

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
and JOHANNA MACNAUGHTON

Applicants

- and -

THE TORONTO HUMANE SOCIETY, ALAN JOHNSON, ALVIN TWETEN,
ROBERT HAMBLEY, BRENDA HIND, BUD WALTERS, CAROL LUPOVICH,
DELORES QASIM, JOAN MILNE, LAURIE OVERTON, PAMELA INGLIS,
PATRICIA McILHONE, SANDI HUDSON, STEPHEN DOOLEY, TIM TROW,
VALERIE JONES and PUBLIC GUARDIAN AND TRUSTEE

Respondents

**APPLICATION UNDER *THE CORPORATIONS ACT*, R.S.O., 1990, C.38,
AND *THE CHARITIES ACCOUNTING ACT*, R.S.O. C.C.10**

**AFFIDAVIT OF GARTH JEROME
(Affirmed March 25, 2010)**

I, Garth Jerome, of the City of Toronto in the Province of Ontario, SOLEMNLY AFFIRM AND SAY as follows:

1. I am the Executive Director of the Toronto Humane Society ("THS"), and as such I have personal knowledge of the evidence given in this affidavit, except where I state otherwise, in which case I set out the source of my information and I believe the information to be true.

THE ROLE OF THE EXECUTIVE DIRECTOR IN AN ANIMAL SHELTER

2. As Executive Director it is my job to direct the overall operation and function of the THS through planning, developing and executing programs that meet the mission and objectives established by the Board of Directors. I must also perform public relations functions for the positive representation of our organization. My duties also include overseeing personnel functions and human resource practices, and ensuring compliance with applicable laws and

regulations. A fulsome description of the duties and responsibilities of an Executive Director of a humane society are set out in the excerpt from the website of the Humane Society University, a Program of the Humane Society of the United States marked as Exhibit "A" to this affidavit.

3. Since November 27, 2009, I have been working to address the concerns identified by the OSPCA regarding the quality of the animal care at the THS. To that end, I have done the following:

- a. determined the reasonable animal capacity of the THS given the limits of the 11 River Street facility;
- b. assessed the staffing complement that the THS requires to deliver care to the animals reasonably expected to be at 11 River Street (considering their number, characteristics and general health) and have made the staffing changes necessary to reach that complement;
- c. prepared a revised set of operating standards, policies and procedures to ensure that staff are applying a high level, consistent, and humane approach to animal care at the THS; and
- d. sought independent expert advice on all of the above from Dr. Dana Allen, DVM, M.Sc., the Chair of Clinical Studies at the Ontario Veterinary College, Guelph University, and Stephanie MacDonald and Dr. Karen Lange, the Executive Director and the Chief Veterinarian of the Edmonton Humane Society (together, the "Edmonton experts").

4. Although I will describe each of these initiatives in more detail below, after these processes were complete, I found myself as Executive Director, presented with three operational choices. First, I could steer the THS toward resuming operations in the same manner that it had done so before, albeit with a lower population. Second, I could recommend to the Board that the THS change its focus from animal shelter to sanctuary or animal hospital. The third and most compelling choice was to rebuild the THS as a shelter and adoption centre from the ground up, and regain the public's confidence in the organization. As explained further below, I propose to implement the third choice as a short-term plan for the THS.

THS SHORT-TERM PLAN

5. Following detailed discussions with the Edmonton experts (McDonald and Lange), I became convinced that the THS's infrastructure needed to be rebuilt. Ms McDonald and Dr. Lange operate a comparable size shelter in Edmonton which takes in approximately 10,000 companion animals per year (similar to THS). They placed approximately 5000 animals into adoptive homes in 2008. They operate from a new 46,000 square foot facility, which is approximately the size of the THS excluding the basement. They spent almost two days at the THS, and engaged in thorough discussions with me and with three of the THS veterinarians and several staff members.
6. Almost immediately, Ms McDonald and Dr. Lange critiqued certain practices they observed during their tour and inspection of the THS. They remarked that even under the care and control of the OSPCA the staff were not following best practices for hygiene and disease control. They also found flaws with how veterinary records are stored and maintained, and offered many helpful suggestions to achieve efficiencies in the veterinary department. They have volunteered to act as resources to me and to the veterinarians for as long as we need their assistance.
7. In the last few months I have also participated in detailed discussions with Dr. Dana Allen, all of the THS veterinarians, many of the OSPCA veterinarians and supervisors on site, various THS managers and staff, and members of the Board of Directors. I have been advised by Bob Hambly, President of the Board, that I have the confidence and approval of the Board of Directors to implement this short-term plan and to rehabilitate the THS in a manner whereby it can best serve the Toronto community.
8. Step one is to close the THS for business, including all intake and adoptions. The current animal population of THS should be emptied by means of adoption, fostering, transfers to rescue groups, and euthanasia where recommended by the THS veterinarians. In some cases, Dr. Lange has advised me that certain animals should be euthanized because their physical or mental health has deteriorated and they have little quality of life. In other cases, such as the pit bulls, arrangements had been made to transfer these dogs to a rescue group in the U.S., but the transfer was blocked (for reasons unknown to me) by the OSPCA. The transfer of these dogs to

the U.S. should be made a priority, because, according to Dr. Lange, it would be detrimental for their mental health to keep them confined in the shelter any longer.

