontario S.P.C.A. to provide that equipment
2 after consultation with other individuals who had
3 some expertise in personal safety as well as
4 workmen's safety, workplace safety.

5 473 Q. And those other individuals, are
6 you able to elaborate on that?

7 A. I'm not sure what sort of
8 elaboration you are looking for.

9 474 Q. Well, can you just say who they
10 were?

11 A. It was prior to me becoming Chief
12 Inspector, so the names of those individuals, I
13 don't know who they are.

14 475 Q. Were they merely consultants or
15 did they belong to an organization?

16 A. That I cannot say. I only know
17 that there was input from experts in personal
18 safety as well as workplace safety, in discussions
19 of a willingness. I...

20 476 Q. All right. The same process and
21 decisions were made to equip the agents and
22 inspectors with -- what's the appropriate word for
23 like the billy sticks? What's the proper word for
24 that?

25 A. They are referred to as batons.

1 477 Q. Batons. Is that correct?

2 A. Yes. Again, through consultation
3 with other experts.

4 478 Q. And pepper spray?

5 A. Same thing, it was done at the
6 same time. Pepper spray, batons and body armour
7 were issued at the same time.

8 479 Q. Anything else that I'm missing?

9 A. I don't believe so.

10 480 Q. And at the same time, were they
11 also considering firearms?

12 A. Not to my knowledge.

13 481 Q. All right. The zoo registry that
14 you discuss in your affidavit --

15 A. Yes.

16 482 Q. So that zoo registry program, as
17 you describe it, I just ask for confirmation when
18 somebody registers their zoo with the O.S.P.C.A,
19 it includes providing the O.S.P.C.A with
20 disclosure of what would otherwise be private
21 information of the zoo; is that fair to say?

22 A. What we generally look for is I
23 can't say whether it's private to that particular
24 zoo or not. The information that we are looking
25 to obtain is an inventory of animals, a species of

1 animals, if they have a breeding program, if they
2 have a euthanasia policy, if they have an exit
3 plan for their animals should they decide to get
4 out of a business, do they have a veterinarian,
5 and those are the sorts -- that's the sort of
6 information that we are looking for to be part of
7 the registry, which is voluntary. There is no --
8 they are not made -- it's not made mandatory for
9 them to be part of the registry.

10 483 Q. I describe it as private
11 information, but ultimately that information, what
12 you just described, that would be information that
13 the O.S.P.C.A wouldn't otherwise be privy to;
14 that's fair to say, correct?

15 A. No, we ask for that information.

16 484 Q. Yes, you ask for it and otherwise
17 you wouldn't be privy to it, is what I'm asking?

18 A. Correct.

19 485 Q. Okay. Now you indicated that I
20 can't remember if it was actually in your
21 affidavit or if it's the letter that's attached to
22 the record, that those zoos that do not register
23 though would be subject to greater scrutiny than
24 those that do register. Is that in fact --

25 A. No, it's not greater scrutiny.

1 An inspection is conducted equally at every
2 facility. The only advantage that somebody might
3 have if they voluntarily become part of the
4 registry is that we would -- we would have an
5 announced visit and an unannounced visit, whereas
6 people who were not part of the registry, it's two
7 unannounced visits.

8 486 Q. I see. Okay, now you also have
9 these MOUs, memorandum of understandings with
10 livestock groups?

11 A. That is correct.

12 487 Q. And as I understand it, when
13 investigating an animal owner that is a member of
14 one of these livestock groups, you have some
15 agreement with the livestock group on how you will
16 proceed with the investigation; is that fair to
17 say?

18 A. They vary a little bit
19 differently between one organization or another,
20 but, yes, we have developed processes, if you
21 will, for doing an investigation on an industry
22 that is part of that particular agency that we
23 have an agreement with.

24 488 Q. All right. And how would you
25 conduct an investigation differently if you had

1 one of these agreements in place and it's in
2 effect essentially because of you're investigating
3 a member of one of these groups?

4 **A.** So generally what we do is if we
5 get a complaint about a particular commodity that
6 we have an MOU with, we would reach out to the
7 commodity, we would ask for someone from that
8 industry to attend along with us. They would
9 attend on the property and we would -- the Ontario
10 S.P.C.A. would do the investigation, but the
11 commodity would be there too as a resource to both
12 us and possibly to the property owner.

13 489 **Q.** And what, if anything, do you --
14 like there's sort of an exchange here where you do
15 things in a certain way. Do you receive anything
16 like aside from -- or is it assistance from them
17 essentially what you get out of these deals?

18 490 I guess what I'm asking for is what does
19 the O.S.P.C.A get out of these deals or what is
20 the advantage to the O.S.P.C.A?

21 **A.** Well, I think there's an
22 advantage on both sides. The Ontario S.P.C.A. has
23 been able to have a much more open dialogue with a
24 number of these commodity groups, and those groups
25 we do cross training, we can share information, as

1 well as those commodity groups and those members
2 that may attend on the property have a greater
3 understanding of what the Ontario S.P.C.A. does.

4 So I think it's mutually beneficial for
5 all these agreements, and I also think it's
6 beneficial to the person who we may be
7 investigating to know that they have somebody in
8 attendance that understands the industry, and can
9 either support them or educate them, whatever the
10 case may be.

11 491 Q. Do you receive any information
12 from the livestock groups about the individual
13 that you are investigating?

14 A. Generally, I'm not sure what you
15 are referring to as information. We will often
16 times -- the Ontario S.P.C.A. will get a complaint
17 about a commodity, we will check with the
18 commodity agency to determine whether or not they
19 are a member or licensed under that particular
20 commodity, and we ask if they can attend with us.
21 We don't ask any other information than that other
22 than are they a member of that, so that is
23 essentially the information that we would get from
24 them.

25 492 Q. Okay. Just to be clear, like any

1 information that the commodity group might have on
2 file, whether they are in compliance with the *Milk*
3 *Act*, or do you have access to any of those
4 agreements?

5 **A.** No, that information is not
6 shared.

7 493 **Q.** And I'm just going to ask, and
8 you can refuse if you wish, could we have an
9 undertaking to provide a copy of the MOUs that you
10 have with those livestock groups?

11 494 **MR. SCHWARTZ:** So, Counsel, can we go
12 off the record for a moment?

13 495 **MR. ANDREWS:** Sure.

14 -- discussion off the record --

15 -- upon resuming --

16 496 **MR. SCHWARTZ:** With respect to the
17 request to provide copies of the
18 memorandums of understanding with
19 various farm organizations, which off
20 the record we have noted are referred to
21 at paragraph 7 of Mr. Bogaerts'
22 affidavit, pages 33 and 34 of the
23 record, and at Exhibit D, beginning at
24 page 59 of the record, the respondent
25 will take those requests under

1 advisement and will make inquiries with
2 counsel for the O.S.P.C.A. and the
3 O.S.P.C.A. before confirming whether the
4 undertaking will be granted or rejected.

5 --- Under Advisement No. 1 ---

6 **BY MR. ANDREWS:**

7 497 **Q.** Okay, thank you.

8 498 All right, Inspector Mallory, I want to
9 talk to you now about the training of your agents
10 and inspectors that you reference in your
11 affidavit.

12 **A.** Yes.

13 499 **Q.** And can you just -- you have
14 covered it to some degree here in your affidavit.
15 Can you just give me an overview of this, you
16 know, and, as I understand it, this is your
17 initiative, is it not?

