

SUMMARY OF CROWNS REASONS FOR THE WITHDRAWAL OF CHARGES

Introduction

The Crown is aware of the important responsibility ascribed by all parties in this case to the protection, care and treatment of animals. We have carefully considered the nature of the investigation of the Toronto Humane Society (THS), the manner in which the charges were laid, the significant volume of the material seized and the very complex constitutional and legal issues involved in the circumstances of this case since the charges were laid eight months ago.

The charges before the court were investigated and laid under the direction and authority of the Ontario Society for the Prevention of Cruelty to Animals (OSPCA). The OSPCA is a private charitable institution that operates under the *Ontario Society for Prevention of Cruelty to Animals Act (OSPCA ACT)*. The mandate of the OSPCA is to enforce animal cruelty laws within the province. The legislation provides the OSPCA investigators/inspectors with powers to enforce their legislation and to lay charges under both the *Criminal Code* and the *OSPCA Act*, where appropriate.

The THS is a not-for-profit corporation. The mandate of the THS is to promote the humane care and protection of all animals and to prevent cruelty and suffering. The THS provides care and veterinary treatment to abused, neglected and abandoned animals. THS operates its main administrative office, shelter and veterinary hospital at 11 River Street in the City of Toronto. The THS operates a 24-hour animal care facility and an Animal Hospital which provides medical and dental treatment to animals. At the time of these allegations, over 1,000 animals were in the care of the THS.

On June 2, 2009, the OSPCA conducted an inspection of the Toronto Humane Society involving all of the animals in the care of the THS at the time. Consequently, four Orders of Care were made concerning animals found at the THS on that date. Issues relating to the care of these four animals were subsequently dealt with by the Animal Care Review Board (ACRB), the tribunal that hears appeals from orders issued under the *OSPCA Act*.

Over the course of the following months the OSPCA conducted a lengthy investigation. On November 25th, 2009 search warrants were issued with respect to THS premises at 11 River Street, as well as for the residence and car of Tim Trow who was the President of the THS at the time. On November 26, 2009, the OSPCA executed the warrants. The search of the THS premises began on November 26, 2009 and concluded 56 days later on January 21, 2010.

Overview of the Charges Investigated and Laid by the OSPCA

On November 26, 2009, five senior officials at the THS were charged with a number of criminal offences pursuant to the *Criminal Code*. These officials were:

- i) Tim Trow – President
- ii) Gary McCracken – Operations Manager
- iii) Dr. Steve Sheridan – Head Veterinarian
- iv) Andy Bechtel – Supervisor
- v) Romeo Bernardino – Business Manager

The *Criminal Code* charges against these individuals included allegations of conspiracy to commit an indictable offence of cruelty to animals, causing unnecessary suffering to animals and obstructing a peace officer.

Each member of the former THS Board of Directors was also charged with similar offences under both the *Criminal Code* and the *OSPCA Act* in relation to offences of animal cruelty and permitting animals to be in distress. On January 25th, the THS was also charged in its corporate capacity with offences pursuant to the *Criminal Code* that included causing unnecessary suffering and abandoning animals in distress or wilfully neglecting to provide adequate care. THS Corporate was similarly charged with offences under the *OSPCA Act* that included causing an animal to be in distress and failing to comply with reasonably prescribed standards of care.

All these charges were investigated and laid by the OSPCA without input from the Crown. On January 26th, in the course of dealing with an anticipated motion brought by the THS in the Superior Court, Justice McMahon stressed the importance of the Crown taking carriage of all charges to ensure they were prosecuted separate and apart from the parties involved in the application. In accordance with the *Crown Attorney's Act*, it was the responsibility of the Crown to assume carriage of this matter and the Crown did so.