9. Step two is to conduct a deep cleaning of the entire facility, make some low-cost cosmetic changes to the public areas of the facility and put in place a new infrastructure for the conduct of future operations. In part, the new infrastructure includes preparing standards, policies and procedures much of which I have already done, but an important aspect will be the retraining of staff to meet best practices in modern shelter medicine (the "Retraining Program"). The Retraining Program will be a key element to ensure that the THS meets (and hopefully exceeds) all industry standards and once again becomes a leader and an example in the animal shelter community.

10. The Retraining Program will involve both the animal care workers who clean and feed the animals, and the veterinary staff. Stephanie McDonald has offered to send her animal care trainer to Toronto, or to host our shelter supervisors in Edmonton to train them on best practices for (i) shelter cleanliness, (ii) prevention and disease control, (iii) basic training on animal feeding and behaviour, and (iv) integration of animal care workers with the veterinary team, including enhancing communication between the front-line workers and the veterinarians through the use of computers. I anticipate that better training and communication between the front-line workers and the veterinarians will ensure that medical problems are noticed, properly documented and promptly brought to the attention of veterinary staff.

11. Stephanie McDonald and Dr. Lange observed that our veterinary staff are underutilizing the shelter management computer software at the THS. Currently and in the past, much of the veterinary charting was done by hand and kept in paper folders on the animal cages. When a veterinarian is required to check an animal, a purple piece of paper with the letters HVC ("have vet check") are placed on the cage. When the shelter is busy and the veterinarians are pressed for time these purple papers can be missed.

12. Using our computer software to its maximum potential will increase efficiencies and provide a further check and balance to ensure that animals do not fall through the cracks. It will also allow us to carefully monitor our population by generating reports on intake and adoption, and to track seasonal trends and diseases. I will arrange for the veterinarians, RVTs and

veterinary assistants to be thoroughly trained on the shelter management software so that all veterinary charting and record-keeping can be done by computer. Every morning the computer will generate a report listing the animals that require care that day, and the specific treatment or medications they require. All of the veterinary staff will carry low-cost laptops and check off the treatments they complete, or do further charting as they go. At the end of a shift, the veterinary staff can quickly verify by computer that all required treatments have been completed. The computer software also permits animal care workers to flag certain concerns for the veterinarians, for example, if an animal has not eaten for several days. We currently have a computer software program called Chameleon which we had planned to replace with a similar software called Shelter Buddy. Both computer systems support this application.

13. If deemed necessary by the veterinarians, we will arrange training for the Registered Veterinary Technicians ("RVT"s) so that the veterinarians can delegate the maximum number of tasks to them within the guidelines prescribed by their governing body, the Ontario Association of Veterinary Technicians. RVTs are trained to administer certain vaccines and anaesthetics, to conduct emergency care, and to conduct various other technical procedures. Maximization of the RVTs' potential is expected to alleviate some of the burden on the veterinarians, particularly when the shelter gets busy.

14. During this training period, I will likely spend a week in Edmonton shadowing Stephanie MacDonald at her shelter, and if feasible, I hope to take one or two of the full-time veterinarians with me to shadow Dr. Lange. I am presently preparing a draft schedule for the Retraining Program which I expect to be ready within the next week or so.

15. Step three is to re-open the THS facility with a new vision, a new promise to the community, a fresh face, and a transparent operation. The Board of Directors plan to revise the mission statement of the THS and reiterate that we are first and foremost a shelter with a mandate to place as many unwanted animals into adoptive homes as quickly as possible. The Board will also make some promises to the community about how the THS intends to conduct business in the future.

16. For my part, I intend to run a transparent organization which means that the OSPCA, College of Veterinarians, Toronto Animal Services, rescue groups and other stakeholders will

be welcome to visit and tour the shelter as will any donor or member of the THS, and member of the public. To be clear, the THS Board which represents the membership takes the position that the OSPCA is limited to its powers as set out in the *OSPCA Act*. However, as long as the OSPCA is acting in good faith and with the best interests of the THS in mind, I will extend an invitation to Ms MacDonald and anyone else from the OSPCA to visit our facility at any time.