18 **A.** Well, certainly training has over
19 the course of a number of years has enhanced and
20 certainly, as Chief Inspector, there was changes
21 that I made to the training program in
22 consultation with others, so I'm happy to go --
23 I'm not sure whether you want me to go through
24 what was changed or what is implemented now.

25 500 **Q.** Well, tell me about how it was,

1 because as you mentioned, I think you mentioned
2 that everything was essentially overhauled between
3 2010 and 2011. So if you could start with just
4 telling me how it was before in terms of the
5 amount of time and what was involved in the
6 training before then, and what it is now, I would
7 appreciate that.

8 501 **MR. SCHWARTZ:** Counsel, can you help me
9 with the relevance?

10 502 **MR. ANDREWS:** Well, it's in her
11 affidavit. Ultimately we are looking
12 for an overview of the organization and
13 how they operate, and she's gone to
14 great lengths in her affidavit to
15 describe the training of the agents and
16 inspectors. With it being in her
17 affidavit, I think these are fair
18 questions just on that basis alone. It
19 seems to me it's in there for relevancy
20 of the AG.

21 503 **MR. SCHWARTZ:** Certainly it's one of the
22 duties of the Chief Inspector, so I'll
23 permit her to answer.

24 504 **THE WITNESS:** So training has certainly
25 evolved over the years to what we have

1 now is a 16-week program, there's four
2 weeks of on-line, and then there is four
3 weeks of in class, and then there are as
4 one week of inspector training -- sorry,
5 of livestock training and equine
6 training as well as one thing that I had
7 implemented was for a new recruit to
8 actually do ride-along training, and
9 they had to -- it was made mandatory
10 that they completed those hours of
11 mandatory training. The guideline here
12 is set at four weeks, however, that is
13 really dependent upon the officer who
14 supervises them as well as the officer
15 who is mentoring them to determine
16 whether or not they have a clear
17 understanding of the role that they will
18 be doing. So in some instances, it
19 might be longer than that. Part of that
20 ride-along was that they also spent one
21 week dealing with livestock, and
22 understanding properly the requirements
23 for livestock, and that was conducted in
24 a number of different ways.

25 I can go through essentially

1 the training consists of some
2 competencies, investigative techniques,
3 principles of investigations, clearly
4 understanding the *Ontario S.P.C.A. Act*,
5 what the officers authority was within
6 that Act, understanding the standards of
7 care and what was required, rights of
8 entry, to ensure they understood the
9 *Charter*, would review case studies. The
10 training also went through all of the
11 paperwork that was required to ensure
12 that they understood how to properly
13 prepare documents, having an ability to
14 understanding and recognizing disease as
15 well as distress, and knowing what to do
16 if they didn't have a clear observation
17 of what that looked like. Touched a
18 little bit on illegal dog fighting,
19 bestiality, and of course animal
20 handling. There's a section on personal
21 safety, first-aid training, and then a
22 lot of our training has also focussed on
23 leadership, because what we are looking
24 for in new recruits is individuals who
25 can carry themselves very professionally

1 and can be mentors for other down in the
2 future, so there is, you know, a lot of
3 training spent on that. And, again,
4 that's when we are looking for people to
5 become recruits is that they have a
6 background in policing, and or have
7 similar education, animal care, and
8 ideally both, but who are mature
9 individuals who could potentially be the
10 leaders for the future.

11 They are throughout the
12 testing process, the recruits are
13 required to write and do oral exams and
14 they must pass those exams with an
15 80 percent mark, and failing that, then
16 they don't -- they are not appointed as
17 an agent, and they would only be able to
18 reapply for that position the next
19 calendar year. Have I answered that --

20 **BY MR. ANDREWS:**

21 505 **Q.** Okay.

22 **A.** -- sufficiently?

23 506 **Q.** Yes, I think so. This curriculum
24 that you just described, this is something that
25 has been determined internally with the S.P.C.A.?

1 **A.** Not entirely internally. We have
2 instructors who participate in this training. We
3 utilize a retired RCMP officer, who is also a --
4 was a professor at Algonquin College in the Police
5 Foundations program, has years and years of
6 experience dealing with investigations, he helped
7 put the training program together. As well as we
8 have an OPP officer who assists with the training
9 on the personal safety aspect of things, and we
10 have a certified Red Cross instructor who does the
11 Red Cross, and when we are doing livestock and
12 equine training we utilize the University of
13 Guelph, and the Animal Sciences Department put
14 together the program for livestock and equine.

15 So certainly there is a lot of
16 expertise, external expertise who has assisted in
17 pulling this program together.

18 507 **Q.** Okay. What I was actually trying
19 to get at is in terms of designing the curriculum,
20 establishing the number of weeks and that sort of
21 thing, this plan was developed internally by the
22 S.P.C.A., correct?

23 508 **MR. SCHWARTZ:** I'm not sure I understand
24 what you mean by internally. The
25 witness has just answered that they had

1 consultation with a number of external
2 persons, so I think the question has
3 been answered unless you want to reframe
4 it.

5 **BY MR. ANDREWS:**

6 509 **Q.** The decision to -- the decisions
7 to have the curriculum like this, ultimately
8 implementing this is a decision of the O.S.P.C.A.
9 organization, correct?

10 510 **MR. SCHWARTZ:** Before the witness
11 answers, my concern is that that the
12 affidavit addresses this, and anyways,
13 I'll deal with it in reply if I have to.
14 Go ahead.

15 511 **THE WITNESS:** Do you want me to answer?

16 512 **MR. SCHWARTZ:** Yes.

17 513 **THE WITNESS:** So the Chief Inspector of
18 the Ontario S.P.C.A. would make the
19 final decision of what the curriculum
20 looks like, and that is based on opinion
21 from others. Also looked at the
22 recruitment training for policing, their
23 recruitment training is also 16 weeks,
24 but takes in many pieces of legislation,
25 and ours is essentially dealing with a

1 very few pieces of legislation. So this
2 curriculum was put together and
3 finalized based on what was determined
4 to be the need for -- to be able to
5 ensure that we had agents who had a
6 clear understanding of what it was that
7 they were supposed to do once they were
8 in the field.

9 And those officers would be
10 under strict supervision for a minimum
11 of six months even after they were
12 appointed to ensure that they were doing
13 the job appropriately.

14 **BY MR. ANDREWS:**

15 514 **Q.** Okay. And before the overhaul in
16 2010, can you just tell me like how many weeks of
17 training did an agent receive?

18 **A.** Prior to that, it's changed over
19 the years, it's gone from two days to one week, to
20 two weeks, to three weeks, to four weeks. It
21 just -- it has evolved over the years.

22 515 **Q.** All right. How long ago was it
23 two days, for example?

24 **A.** Twenty years ago.

25 516 **Q.** Then just before the changes in

1 2010, 2011, can you tell me what it was?

2 **A.** I believe it was four weeks, so
3 it was -- it was once we received actually funding
4 from the government, and I can't recall what year
5 that was, I was not Chief Inspector nor was I
6 senior inspector. We received funding from the
7 government. We implemented a week-long training.
8 From there, it went to four weeks training. Just
9 prior to becoming Chief Inspector, we had
10 implemented the on-line portion of the training,
11 and then becoming Chief Inspector we added a
12 couple of extra weeks of in-classroom training,
13 and of course the four weeks after of mentoring by
14 a seasoned officer doing ride-alongs, and --

15 517 **Q.** So --

16 **A.** -- in addition, we have also
17 added a year -- a week of equine training.