17. Even though I am strongly opposed to the presence of the OSPCA security guards at the THS (as set out toward the end of this affidavit), I do see a continued role for the OSPCA throughout this transition period. Those OSPCA employees with some shelter experience, namely, Tanya Firmage and Dave Wilson have been valuable sources for information for me. I would like to continue working with them in a collaborative, and not a combatative or subordinate role. If Ms Firmage and Mr. Wilson are willing to work with me as on-site consultants throughout this transition process, I believe we could achieve our mutual objective of seeing the THS thrive.

18. I believe the THS will have to be closed for approximately six to eight weeks during this transition period. I therefore anticipate resuming operations on June 1, 2010. Once the THS re-opens for regular business, regardless of whether or not the Court orders that a Special General Meeting take place for an election of a new Board of Directors, I will continue to implement this plan, as long as I am Executive Director. In the medium term, after regular operations stabilize, it may be feasible to invite a consultation/assessment team from the Humane Society of the United States (HSUS) or Dr. Kate Hurley from U.C. - Davis to spend a week at the shelter and conduct a wholesale review of our operations. I understand that the OSPCA has had discussions with Ms Hurley and her team may be available in mid-June to assist us. Stephanie MacDonald participates in the HSUS assessment process and she highly recommends it as an alternative to the U.C.-Davis program. I would be pleased to work with either consultation team at the THS.

MAINTAINING A SUSTAINABLE POPULATION OF ANIMALS AT THE THS

19. The THS standards of shelter care, protocols and policies that seem to have been in place prior to November 26, 2010, are marked as Exhibits "B" and "C" to this affidavit.
20. In preparing new THS standards, policies and procedures I have consulted as much as possible with the THS staff, including Dr. Karen Ward and Dr. Vivian Ungar, and with the representatives of the OSPCA, including, among others, Mr. Strooband, Ms MacDonald, Tanya Firmage, Christa Chadwick and Dave Wilson. To a limited extent I have also consulted with the Edmonton experts and I will continue to do as needed.
21. In January 2010, I consulted with Dr. Ward, Dr. Ungar, THS Operations Manager Bernard Bignall, and Christa Chadwick and Tanya Firmage of the OSPCA to assess the number of animals for which the THS can reasonably provide care. We concluded at that time that the THS can reasonably accommodate on a regular basis 520 cats, 85 dogs, 80 small mammals and 20 birds. In recent consultations with the Edmonton experts, and Drs. Ward and Ungar, these numbers have been further revised to a target population of 645 animals, at least in the medium term.
22. To arrive at the reasonable capacity we solicited input from the departments dealing with cats, dogs, small mammals and birds as to the number of animals the staff in each department believes it can comfortably handle at this time. We also assessed factors such as the total number of available cages, the average size and area of individual rooms at 11 River Street and our past experience dealing with different animal population levels at the facility. Individual rooms are being measured to determine the precise number of cages which can fit in each room. A draft document which outlines the proposed inventory for rooms is marked as Exhibit "D"
23. To ensure that the THS remains within its reasonable capacity, I prepared a new admissions policy. The new Admission Policy and Procedure aims to keep the population at or below the target referred to above. In order to remain around this population level, we had intended to introduce a pre-arranged appointment system. Indeed, I presented this appointment system to the Court when I testified on February 25, 2010. However, the Edmonton experts recommended against this. They have suggested some reasonable alternative policies used by

the Edmonton Humane Society. I will be working with them to revise our approach. The key will be to maximize the flow of adoptable animals through the THS to the public.

24. The reasonable animal capacity of the THS depends to some extent on many factors that can change over time such as staffing levels, skill and training of staff, type of animals, health of animals, number of cages on hand, layout of the building, and other personnel issues, such as staff morale and proper communication. We will continue to assess the capacity of the THS so that as circumstances change, the reasonable capacity can be adjusted accordingly upward or downward.

25. The actual population measured as at February 22, 2009, and March 25, 2009 were as follows:

Species	Reasonable Capacity	Actual as of February 22, 2010*	Actual as of March 2, 2010*
Felines (Cats)	520	208	160
Canines (Dogs)	85	32	22
Small Mammals	80	122	69
Birds	20	11	4

*These figures do not include animals that are living in foster homes and animals living in the Victoria Park shelter, which can presently accommodate a further 25 cats

26. Since November 26, 2009, the OSPCA has not admitted any new animals. I was advised by the OSPCA that they will not permit us to admit any new animals as long as they are in control of animal care and the current Board remains in place.