18 518 **Q.** So, again, just trying to get my
19 timelines a little bit. Around 2008 -- 2009,
20 there was -- am I right that the agent training
21 was four weeks of on-line training?

22 **A.** Yes, there was four weeks. It
23 was essentially 40 hours of on-line, and they were
24 given four weeks to complete it, and then there
25 was four weeks of classroom time, and one week of

1 ride-alongs.

2 519 Q. Sorry, eight in total, plus a
3 week of ride-along?

4 A. Yes.

5 520 Q. Okay. And before you mentioned
6 four weeks for the agents. Was that by
7 correspondence, do you remember?

8 A. No, there would be classroom
9 time.

10 521 Q. But a total of four weeks --

11 A. Yes.

12 522 Q. -- at one point?

13 A. Yes.

14 523 Q. All right. In your affidavit,
15 you talk about the investigator and agent conduct
16 reviews?

17 A. Yes.

18 524 Q. And you have included Article 15
19 of the -- I think it's Tab L of your affidavit.
20 It's Article 15 of O.S.P.C.A. By-Law No. 12.

21 A. I didn't have L.

22 525 MR. SCHWARTZ: Okay. It seems to be on
23 page 802.

24 526 THE WITNESS: Okay, I have it in front
25 of me.

1 **BY MR. ANDREWS:**

2 527 **Q.** Right. So these by-laws, I think
3 at the very end, it has the year -- there's
4 actually no date on it, but it appears that they
5 were passed in 2016. Do you know if that's right?

6 528 **MR. SCHWARTZ:** The very last page has --

7 529 **THE WITNESS:** I'm just looking to see
8 which by-law it is.

9 530 **MR. SCHWARTZ:** Was this passed in 2016?

10 531 **THE WITNESS:** Oh, this is number 12.

11 532 **MR. SCHWARTZ:** We are just going to go
12 off the record for a second.

13 533 **MR. ANDREWS:** No problem.

14 --- Off the record ---

15 --- Upon resuming ---

16 534 **MR. SCHWARTZ:** Some time in December of
17 2016 By-Law No. 15 was passed by the
18 Board of the O.S.P.C.A.

19 535 **THE WITNESS:** By-law 12.

20 536 **MR. ANDREWS:** I think it's By-law 12 --

21 537 **MR. SCHWARTZ:** By-law 12, sorry, thank
22 you.

23 538 **MR. ANDREWS:** -- I think it's
24 Article 15. Just point of clarity, for
25 the record, you said By-Law No. 15.

1 539 MR. SCHWARTZ: Yes, my mistake.

2 By-law 12. In fact, it was --

3 540 MR. ANDREWS: You said -- sorry?

4 541 MR. SHILLER: November 21, 2016.

5 542 MR. SCHWARTZ: I'm sorry, I have been
6 corrected, November 21, 2016, is the
7 date that it was passed.

8 543 MR. ANDREWS: More precise, there you
9 go.

10 544 Q. Inspector Mallory, was this the
11 first time that there was a section in the by-laws
12 on appointments, suspensions and cancellations,
13 Article 15?

14 A. Previous by-laws would have
15 sections similar to this.

16 545 Q. They did have a similar section?

17 A. Yes.

18 546 Q. Okay. Because we had included in
19 our -- well, in Mr. Bogaerts' affidavit I think
20 By-Law No. 9, and it wasn't in there. Do you know
21 when this kind of section entered into the
22 O.S.P.C.A.'s by-laws?

23 A. So By-Law No. 9 indicated that
24 the board actually had the authority to appoint
25 and revoke agent inspector status, and they would

1 have the authority to approve those
2 recommendations. When the *O.S.P.C.A. Act* changed
3 in 2009, it gave the Chief Inspector the authority
4 to do that. So this may have changed
5 significantly as a result of that.

6 547 **MR. SCHWARTZ:** Counsel, I'm looking at
7 page 134 of the record, which is
8 By-Law No. 9, and it does seem to be
9 very similar to page 802 of the record,
10 which is By-Law No. 12, and then it was
11 Article 14, now it's Article 15, but
12 from my brief review, they seem to be,
13 if not substantially similar, they may
14 even be the same.

15 548 **MR. ANDREWS:** Okay, could I go off the
16 record for a second.

17 -- discussion off the record --

18 -- upon resuming --

19 **BY MR. ANDREWS:**

20 549 **Q.** Yes, I'll just withdraw my last
21 questions about Article 15 of the by-laws, I'm
22 going to move on.

23 550 Okay, my next questions, and
24 Mr. Schwartz, if you want to, there's going to be
25 a legal component to this, so it may be better for

1 you to put the AG's position on the record rather
2 than having Inspector Mallory answer, if that's
3 okay with you.

4 551 **MR. SCHWARTZ:** Let's hear the question.

5 **BY MR. ANDREWS:**

6 552 **Q.** All right. I was going to ask,
7 and, again, so we have made assertions in our
8 materials that certain legislation does not apply
9 to the O.S.P.C.A. so I was going to ask for
10 confirmation on the record, and really this would
11 may be better served coming from counsel for the
12 Attorney General rather than the witness, is
13 whether the *Police Services Act* applies in any way
14 to the O.S.P.C.A?

15 553 **MR. SCHWARTZ:** In any way, yes. The
16 O.S.P.C.A allows, as we heard, for an
17 inspector to be accompanied by another
18 person. The other person could be an
19 Ontario Provincial Police officer, or a
20 municipal police officer, and their
21 conduct would be covered by the *Police*
22 *Services Act*.

23 **BY MR. ANDREWS:**

24 554 **Q.** All right. And any other way?

25 555 **MR. SCHWARTZ:** I'll take that under

1 advisement.

2 --- Under Advisement No. 2 ---

3 **BY MR. ANDREWS:**

4 556 **Q.** Okay. And the same question with
5 respect to the *Ombudsman Act*. Does the O.S.P.C.A.
6 in any way fall under the jurisdiction of the
7 *Ombudsman Act*?

8 557 **MR. SCHWARTZ:** I think it's a legal
9 question that can be determined by
10 looking at that Act, but if you would
11 like our legal position on that, I'll
12 take it under advisement.

13 558 **MR. ANDREWS:** Okay, thank you.

14 --- Under Advisement No. 3 ---

15 559 **MR. ANDREWS:** I'll ask for the same
16 counsel for the *Freedom of Information*
17 *and Privacy Act*?

18 560 **MR. SCHWARTZ:** *The Freedom of*
19 *Information and Protection of Privacy*
20 *Act*, subject to my clarifying it later,
21 it's my understanding that it applies to
22 the Government of Ontario, and would not
23 apply to the Ontario Society for
24 Prevention of Cruelty to Animals.
25 Similarly the *Municipal Freedom of*

1 *Information and Protection of Privacy*
2 *Act, MFIPPA*, would not apply to the
3 Ontario Society for Prevention of
4 Cruelty to Animals.

5 There may be other privacy
6 legislation like PIPEDA, dealing with
7 certain electronic information that's
8 federal legislation that may apply to
9 many entities. I don't know whether it
10 would apply to the O.S.P.C.A. There's
11 the *Personal Health Information*
12 *Protection of Privacy Act*, I don't know
13 if that would apply to the O.S.P.C.A.,
14 so --

15 561 **MR. ANDREWS:** Sorry, would or it
16 wouldn't?

17 562 **MR. SCHWARTZ:** I don't know.

18 563 **MR. ANDREWS:** Okay. And the *Broader*
19 *Public Sector Accountability Act*, that's
20 a new one. Do you want to take that
21 that one under advisement?