27. In my view, the THS is well below capacity considering all of the relevant factors. The OSPCA has helped lower the population to a level which can be managed by the THS under my control. In any event, as set out in my short-term plan, it is my objective to evacuate the facility of animals so that we may begin to work on the next steps. If the Court approves the short-term proposal and schedule as set out in Exhibit "E" to this affidavit, I require care and control over the animal portion of the THS in order to begin this process.

STAFFING AT THE TORONTO HUMANE SOCIETY

28. In my role as Executive Director, I was given a specific mandate from the Board of Directors of the THS to revise the staffing complement at the THS to meet the current and future needs of the organization.
29. Using an analytical computer program from the University of California - Davis Koret Shelter Medicine Program combined with the THS's past and present experience with ratios of different types of animal care workers, I assessed the animal care staffing needs of the THS. The U.C. - Davis School of Veterinary Medicine is a leading research and education institution in the field of animal health. I was referred to its website as a resource for best practices by the OSPCA.
30. From this analysis, I concluded that the THS should have as a goal a staff of six full-time veterinarians, six registered veterinary technicians ("RVT"s), six veterinary assistants and thirty-eight shelter workers. These figures are based on the animal population being at or near the THS's full reasonable capacity (as set out in the Animal Admission Policy) with a population of mixed health ranging from chronically ill animals to healthy animals. My conclusions regarding the optimal level of staffing at THS are set out in the Recruitment Policy which is marked as Exhibit "F" to this affidavit.
31. The Edmonton Humane Society maintains a relatively healthier population than the THS has historically maintained, and it only has two full time veterinarians and five RVTs. This leads me to believe that if the THS does not accumulate a large degree of chronically sick animals, once we re-open, we will have sufficient veterinary staff to meet our medium-term staffing needs. I have put this hypothesis to the Edmonton experts (MacDonald and Lange) and they agree with my basic assumptions.
32. We are caring for about one third as many animals as our capacity would permit. My assessment of our present staffing needs (if we do not evacuate the facility) is found in the document marked as Exhibit "G" to this affidavit.
33. On March 25, 2010, the THS had the following veterinary and animal care staff:

Position	Hours/day	Days/week
2 Full-time Veterinarians	8	5
2 Part-time Veterinarians	8	2/3
4 RVTs	8	5
1 Animal Health Technician ("AHT")	8	5
3 veterinary assistants (1 has diploma from a community college in animal care, other two have BSc. Degrees from University. They have worked at THS for on average two years)	8	5
20 animal care workers (who clean cages and feed animals)	8	5
Approximately 100 volunteers who walk and groom dogs, groom cats and feed kittens		
9 Managers including: 1 Executive Director, 1 Shelter Operations Manager, 3 administrators for animals, 4 shelter supervisors	8	5

34. My calculations of the current animal care worker requirements are based on the assumption that every companion animal such as a cat or a dog requires at least 15 minutes of dedicated animal care worker time per day for feeding, cleaning and enrichment. This assumption is a recognized and widely accepted standard in shelter medicine and will be discussed further by Dr. Dana Allen in his report.

35. My understanding is that there is no accepted standard for the number of veterinary minutes required per animal in the world of shelter medicine. I therefore have broken down the current animal population by general health and/or illness or condition to make this calculation. I have estimated the average number of veterinary minutes it takes to care for the current population of animals at the THS based on information provided to me by Dr. Allen and my observations of our veterinary staff. On a day to day basis, the number of minutes to care for an animal may fluctuate depending on several variables, including the changing nature of the health of the animal, the efficiency levels of shelter workers and veterinary staff (including skill and training level), and other events that may occur at the shelter on any given day. For these reasons, the calculations of veterinary minutes are approximations to assist the Court in understanding the current situation and how these calculations will be done in the future.

36. After making the calculations described above, I contacted the Calgary Humane Society ("CHS") and spoke to Patricia Cameron, its Executive Director about her staffing levels. Ms Cameron advised me that the CHS takes in approximately 8000-9000 animals per year and regularly has an animal population around 700-800 animals in a 44,000 square foot building. The CHS employs one senior veterinarian, two full-time veterinarians, 4 AHTs (RVTs) and two veterinary assistants. There is an Animal Health Director who supervises animal care, but she is an administrator and not a veterinarian.

37. As part of the process of re-tooling the staffing complement at the THS, I have had to reduce the size of the administrative side of the organization. Since the beginning of February, I have laid off seven employees who worked in admissions, two employees who worked in the call centre, two shelter supervisors and two animal rescue officers. A further 3 veterinary assistants and 8 shelter workers were laid off temporarily in early March 2010. These lay-offs are primarily a result of the smaller animal population, lack of work, overall downsizing of our operation in the shelter (fewer adoptions), the absence of new admissions and the absence of animal cruelty investigations. When the THS begins to admit new animals into the shelter some of these lay-offs will be reversed.

38. Reductions in the management and administrative staff have also resulted in a significant reduction in the payroll.

39. Staff morale has been low as a result of layoffs, the steady presence of OSPCA security and recent negative publicity. Once I am back in control of operations, I plan to hold a meeting with staff to explain my plan going forward. Our staff and volunteers are crucial to the smooth operations of the THS, and one of my objectives going forward is to improve the relationship between staff and management. I plan to hold weekly meetings, ongoing training, workshops with staff, and to organize occasional day time social events, like summer barbeques.

NEW STANDARDS, POLICIES AND PROCEDURES FOR ANIMAL CARE AND THS OPERATIONS

40. To ensure that THS provides its animals with consistently high quality care, I have drafted a new set of standards, policies and procedures to govern the organization (collectively, the "Policies and Procedures"). A complete set of the current Policies and Procedures have been copied onto a CD ROM and marked as Exhibit "H" to this affidavit. I gave evidence to

the Court on February 25, 2010 about some of the policies, and I do not propose to discuss them in detail, except to say that the THS is, and will continue to be governed by the as they evolve over time. The THS veterinarians have also agreed to prepare flowcharts and procedures to regulate the intake, vaccination and flow of animals through the THS.

41. The THS has struck an Animal Care Strategy Committee to design and continuously revise operational protocols for how the THS delivers care to the animals in its shelter. The committee is composed of me, Dr. Ward, Dr. Ungar, Dr. Linda Jackson (an OSPCA contract veterinarian), Dr. Magdalena Smrdelj and Tanya Firmage of the OSPCA. Dave Wilson of the OSPCA has also contributed to this forum. These draft procedures are the subject of continuous revision by the Committee. This Committee meets every Friday at 11:00am.

42. Dr. Dana Allen has reviewed the Policies and Procedures that are related to animal care. He has provided his recommendations to me and I have incorporated them into the current versions. In fact, on March 15, 2010, Dr. Allen met at the THS and I invited an OSPCA representative to participate in a meeting with us to discuss the animal care Policies and Procedures, including the capacity of THS and the staffing levels.

43. Mr. Dave Wilson of the OSPCA attended the meeting with legal counsel. As noted above, Mr. Wilson has been a helpful resource for me in recent months because he has shelter operations experience. Although the meeting went smoothly, the OSPCA did not offer many further insights on the Policies and Procedures and staffing projections that Dr. Allen and I were seeking input on. My minutes of the meeting, were emailed to Mr. Dave Wilson so he could make any changes. Mr. Dave Wilson asked for two changes to be made to the minutes of this meeting. These changes were effected and a new copy of the minutes were prepared. The revised minutes are marked as Exhibit "I" to this affidavit.

44. In co-operation with the THS veterinary staff, including Dr. Ward and Dr. Ungar and along with the input of a number of other consulting veterinarians, I prepared a new euthanasia policy. The new policy seeks to make the THS approach to end-of-life decisions more objective and consistent. We have introduced a score card with five factors to be assessed in deciding whether an animal should be euthanized. The threshold score over which a veterinarian is authorized to euthanize an animal will vary depending on the circumstances in the shelter, such

as the total population and the mix of healthy and unhealthy animals. With marginal cases, the attending veterinarian is encouraged to consult with his or her colleagues on the veterinary staff. A copy of the Euthanasia Policy is marked as Exhibit "J" to this affidavit. I am confident that this new policy will result in a more consistent, standardized process for decision-making regarding animals at the THS at the end of their lives. This euthanasia policy was presented to the Board of Directors. The Board passed a resolution implementing the policy on March 6, 2010.

45. The THS uses a shelter management computer program called Chameleon. I received approval from the Board to purchase new shelter management software called Shelter Buddy. The new software package will improve the THS's ability to maintain accurate records in relation to all of the animals in its care and track the treatment that the animals receive. The shelter record system will be interfaced with our redesigned web site to facilitate better information for the public about animals available for adoption. I have struck an implementation committee consisting of me, our Information Technology Manager Chris Johnson, Webmaster Charles Curl and our Senior Communicator Ian McConachie. Our goal is to have the new software system in place and operating by mid-May 2010.

THS'S RELATIONSHIP WITH THE COLLEGE OF VETERINARIANS

46. On January, 2010, I received a letter from Susan Carlyle, the Registrar of the College of Veterinarians of Ontario (the "CVO"), confirming that the THS staff veterinarians may care for animals owned by the THS without 11 River Street being an accredited veterinary facility. The absence of accreditation only prevents the THS veterinarians from treating animals that are not owned by the THS. I am attaching a copy of Ms Carlyle's letter to this affidavit as Exhibit "K".