22 564 **MR. SCHWARTZ:** I don't know enough about
23 that statute, but we can provide you
24 with -- well, yes, let me take it under
25 advisement, so I can look at it.

1 --- Under Advisement No. 4 ---

2 565 **MR. ANDREWS:** Okay, and there was
3 Bill 8, the *Public Sector and MPP*
4 *Accountability and Transparency Act*
5 changed a number of different pieces of
6 legislation. Would you be able to look
7 at that one as well?

8 566 **MR. SCHWARTZ:** Is the bill now a law?

9 567 **MR. ANDREWS:** Yes. Well, yes, it did a
10 number of things. It changed a number
11 of legislation, including the *Ombudsman*
12 *Act*, and I believe it established the
13 *Broader Public Sector Accountability*
14 *Act*, or at least it made fundamental
15 changes to it.

16 568 **MR. SCHWARTZ:** If the Act has been
17 proclaimed into force and is now
18 operable, we can look at that and take
19 it under advisement.

20 569 **MR. ANDREWS:** Thank you.

21 --- Under Advisement No. 5 ---

22 **BY MR. ANDREWS:**

23 570 **Q.** And that question is now directed
24 to Inspector Mallory again. And, again, this is
25 just to the best of your knowledge. First of all,

1 I mentioned Bill 8, the *Public Sector and MPP*
2 *Accountability Transparency Act*, Inspector
3 Mallory, are you familiar with that law?

4 **A.** I am not.

5 571 **Q.** Okay. Well, I was going to ask
6 you if you knew of any consultation with the
7 O.S.P.C.A between it and the government, but since
8 you are not familiar with it, I presume you can't
9 answer that.

10 572 All right, Inspector Mallory, again this
11 one may end up going to Hart as well, but to the
12 best of your knowledge, you are very familiar with
13 the *O.S.P.C.A Act*, and how it essentially governs
14 the S.P.C.A.'s mandate, especially from an
15 investigation standpoint. Is there any other
16 legislation that would regulate or direct the
17 actions and policy or procedures or conduct of the
18 S.P.C.A.?

19 573 **MR. SCHWARTZ:** It seems to be a legal
20 question, Counsel. Why don't we take it
21 under advisement.

22 --- Under Advisement No. 6 ---

23 **BY MR. ANDREWS:**

24 574 **Q.** That's fine. To the best of your
25 knowledge, Inspector Mallory, had the O.S.P.C.A

1 ever had any consultation with Ontario's
2 Ombudsman's office about complaints received by
3 the Ombudsman about the O.S.P.C.A?

4 **A.** Not that I'm aware of.

5 575 **Q.** To the best of your knowledge,
6 has the provincial government ever approached the
7 O.S.P.C.A or had consultation with the O.S.P.C.A
8 about legislative changes that would bring it
9 under the jurisdiction of the *Police Services Act*?

10 **A.** Not that I'm aware of.

11 576 **Q.** How about bringing it under the
12 jurisdiction of *the Ombudsman Act*?

13 **A.** Not that I'm aware of.

14 577 **Q.** How about *the Freedom of*
15 *Information and Protection of Privacy Act*?

16 **A.** The only conversation that I
17 recall in regards to the Information Act --
18 Freedom of Information -- was whether or not that
19 would apply to the Ontario S.P.C.A. That's the
20 only conversation that I recall.

21 578 **Q.** Okay. And can you tell me what
22 that conversation was about more specifically?

23 579 **MR. SCHWARTZ:** Well, if it was with a
24 lawyer, it would be privileged and
25 should not be shared, so I just would

1 warn the witness before answering.

2 580 **THE WITNESS:** It was more of a
3 conversation, and it was just as I said,
4 earlier, my earlier statement.

5 **BY MR. ANDREWS:**

6 581 **Q.** So you had a conversation with an
7 official or a person with the Ontario Provincial
8 Government?

9 **A.** A bureaucrat regarding whether or
10 not the *Freedom of Information Act* would apply to
11 the Ontario S.P.C.A., and it was just that, a
12 conversation.

13 582 **Q.** Do you recall, was there -- were
14 they asking you to -- were questions being asked
15 of you in this conversation?

16 **A.** As I said, I think I've answered
17 it. It was merely a conversation. There was no
18 conclusion to it. There was no answers. It was
19 just a conversation.

20 583 **Q.** Okay, very well then. And then
21 lastly, the same question as I asked with those
22 other pieces of legislation, have they ever
23 approached you or consulted with you to best of
24 your knowledge, consulted with the O.S.P.C.A about
25 being included under the jurisdiction of the

1 *Broader Public Sector Accountability Act?*

2 **A.** Not that I'm aware of.

3 584 **Q.** Okay. All right, I'm going to
4 switch to a different area now. You are familiar,
5 Inspector Mallory, I presume with sections 11.1(1)
6 of the *O.S.P.C.A Act*, which is the one with
7 respect to standards of care?

8 **A.** Yes.

9 585 **Q.** Provided standards of care, and
10 also 11.2(1), which is causing animal to be in
11 distress?

12 **A.** Yes.

13 586 **Q.** And 11.2(2), permitting an animal
14 to be in distress?

15 **A.** Yes.

16 587 **Q.** And can you just describe to me
17 from a training standpoint when agencies and
18 inspectors are being trained, what is the
19 difference between these provisions?

20 588 **MR. SCHWARTZ:** Counsel, I'm worried
21 about legal advice being disclosed, and
22 I think these provisions are subject to
23 interpretation by the Animal Care Review
24 Board, the courts. I don't know that
25 it's this witness' role to interpret

1 them and explain the differences.

2 That's a question of law, so it's a
3 refusal.

4 --- Refusal No. 7---

5 589 **MR. ANDREWS:** I hear you, but I guess
6 what I'm trying to get at here is the --
7 okay, let's maybe put it another way.

8 590 **MR. SCHWARTZ:** Please do.

9 **BY MR. ANDREWS:**

10 591 **Q.** In your experience, I am going to
11 put a statement to you and ask you to confirm it,
12 if you can, or correct it.

13 592 In your experience, very frequently --
14 when a person hasn't, for example, provided a
15 certain level of care to an animal, and charges
16 are essentially then levied against the person,
17 there will be charges under 11.1 and also 11.2 for
18 what is essentially the same thing; would that be
19 a correct way to describe your experience?

20 593 **MR. SCHWARTZ:** So I'm going to ask the
21 witness not to answer. I mean obviously
22 there's legal arguments. There's the
23 *Kienapple* principle that may or may not
24 apply a judge could rule it arises out
25 of the exact same subject matter and

1 stay one or the other of those charges.
2 I'm not sure what any of this has to do
3 with the relevancy of the Act, how it's
4 enforced by the inspectors or what
5 charges are laid, so I'm going to say
6 that's a refusal.

7 --- Refusal No. 8 ---

8 **BY MR. ANDREWS:**

9 594 **Q.** Okay. It's relevant, Counsel, to
10 our position on the criminal law issue, and that's
11 where it's relevant. We see the 11.1 -- just to
12 be perfectly blunt with you -- 11.1, we see that
13 as being something that would be in the purview of
14 provincial legislation, but 11.2 would be -- would
15 not be, and what I would like to do here is try to
16 have the Chief Inspector, who does oversee the
17 training of her inspectors and is involved with
18 essentially leading them and knowing what the
19 differences are, because ultimately they are
20 responsible for providing these charges when they
21 feel it's appropriate. What is the difference?

22 595 **MR. SCHWARTZ:** So your question presumes
23 that the person is always charged under
24 both 11.1 and one of 11.2(1) or (2) and
25 I'm not sure that's been established.

1 596 **MR. ANDREWS:** Right. And so what I'm
2 trying to establish here, and trying to
3 have Inspector Mallory provide some
4 guidance to the court on what is the
5 difference between them --

6 597 **MR. SCHWARTZ:** It's a legal question.

7 598 **MR. ANDREWS:** -- from their perspective.

8 599 **MR. SCHWARTZ:** It's a legal question for
9 which there is a refusal.

10 --- Refusal No. 9 ---

11 **BY MR. ANDREWS:**

12 600 **Q.** Would you allow any question that
13 would be related to how they are trained to levy
14 one charge versus the other?

15 601 **MR. SCHWARTZ:** I'm struggling to see its
16 relevance.

17 602 **MR. ANDREWS:** Well, I already explained
18 it.

19 603 **MR. SCHWARTZ:** So is the question what's
20 the difference between an animal in
21 distress and what's the difference
22 between that and not complying with the
23 standards of care?

24 604 **MR. ANDREWS:** Essentially, yes.

25 605 **MR. SCHWARTZ:** All right, if the witness

1 is comfortable --

2 **BY MR. ANDREWS:**

3 606 **Q.** Since you characterize that as a
4 legal question though, I'm putting it to the
5 witness as how are they trained in terms of
6 determining the difference?

7 607 **MR. SCHWARTZ:** Again, I don't see the
8 relevance. Let's say they are trained
9 wrong, let's say the training is later
10 found by a court to be based on
11 distinctions that aren't legally viable.
12 I don't know how that relates. It's up
13 to the court to determine what the
14 difference is between these provisions.
15 It's not how they are applied, and I
16 think that's consistent with Justice
17 Johnson's ruling. But in order for us
18 not to bicker back and forth, I'll just
19 see if the witness would like to weigh
20 in and explain the difference between
21 distress and standards of care, if
22 that's okay.

23 **BY MR. ANDREWS:**

24 608 **Q.** Sure.

25 **A.** It's a hard question to answer in

1 that there are so many different circumstances
2 which something like this may or may not apply, so
3 it's very difficult to answer the question I think
4 the way that you want -- you would like it to be
5 answered.

6 609 **Q.** Okay, that's fine, I can move on.

7 610 All right, now we are practically at the
8 end here. What I would like to do, unless I can
9 just sort of get a -- I better do it one at a
10 time. I'm going to go through the exhibits that
11 were provided from -- that were included in
12 Mr. Bogaerts' affidavit, and when we get to one
13 that appears to be something that comes from the
14 O.S.P.C.A., my question was specifically going to
15 be for the witness to confirm whether or not it's
16 a true copy of an O.S.P.C.A. document?

17 611 **MR. SCHWARTZ:** If this is your last
18 question, can we take that under
19 advisement and we can do it just as well
20 as you and respond?

21 612 **MR. ANDREWS:** Yes. Yes, absolutely. We
22 can do that any way you wish as long as
23 we receive something that can form part
24 of the record, just to confirm it,
25 because obviously Mr. Bogaerts putting

1 these on the records versus someone who
2 is actually with the S.P.C.A. is less
3 preferrable.

4 613 **MR. SCHWARTZ:** So let us take that under
5 advisement, and those would be exhibits
6 from I think it's just one of
7 Mr. Bogaerts' affidavits, I don't know
8 if they are any in the smaller
9 affidavit, but we will review those that
10 purport to come from the O.S.P.C.A. and
11 advise you as to whether in fact they
12 are true copies of documents from the
13 O.S.P.C.A., okay.

14 614 **MR. ANDREWS:** Yes.

15 --- Undertaking No. 1 ---

16 615 **MR. ANDREWS:** And, Mr. Schwartz, I just
17 noticed that in the second affidavit of
18 Mr. Bogaerts there's a sessional paper
19 from the Ontario Government. That
20 obviously just try to save a little bit
21 of time, since we are on the same topic,
22 when I examine Ms. Kool, I'll be asking
23 for the same thing when it comes to
24 anything that appears to be a Government
25 of Ontario document, so if we could -- I

1 could just get the same undertaking
2 under advisement, then I can have that
3 dealt with, and we don't have to cover
4 this with Ms. Kool.

5 616 **MR. SCHWARTZ:** That's at page 529 of the
6 record?

7 617 **MR. ANDREWS:** That's right.

8 618 **MR. SCHWARTZ:** Okay, we'll know that's
9 coming.

10 619 **MR. ANDREWS:** Sorry, I missed that.

11 620 **MR. SCHWARTZ:** Yes, that's fine, thank
12 you. We know that is coming, that
13 request is coming. We will consider
14 that, thank you.

15 621 **MR. ANDREWS:** Okay, so consider it the
16 same way, so I don't have to cover it
17 again with Ms. Kool?

18 622 **MR. SCHWARTZ:** I hope to have an answer
19 for you by the time you cross-examine
20 her.

21 --- Undertaking No. 2 ---

22 623 **MR. ANDREWS:** Okay, that's fine too
23 then. Okay, well, that's it then.
24 That's all for me.

25 624 **MR. SCHWARTZ:** I'll be very brief.

RE-EXAMINATION BY MR. SCHWARTZ:

1
2 625 Q. Ms. Mallory, you stated in answer
3 to a question regarding the curriculum and whether
4 it was internally created that you also received
5 funding from the provincial government; do you
6 recall that?

7 A. Yes, I do.

8 626 Q. And so with respect to this
9 question, can you clarify the connection, if any,
10 between funding from the provincial government and
11 training?

12 A. The funding that -- prior to
13 receiving the funding in 2012 -- 2013, the funding
14 that we received was specific for training. So
15 initially, there was a hundred thousand, and then
16 it was increased to \$500,000, and it was
17 designated for training only.

18 627 Q. And is this what you refer to on
19 page 723 of the record, which is the transfer
20 payment agreement, I guess it's called, with the
21 Province?

22 A. The transfer payment, this was
23 part of the agreement for the \$5.5 million --

24 628 Q. Yes.

25 A. -- which included a designation

1 of money to be used specifically for training and
2 to designate a deputy chief who was responsible
3 for facilitating the training.

4 629 Q. And it refers at page 723 to a
5 Schedule F, and is that the contents of the
6 training that the Province requested? Let me just
7 turn it up.

8 A. This was -- this particular
9 document was provided to the provincial government
10 as a report for the spending of the portion of
11 money that was allocated towards training.

12 630 Q. And this schedule is a schedule
13 to the transfer payment agreement?

14 A. Yes.

15 631 Q. When you talked about
16 commodities --

17 A. Yes.

18 632 Q. -- you were talking about the
19 MOUs.

20 A. Yes.

21 633 Q. I didn't know what that meant.

22 A. So I would be referring to the
23 dairy industry, the beef industry, pork industry,
24 chicken industry, those would be considered
25 commodities.

1 634 **Q.** Okay. So is this by the
2 industry, do you mean like an industry
3 association?

4 **A.** Yes, so we have -- yes, there are
5 several different -- there's Beef Farmers of
6 Ontario, Dairy Farmers of Ontario, Ontario Chicken
7 Farmers, and those are an association that people
8 would belong to. Some have regulatory authority,
9 like the Dairy Farmers of Ontario, they have the
10 *Milk Act* that dairy farmers would have to follow,
11 that is more predominantly regulates the safe
12 handling of milk products.