47. I have communicated with the CVO regarding our accreditation. Martin Fischer, an investigator with the CVO, identified four areas of concern that needed to be addressed in order for the THS veterinary clinic to be re-accredited:

- a. a mouse and insect infestation in the building;

- b. the temperature of the refrigerator in which deceased animals are stored needed to be below 0°C;
- c. there appeared to be no flashlights or back-up generator on site;
- d. a veterinarian need to be assigned responsibility for the restricted drug inventory and log book.

All of these concerns have now been addressed. We have hired a professional pest control company and there is no longer a significant pest problem in the building. The temperature in the refrigerator was adjusted to below freezing. We confirmed that there has always been a back-up generator at 11 River Street. Dr. Ward and Dr. Rock have been assigned responsibility for control of the restricted drug inventory and the drug registry.

48. On February 3, 2010, Mr. Fischer wrote to me by email advising me that the next step is to re-apply for accreditation and to be subject to a new inspection. I have delayed proceeding with that step until we have finalized our reorganization of the veterinary department and the OSPCA is no longer in the care and control of the animals.

49. All of the veterinarians at the THS have signed addendums to their contracts drafted by the CVO to ensure they are in compliance with the *Veterinarians Act*. In affidavits previously filed by the Applicants in relation to this matter, Dr. Ward and Dr. Ungar expressed concerns about whether their contracts with the THS met the requirements of the Regulations under the *Veterinarians Act*. To address their concerns, the THS engaged in a dialogue with the CVO about appropriate language to ensure compliance with the Regulation. The CVO provided the THS with its approved language. Each of Dr. Rock, Dr. Ward, Dr. Ungar and Dr. Patersen signed addendums to their contracts giving them full responsibility for health care decisions made in relation to animals in their care as a result of the THS affiliation with the Ontario Humane Society. The addendum encourages a consultative process whereby staff veterinarians are to seek the consent of management in relation to non-routine treatments or tests (where practical) and management agrees not to question the professional judgment of the veterinarians

or interfere with their professional obligations. I am attaching to this affidavit copies of the signed addendums as Exhibit "L".

SPECIFIC ALLEGATIONS MADE BY THE OSPCA

A. INVENTORY OF DRUGS, VACCINES, AND ACCESS TO OUTSIDE LABORATORY

50. To my knowledge there has been no episode in which the THS has been unable to order medical supplies like vaccines, catheters and drugs from our medical supplier CMDV. I disagree with the allegations in paragraph 4 of Dr. Karen Ward's affidavit sworn January 21, 2010. I am supposedly a source of Dr. Ward's information about this allegation. I am not aware of what she may be referring to. The same is true with respect to the allegation about the inability to use the THS outside laboratory IDEXX.

B. CLEANLINESS AND MICE

51. I understand that the THS had a mouse problem at 11 River Street, as alleged. Some mouse presence appears to be an unavoidable consequence of operating a shelter. The Edmonton experts told me that even their 9-month old shelter facility has mice. To my knowledge, there has never been an outbreak of any virus (eg. hanta-virus) transmitted by mice at the THS in the past. Various strategies to control the mouse problem have been implemented. While the mouse presence at THS has not completely disappeared, it appears to be under control and I intend to keep it that way.

52. Some of the OSPCA affiants allege that the animals' cages were often filthy in the past. My best response to this allegation is to ensure that in the future adequate number of animal care workers are properly trained to clean animal cages, and to schedule these workers in shifts with short lag times between shift changes. The THS has 20 animal care workers and two state of the

art animal cage sterilizing machines. Once the animal care workers are re-trained and properly scheduled, there is no reason why cages should generally not be clean in the future.

C. OVERCROWDING

53. I agree with the OSPCA affiants that the THS facility was above its reasonable capacity on November 26, 2009. It was similarly crowded in June 2009 when the OSPCA inspected the facility. One of the reasons for this was the accumulation of chronically-ill animals that were difficult to adopt out to the public. As this segment of the THS population grew in number, it was increasingly difficult to care for the overall population and it seems some of the veterinary staff felt overburdened.

54. It is my objective to keep the animal population at the THS moving through our facility quickly to adoptive homes or foster homes so that we do not accumulate a disproportionate number of chronically-ill, unadoptable animals. To a large extent, I believe that closely monitoring and controlling the population of unadoptable animals, coupled with an aggressive adoption campaign, will prevent the problem of overcrowding in the future.