13 635 **Q.** And you were asked about the zoo
14 registry.

15 **A.** Yes.

16 636 **Q.** And I'm looking here at page 724
17 of the transfer payment agreement. Is this
18 something as well that came out of the transfer
19 payment agreement?

20 **A.** That is correct.

21 637 **Q.** So when Mr. Andrews asked you if
22 policies and programs are created independently of
23 the government, can you clarify what role the
24 transfer payment agreements have?

25 **A.** So with the transfer payments,

1 the Ontario S.P.C.A. is obligated to do certain
2 requirements as per that agreement and we are to
3 report on those. And part of that is how the
4 training is rolled out and implemented and what
5 the curriculum looks like.

6 638 Q. And similarly the zoo and
7 aquarium registry would have been a policy that
8 was created flowing from the transfer payment
9 agreement?

10 A. Yes, that is correct.

11 639 Q. You mentioned the chain of
12 command?

13 A. Yes.

14 640 Q. Who is at the top of the chain of
15 command?

16 A. Sorry, are you referring to the
17 organization as a whole or the investigations
18 department?

19 641 Q. Investigations.

20 A. That would be the Chief
21 Inspector.

22 642 Q. Yourself?

23 A. That would be me, yes.

24 643 Q. Okay. Now you were asked about
25 before an animal is returned, whether there was --

1 returned -- an animal that had been seized is
2 returned, Mr. Andrews asked you whether there
3 would be consultation, and you indicated there
4 could be consultation with a veterinarian or a
5 senior officer, and Mr. Andrews then asked you not
6 necessarily a veterinarian; do you recall that?

7 **A.** Yes, I do.

8 644 **Q.** And you agreed but would it --
9 would there be necessarily consultation with a
10 senior officer?

11 **A.** In most cases, yes, an agent
12 would speak to an inspector about the situation,
13 whether or not compliance had been met, whether or
14 not cost of care had been provided. So there is
15 always ongoing communications between an agent and
16 an inspector.

17 645 **Q.** Is an inspector the same thing as
18 a senior officer?

19 **A.** An agent and inspector have the
20 same authorities, however, an inspector has more
21 of a mentoring supervisory position. There are
22 people who are more seasoned, are more
23 knowledgable, have more experience.

24 646 **Q.** So let me understand this chain
25 of command that you are the top of --

1 **A.** Yes.

2 **Q.** -- because when you answered
3 before, senior officer --

4 **A.** Yes.

5 **Q.** -- I'm trying to understand is
6 that different from an inspector or is that the
7 same as an inspector or is that some inspectors?

8 **A.** That would be some inspectors.
9 So I'm happy to clarify the rank. Starts out as
10 agent. And agent would report to an inspector.
11 We have regional inspectors, and then the
12 inspector would report to the regional inspector.
13 And then every region of the Province, north
14 south, east, central and west, we would have a
15 senior inspector. And so those regionals would
16 report to the senior. Seniors would report to a
17 deputy chief. We have two deputy chiefs. One is
18 responsible for training and the other one is for
19 operations, and then they would report to me.

20 **Q.** So when Mr. Andrews was asking
21 you about returning an animal seized or obtaining
22 a warrant, and asking you if that's something that
23 the agent decides on, what role, if any, would the
24 people up the chain have in those two examples?

25 **A.** Prior to an animal being removed

1 or a warrant being obtained, they must receive
2 guidance, consultation from an inspector.

3 650 Q. And an inspector --

4 A. Is an individual who has more
5 training, more years in the field --

6 651 Q. Sorry, I'm just trying to
7 understand does it go up the chain beyond an
8 inspector or is it just an inspector?

9 A. Depending on the situation, it
10 may go beyond the inspector. It may go to a
11 regional inspector, a senior inspector or we may
12 have -- there's been a number of occasions where
13 we'll even have a meeting or a conference call
14 that would involve all of those, including myself,
15 depending on the situation and the severity of the
16 situation.

17 652 Q. Finally you were asked -- two
18 finally's sorry. You were asked whether
19 charitable donations go towards the investigations
20 department. Do you remember that?

21 A. Yes, I do.

22 653 Q. You said they do?

23 A. Yes.

24 654 Q. Is that the only department they
25 go to?

1 **A.** Oh, gosh, no. There are several
2 different departments that it would go. As I had
3 indicated earlier, in my statements, we have
4 rescue and relief services, we have sheltering
5 services. Often times animals that we care for
6 are strayed or injured and they need veterinarian
7 care, so it would go to provide veterinarian care
8 for those animals. Education is really important,
9 so there is a certain amount of those proceeds
10 that would go to educating the public as well as
11 our donors and our members.

12 **Q.** Okay. Those are my questions in
13 reply. Thank you very much. So, Kurtis, could we
14 go off the record now?

15 **MR. ANDREWS:** Sure. I think we are
16 done.

17 **MR. SCHWARTZ:** We are done.

18 --- Whereupon cross-examination concluded
19 at 4:48 p.m. ---

20
21 REPORTER'S CERTIFICATE

22
23 I, ANGELA GUNN, CSR, Chartered
24 Shorthand Reporter and Commissioner of Oaths
25 within and for the Province of Ontario, certify;

1 That the foregoing proceedings were
2 taken before me at the time and place therein set
3 forth, at which time the witness was put under
4 oath by me;

5 That the testimony of the witness and
6 all objections made at the time of the examination
7 were recorded stenographically by me and were
8 thereafter transcribed;

9 That the foregoing is a true and
10 correct transcript of my shorthand notes so taken.

11
12 Dated this 25th day of September,
13 2017.



14
15 _____
16 PER: ANGELA GUNN, CSR

17 CHARTERED SHORTHAND REPORTER
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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

This is the Cross-Examination of **CONNIE MALLORY**, a representative of the Respondent herein, on her Affidavit sworn May 2, 2017, taken on consent at the offices of **Barrett Gunn Court Reporters**, 76 Prospect Street, Newmarket, Ontario, on the 7th day of September, 2017, at 1:00 p.m.

Barrett Gunn Court Reporters
76 Prospect Street
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**Ministry of the
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October 10, 2017

VIA EMAIL

Kurtis R. Andrews
Counsel for the Applicant
P.O. Box 12032 Main P.O.
Ottawa, ON, K1S 3MA

Dear Mr. Andrews:

RE: Response to Matters Taken Under Advisement in Mallory Cross-Examination in *Ontario ats Bogaerts*

I am writing in response to your request for undertakings raised during the cross-examination of Connie Mallory by video conference on September 7th, 2017.

At pages 125 to 128 of the Transcript of Ms. Mallory's cross-examination, you requested that I confirm whether the following legislation applies to the Ontario Society for the Prevention of Cruelty to Animals: the *Freedom of Information and Protection of Privacy Act* (FIPPA), the *Ombudsman Act*, the *Police Services Act*, and the *Broader Public Sector Accountability Act*. I agreed to take these matters under advisement. I can now advise as follows.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31

FIPPA applies to certain institutions including ministries of the government of Ontario and designated agencies, boards, or commissions. The OSPCA is not part of the Ministry, nor are they a designated agency, board, or commission. Accordingly, the OSPCA is not itself directly subject to FIPPA. However, to the extent that the OSPCA enters into Memorandums of Understanding or agreements, or even engages in the exchange of correspondence with the provincial or a municipal government, or with a designated agency, board or commission, those documents may well be subject to FIPPA, depending on the particular circumstances.

Ombudsman Act, R.S.O. 1990, c. O.6

The *Ombudsman Act* applies to specific enumerated entities. The OSPCA is not such an entity. To the extent that an enumerated entity may have dealings with the OSPCA, such as the Ministry

of Community Safety and Correctional Services, that conduct of the enumerated agency may come under the purview of the Ombudsman.

Police Services Act, R.S.O. 1990, c. P.15

While the *Police Services Act* does not apply to the OSPCA directly, investigators may ask Police Officers to accompany its inspectors or agents to assist in carrying out their duties. The *Police Services Act* necessarily applies to those officers, and hence will govern certain operations.

Broader Public Sector Accountability Act, 2010, S.O. 2010, c. 25

This Act applies to designated broader public sector organizations and publicly funded organizations. Pursuant to subsection 1(1)(g), publicly funded organizations that receive public funds of ten million dollars or more are considered designated broader public sector organizations.

Transfer Payment Agreements falls within the definition of public funds outlined in the Act. If there were other public funds that brought the total OSPCA funding for a given year to the benchmark of ten million dollars, it would be subject to the Act. As you are aware, based on the cross-examinations to date, the amount of provincial funding is currently below that benchmark.

In addition, at the cross-examination of Ms. Mallory you requested undertakings at pages 111 and 135 of the transcript for copies of the Memorandums of Understanding between the OSPCA and various farm organizations (p. 111) and regarding whether the exhibits attached to Mr. Bogaerts affidavits are true copies of OSPCA documents (p. 135). To date, I have not yet received these materials or this confirmation from the OSPCA. I will keep you advised and, if I still do not have an answer within a reasonable time, ask you to treat these requests as refusals.

Sincerely,

Hart Schwartz

Hart Schwartz
General Counsel

**Ministry of the
Attorney General**

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September 19, 2017

VIA EMAILKurtis R. Andrews
Counsel for the Applicant
P.O. Box 12032 Main P.O.
Ottawa, ON, K1S 3MA

Dear Mr. Andrews:

**RE: Undertaking to Make Best Efforts to Confirm Exhibit B to the Affidavit of
Jeffrey Boegarts is a True Copy**

I am writing in response to your request for undertaking solicited during the cross-examination of Lisa Kool by video conference on September 10th, 2017. You requested that I confirm that “Sessional Paper No. P-53,” included in the record as Exhibit B to Mr. Boegarts’ affidavit, is a true copy of a government document.

I confirm that the document is a true copy of a Sessional Paper tabled on March 21, 2013 in the 2nd session of the 40th Provincial Parliament. The document was filed in response to a petition calling for greater government action to ban puppy mills. Specifically, the petition asks the Government of Ontario to consider implementing a criminal law to prohibit puppy mills and to strictly enforce it.

The Ministry does not send copies of Sessional Papers to any other party, however, involved MPPs may have distributed copies to their constituents. This could explain how a member of the public would come to possess a copy.

The original document is held at the Ministry of Community Safety and Correctional Services. Please find enclosed a copy of that document as well as the petition to which it responds. In our view, both should be included in the Record in answer to the Undertaking.

Sincerely,

*Hart Schwartz*Hart Schwartz
General Counsel

**Ministry of Community Safety
and Correctional Services**

Office of the Deputy Minister
Community Safety

25 Grosvenor Street
11th Floor
Toronto ON M7A 1Y6
Tel: 416-326-5060
Fax: 416-327-0469

**Ministère de la Sécurité communautaire et
des Services correctionnels**

Bureau du sous-ministre
Sécurité communautaire

25, rue Grosvenor
11^e étage
Toronto ON M7A 1Y6
Tél. : 416-326-5060
Téléc. : 416-327-0469



MC-2013-1284

APR 10 2013

Mr. Craig Sumi
Corporate Issues
Cabinet Office
99 Wellesley Street West
Room 4520, Whitney Block
Queen's Park
Toronto ON M7A 1A1

Dear Mr. Sumi:

Attached please find the response to Petition No. P-53, Cabinet Office ID Number 11884,
signed by the Honourable Madeleine Meilleur, Minister of Community Safety and Correctional
Services.

Sincerely,

Ian Davidson
Deputy Minister of Community Safety

Enclosure

Ministry of Community Safety
and Correctional Services

Ministère de la Sécurité communautaire
et des Services correctionnels

Office of the Minister

Bureau de la ministre

25 Grosvenor Street
18th Floor
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Télec. : 416-325-6067



Sessional Paper No. P-53

P-53 Ban puppy mills (Sessional Paper No. P-53) Mr. Bisson, Ms. DiNovo and Mr. Prue.
(Tabled March 21, 2013)

Response:

The Ontario government has clamped down on animal abusers by updating and strengthening the *Ontario Society for the Prevention of Cruelty to Animals (OSPCA) Act* for the first time in nearly a century. These revisions were proclaimed into force on March 1, 2009. The texts of the new legislation and its regulations are publicly available.

The Ministry of Community Safety and Correctional Services takes the issue of animal welfare very seriously, which is why we moved forward with the new law, one that gives Ontario the strongest animal welfare legislation in Canada. Since 1919, the *OSPCA Act* has authorized OSPCA inspectors and agents to enforce any law in Ontario pertaining to the welfare of animals. Police may also enforce these laws.

The OSPCA and its affiliated humane societies play important roles in protecting animals. However, the OSPCA and its affiliates are operationally independent from the provincial government. As independent charities, the OSPCA and its affiliates operate under the laws that regulate that type of organization.

With respect to puppy mills, the revised *OSPCA Act* includes standards of care that may be applied to any animals, including those in such premises. The OSPCA has the authority to inspect premises in which animals are kept for exhibit, entertainment, boarding, hire, or sale in order to check for compliance with the standards of care. There is also an accompanying provincial offence for failing to comply with the standards.

In addition, under the *Municipal Act 2001*, a municipality may pass bylaws pertaining to animals. As well, a municipality may prohibit or license a business within its jurisdiction while imposing licensing conditions.

On October 10, 2012, I announced a plan to ensure that Ontario continues to be the leader in animal protection in Canada. That plan includes:

- Improving provincewide enforcement, and strengthening the governance of the OSPCA
- Ensuring the protection of marine mammals in captivity
- Exploring options for the licensing of zoos and aquariums.

Our government is working with its partners and with experts to explore all options to better protect Ontario's animals.

Please be assured that this ministry will continue to support a strong and effective animal welfare system in Ontario.

Madeleine Meilleur
Minister

The Cabinet Office
Corporate Issues
99 Wellesley Street West Room
4520, Whitney Block Toronto,
Ontario M7A 1A1

Bureau du Conseil des ministres
Étude des dossiers ministériels
99, rue Wellesley ouest
Bureau 4520, Édifice
Whitney Toronto
(Ontario) M7A 1A1



March 22, 2013

MEMORANDUM TO: Hon. Madeleine Meilleur
Ministry of Community Safety and Correctional Services

SUBJECT: Responses to Petitions in the Ontario Legislature

The following petitions were tabled in the House on March 21, 2013:

Sessional Paper Numbers:

CO ID # 11884

P- 53 Ban puppy mills (Sessional Paper No. P-53) Mr. Bisson, Ms. DiNovo and Mr. Prue.
(Tabled March 21, 2013)

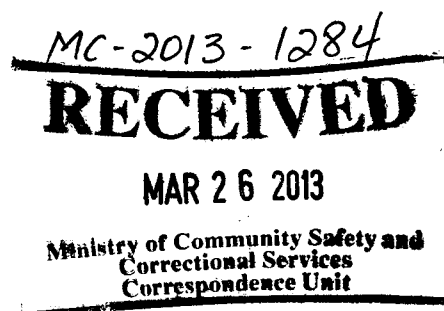
CO ID # 11885

P- 54 Province of Ontario Correctional Museum (Sessional Paper No. P-54) Ms.
Thompson. (Tabled March 21, 2013)

Since Standing Order 38(h) requires that a response be tabled within 24 sitting days of its presentation, we would appreciate receiving the responses in the Cabinet Office by
April 8, 2013.