D. STAFF DISCIPLINE

55. The THS has various new staff policies including a disciplinary policy. The THS has historically had a Code of Conduct for its employees, but I have added a new process for corrective action that I expect will result in a consistent, thoughtful approach to discipline in the workplace. The policy was presented to the THS managers in January 2010, and has been working well since that time. There have been no instances of harassment or the need to generate grievance procedures since December 29, 2009.

E. DR. MAGDALENA SMRDELJ

56. Dr. Magdalena Smerdelj has alleged that I gave false evidence to the Court on February 25, 2010 about her employment with the THS. I dispute this. The facts as stated in the affidavit of Dr. Smerdelj are not accurate.
57. On February 16, 2010, Dr. Magdalena Smerdelj approached me to arrange a meeting to discuss her possible employment with THS. I arranged to meet with her on Friday, February 19, 2010 at the THS.
58. On Friday morning, February 19, 2010, I received a telephone message from the switchboard operator, to say that Dr. Smerdelj had called in sick that day and wished to postpone her meeting with me. I received an email confirming her message later in the day which is marked as Exhibit "M" to this affidavit.
59. On Monday, February 22, 2010, Dr. Smerdelj reported to my office at 11:00 a.m. to meet with me. She told me that she was interested in returning to work at the THS. I said that I would be pleased to take her back on the staff and that all the THS veterinarians were very complimentary about her work. She indicated that she had worked for the THS before (something I already knew). I advised Dr. Smerdelj that all THS veterinarians are unionized and are covered by a collective agreement. I handed a copy of the collective agreement to Dr. Smerdelj. All unionized employees receive the same contract. There are no individual contracts signed between the THS and unionized employees.
60. She asked whether the THS would cover the cost of her CVO fees and liability insurance and I said that this is not covered in the collective agreement. (There is a "grandfathering clause" which treats Dr. Ungar and Dr. Ward differently with regard to CVO fees).

61. At the conclusion of the meeting on February 22, 2010, I asked Dr. Smerdelj the date on which she wished to start working for the THS. She indicated that she wanted to begin working for the THS on March 1, 2010. I agreed to make all necessary arrangements for her to begin work on March 1. I told her this. At that point, I considered Dr. Smerdelj to be "hired."
62. Ms. Mitra Bastry-Attar, is the THS payroll clerk. She looked up Dr. Smerdelj in the ITR system (the swipe card payroll tracking system) and found her profile still active. She issued a new ITR card for Dr. Smerdelj on February 22, 2010. Card number 1429 was allocated to Dr. Smerdelj on that date, as indicated by the page marked as Exhibit "N" to this affidavit.
63. On February 25, 2010, I was asked to testify before Justice Brown. In response to a question, I advised the Court that Dr. Smerdelj intended to start working for THS on the following Monday, March 1, 2010. (In the three days between the meeting in which I hired Dr. Smerdelj, I never rescinded the offer and she never resiled from her acceptance of it.)
64. On March 1, Dr. Smerdelj reported to work as usual. I approached her in the veterinary clinic and asked her to come up to my office to sign an updated payroll form and other documents relating to her employment such as the addendum to the contract of the veterinarians required by the CVO. She said that she would, but did not do so.
65. On March 3, 2010, I again approached Dr. Smerdelj in the veterinary clinic and asked her to complete the relevant forms for her employment. At this time, she asked to speak to me in private. We went up to my office for the discussion.
66. Dr. Smerdelj appeared visibly upset and concerned. She said that she had heard about the testimony that I had delivered in court on February 25, 2010 and felt that she could not work at

the THS "under the current Board of Directors." She said that "Kate is my girl" and "Bob Hambley and the Board have a lot to answer for." She went on to say that she did not know why I was "sticking around and perhaps it is because [I] need my job." She said at this point that she had changed her mind and wished to remain under contract to the OSPCA.

67. I told Dr. Smerdelj that I had a responsibility to ensure that the THS endures and that I wished to see that the THS would survive and flourish.

68. Dr. Smerdelj said "the THS may be totally broken down by this, but we will re-build it." I found this attitude strange, given that fact that she had approached the THS for employment some 10 days prior to this. I have noticed discernible hostility towards me and other members of staff, from Dr. Smerdelj, since this discussion.

OBSERVATIONS I HAVE MADE REGARDING SECURITY AND MORALE

69. In my respectful opinion, the OSPCA's team of security guards positioned throughout the building is creating a highly tense and unwelcome environment at the THS: I do not understand the reason for their continued presence. I am not aware of the problems Catharine MacDonald is referring to at paragraph 20 of her March 16, 2010 affidavit. One of the great things about THS administrative staff is that they care very deeply for animals and would regularly spend their lunch and breaks providing some human touch and recreation to caged animals. Ms MacDonald seems to perceive THS administrative staff entering into "restricted" animal care areas to provide enrichment as a nuisance, rather than a benefit. The THS never had any unusual security problems in the past, and I believe that the THS staff and I can operate the THS without the need for security guards.