If your staff have any questions, please have them call Leah Covert at (416) 314-5702.

Craig Sumi
Corporate Issues



(12)

PETITION**TO Legislative Assembly of Ontario**

WHEREAS Puppy mills are facilities which over breed dogs strictly for greed. These animals are victims of unusually cruel treatment. Thousands of puppies are born each year, many to the same mother who is bred continuously until she eventually dies. These puppies are then sold to pet stores and sometimes the public via the Internet. Most die shortly after.

The conditions in which these innocent dogs and puppies are forced to live are beyond inhumane. They are locked in too small cages, the housing conditions are poorly ventilated with no heat in the winter or air in the summer. They eat, sleep and literally live in their own urine, feces and vomit.

The 'breeders' are unlicensed and irresponsible which ultimately results in some form of illness. These animals suffer from malnutrition, skin infections, eye, ear and/or teeth loss, depression, fear and various diseases with minimal or no medical attention. The list is endless. Some are lucky enough to be rescued and their lives saved, others meet a very different, very harsh fate.

Petition:

WE the undersigned petition Legislative Assembly of Ontario as follows:-

On behalf of all the Ontario dogs and puppies imprisoned in puppy mills, let's put an end to this unnecessary suffering. Unfortunately, these dogs and puppies cannot speak for their rights and their cries are unheard except by those inflicting their pain. They need us to speak out for them and save them from being victims of a life whose fate is painful suffering and ultimately death.

While the Humane Society of Ontario and the O. S.P.C.A. are trying to combat the proliferation of puppy mills, locating and shutting down puppy mills is an extremely difficult task. We need criminal legislation to ban puppy mills outright and empower the proper authorities to apprehend and prosecute to the full letter of the laws that protect mans best friends our dogs and puppies.

We the undersigned implore the Ontario Government to take into consideration passing a criminal law which bans puppy mills Province wide and imposes stricter penalties to those who break this law. We need to stop the unnecessary suffering of these animals who share our world.

Please hear our plea and the plea of so many others who speak on behalf of these dogs and puppies who cannot speak for themselves. Leave the breeding to those who do it for the love of dogs and not the love of greed.

Perhaps if Ontario passes this law, other provinces will follow and we can put an end to this nationwide cruelty forever. Please give these dogs and puppies the liberty and safety they deserve and so desperately cry out for.

#	Name (printed)	Address	Sessional Paper No. P- 53 2 nd Session, 40 th Parliament
1	Deborah Matheson	325-10 Mendelssohn St. Toronto	Tabled
2	ESABELE MATHESON	25 THIRD AVE SOUTH OXBRIDGE	Tabling Clerk: kd
3	RON MATHESON	25 THIRD AVE SOUTH OXBRIDGE	
4	Ceilidh Matheson	53 Marquette Ave	
5	Jongh Ross	258 Queensdale Ave.	
6	Sheema Matheson	53 Marquette Ave. TORONTO	
7	Sorina Matheson	53 Marquette Ave TO	
8	Zach Steiner	43 Tamarack Drive	
9	David Matheson	58 Reece Dr. Markham	
10	SARAH NORRIS	" "	
11	DAVID MATHESON (JR)	" "	
12	Matthew Matheson	880 PHARMACY AVENUE MARKHAM	
13			
14			
15			

CERTIFIED

Mar 21/13

DATE

CLERK'S INITIALS

M-BISSON

Petition:

WE the undersigned petition Legislative Assembly of Ontario as follows:-

On behalf of all the Ontario dogs and puppies imprisoned in puppy mills, let's put an end to this unnecessary suffering. Unfortunately, these dogs and puppies cannot speak for their rights and their cries are unheard except by those inflicting their pain. They need us to speak out for them and save them from being victims of a life whose fate is painful suffering and ultimately death.

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#	Name (printed)	Address	Sessional Paper No. P-53 2 nd Session, 40 th Parliament Tabled Tabling Clerk: kd MAR 21 2013
1	Don Ecker	14 Juliana	
2	Beth Pott	Fitzroy Harbour	
3	Jan Sogen	Clayton, On	
4	William	Carleton Place	
5	Jamie Souhier	Carleton Place	
6	Troy Stanzel	C.D.	
7	FAYE LAVERGNE	C.D.	
8	J. Caruthers	C.P.	
9	Mike Morrison	CD/PAWA	
10	J. Martin	C.P.	
11	GRAN SHAWN-MACDONALD	(Carleton Place)	
12	Nicki Laroix	916 MAIZE ST	
13	Tony Dean	8 MILLBROOK CRES	
14	Stephen Nason	89 INVERARY DR.	
15	Don Wankie	205 Royal Gala	
16	W. H. Laroix	985 Plante Dr	
17	John Vard	1527 BONNEVILLE CRES	
18	Glenn Lusk	200 CLIMAX AVE	
19	Alex H. H. H.	39 Birchmount Rd	
20	Rossie Wilson	11111	

Mrs. DINOVO

CLERK'S INITIAL

Michael P. Fine

Petition:

WE the undersigned petition Legislative Assembly of Ontario as follows:-

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#	Name (printed)	Address - Street & City	
1	Chelsea Logan	6000 Princess Louise Drive	
2	R. FRANKLIN	OTTAWA ON.	
3	V. Zencov	ON. ON	
4	C. Gami	ORLEANS ON	
5	DERICK VILETTE	ORLEANS ON	
6	RICHARD DESJARDIN	ORLEANS ON	
7	ADRIEN RAIZENNE	CARLSBAD SPRS ON	
8	SANDRA GREENBERG	Orleans	
9	LOUISE FRANKLIN	1740 SUMMERLANDS	
10	AUSTIN HORTZHAUER	1982 Summerlands Dr. Orleans	
11	DARRICK WITZ	134 MONTMURENCY WAY	
12	Michael Kostick	1625 Lunenburg Cr.	
13	Juliane Lepage	1625 Lunenburg Cr.	
14	ROBERT CHAPMAN	1572 THURLOW ST.	
15	Grant Parson	255 Colford Place	
16	Barbara Gorman	1139 Ste. Therese O. Louis	
17	Joanne MacDonell	2114 Boake St. Orleans	
18	Jason Regs	176 Whispering	
19	Cate Bantlett	332 Roxdale Ave	

Sessional Paper No. P-53
2nd Session, 40th Parliament

Tabled

Tabling Clerk: kd

MAR 21 2013

DATE

CLERK'S INITIALS

Mr Fine

JEFFREY BOGAERTS
Applicant

-and-

THE ATTORNEY GENERAL OF ONTARIO
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Perth, Ontario

APPLICATION RECORD
VOLUME III

THE ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Hart Schwartz
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Tel.: (416) 326-4456
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Counsel for the Respondent,
The Attorney General of Ontario