70. In paragraph 21 of her affidavit, Ms MacDonald raises the issue of Kincaid, a German Shepherd dog, was surrendered to the THS on November 8, 2009. This dog was considered a stray and was found in the parking lot of a Beer Store. The dog was found to have some temperament issues. To my knowledge, the dog is not known to have bitten any employee of the THS.

71. The dog was involved in a minor incident, not a bite, that involved animal care worker, Bernard Blanchard. The employee attempted to enter the dog's cage, he slipped, fell and injured his forearm. The dog did not bite him at any point. This was confirmed to me by Bernard Bignall, the Operations Manager.

72. In the interest of caution related to the temperament issues, the dog was confined on November 10, 2009. The dog was released from confinement on November 19, 2009. The dog suffered from and was successfully treated for peri-anal fistulas. The dog also had a haemangioma removed from his right cheek. Histology was carried out on this mass. This dog was in the care of Dr. Karen Ward during his stay at the THS.

73. For reasons unknown to me, the dog was not formally temperament tested. In early February 2010, Laura Hendy made several enquiries with a number of rescue groups to place Kincaid. Contact was made with Kathy Jeannault in Powasson, Ontario. Kathy runs a German Shepherd rescue group called All Heart Pet Rescue.

74. Kathy Jeannault expressed the desire to adopt the dog. Kathy has worked with the THS before and is considered a reliable resource. Kathy Jeannault agreed to meet representatives of the THS in Orillia, on February 18 at 1:00 p.m. At this point she had agreed to take possession

of the dog from the THS. Laura Hendy arranged for the dog to be transported to Orillia by the THS, to meet with Kathy Jeannault, on February 18, 2010.

75. Dominic Rouselle, a volunteer at the THS agreed to drive the dog up to Orillia and meet with Kathy Jeannault. The meeting took place on February 18, 2010. The dog was successfully transferred to Kathy Jeannault. All documents pertaining to the dog were sent with him to his new home.

76. On Saturday, February 20, 2010 Laura Hendy received a email and telephone call from Kathy Jeannault. Ms Jeannault expressed her happiness to have Kincaid and from the tone of her email, the dog seemed happy and content. A copy of Ms Jeannault's email to THS is marked as Exhibit "O" to this affidavit. The details of the adoption were entered into the Chameleon computer system immediately following this email from Ms Jeannault. A copy of the Chameleon record is marked as Exhibit "P" to this affidavit.

77. On Friday, February 19, 2010, Tanya Firmage (of the OSPCA) demanded to know where Kincaid was. She said that the OSPCA was not given any information on the transfer and adoption of Kincaid. The THS was never given such instructions by the OSPCA and we are not aware of such transfers / adoptions having to be cleared with them at that time.

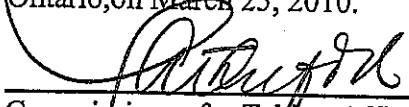
78. I am not aware of any animal resembling Kincaid being replaced in the shelter. In fact, there is no animal in the shelter that currently resembles this dog. The THS has been unable to admit animals since November 26, 2009. Given the security presence at the THS and the surveillance system in the building, it would be impossible for any animal to enter the THS without being observed by the OSPCA security squad.

79. I understand that at some time in late February 2010, an official of the OSPCA visited the home of Kathy Jeannault to observe Kincaid. I have no knowledge of what occurred during the visit or what instructions were issued by the OSPCA in this regard.

80. I do not propose to criticize at length the OSPCA's execution of its "care and control" of the animal care areas of THS. Suffice to say, I have observed that the security presence and some of the restrictions imposed by the OSPCA have been harmful to the THS operations and to staff and volunteer morale. I kept contemporaneous notes of events of the last several months, which I can testify about if they are of interest to the Court. I have also collected some of the correspondence referred to in my notes. My notes and some of the supporting documents are marked as Exhibit "Q" to this affidavit.

81. I am looking forward to moving forward with the assistance, cooperation and trust of the OSPCA to rebuild the THS so that it may serve its important role in the Toronto Community.

SOLEMNLY AFFIRMED BEFORE ME at
the City of Toronto, in the Province of
Ontario, on March 25, 2010.



Commissioner for Taking Affidavits

Tanya Atherfold, a Commissioner, etc.,
Province of Ontario, for Sack Goldblatt
Mitchell LLP, Barristers and Solicitors.
Expires February 8, 2011.



Garth Jerome