As in all cases, the Crown has a responsibility to review and assess whether there is a reasonable prospect of conviction and whether it is in the public interest to proceed. This duty is a continuing one and exists at every stage of the prosecution. The Crown took the following steps:

- Members of my office and Senior Crown Counsel with the Ministry reviewed the information to obtain and the search warrants that were drafted by the OSPCA. This included a review of responses to our questions about the search process which were provided to our office by the lead OSPCA investigator, as well as the returns filed in relation to the three properties searched;
- We reviewed transcripts from some of the court proceedings that occurred during the execution of the search and affidavits filed in the course of those proceedings;
- We reviewed the manner in which the warrants were executed and the inventory of items seized in the course of the execution of the warrants. The inventory was only recently provided to us by the investigating authority;
- We considered whether evidence resulting from the search warrant would be admissible under the *Charter*;
- Our office assessed the admissibility of the evidence that existed apart from the fruits of the search warrant and whether this evidence was sufficient to prove the

case beyond a reasonable doubt based on the disclosure provided to us over the last eight months;

- We assessed information provided to us by counsel, including counsel from the OSPCA;
- We have reviewed the file to determine whether there is a reasonable prospect of conviction against each accused individually and against the THS corporate entity.

After careful assessment of the material available to us and the applicable legal principles, the Crown has determined that all of the charges before the court today should be withdrawn.

Given the importance that the Crown accords to the prosecution of animal cruelty charges, the extensive investigation conducted by the OSPCA and the community interest in animal welfare, it is appropriate to provide an outline of the reasons for the Crown's decision.

The charges are numerous and complex and span different time periods. Some of the charges relate to the time period prior to the execution of the warrant (including dates that range from April 18, 2008 to November 26, 2009). Other charges relate to a time period that post-dates the execution of the warrant and are grounded primarily on the evidence seized pursuant to the November 26th warrant.

I will endeavour to identify the charges by reference to their time frame, and to the particular person or persons charged (including the THS in its corporate capacity).

I will begin by outlining the charges relating to former Board members of the THS that fall into the latter category of charges – those post-dating the obtaining of the warrant.

THS Former Board Members

Counts that must be withdrawn as a result of the search warrant and its execution:

All former Board Members of the THS were charged in their individual capacity on a replacement information that is before the court. Counts 6 to 43 on this information relate to the treatment of specific animals as observed on November 26th, 2009 or in the days following. The evidentiary basis for these counts depends on evidence obtained during the execution of a search warrant obtained pursuant to s.487 of the *Criminal Code* by investigators with the OSPCA on November 25th. OSPCA investigators and civilians hired by the OSPCA, entered the premises on November 26th, and stayed for 56 days.

We have carefully reviewed evidence related to the obtaining and execution of this warrant, as well as two related warrants issued for the search of Tim Trow's residence and vehicle. In so doing, the Crown has identified a number of significant problems related to the THS warrant and its execution, including what the Crown considers to be

several serious breaches of s.8 of the *Charter* – the section that guarantees that everyone has the right to be secure against unreasonable search or seizure.

The concerns identified include the following:

- the length and times permitted by the search warrant;
- the inappropriate use of a s.487 warrant to conduct veterinary checks;
- the overbreadth of the items to be seized pursuant to the warrant;
- the over breadth of the seizures themselves, including the lack of any restrictions concerning computer images;
- the use of civilians during the searches which was not disclosed in the information to obtain the warrant;
- the failure to appropriately address issues of solicitor-client privilege in the course of obtaining and executing the warrant; and
- the presence of the media at various times during the execution of the search warrant.

Ultimately, the Crown has concluded that the lawfulness and execution of these warrants were seriously flawed to such an extent that the Crown would be unable to successfully tender the evidence seized during these searches, with the result that there is no reasonable prospect of conviction on counts 6-43.

The key areas of concern for the Crown include:

The duration of and times permitted by the search warrant

There are no limitations in the warrant with respect to its duration or times permitted for the search. Although the Information To Obtain the warrant stated that five calendar days would be required to complete the search of the THS premises, no end date or end time was inscribed on the warrant. Counsel for the OSPCA indicated that he attended before a Justice of the Peace on November 30, 2009, to explain that the search would take longer than anticipated and was apparently advised that there was no need to seek an extension.

There is a constitutional obligation to minimize interference with privacy interests during the execution of warrants. While the failure to endorse an end time or end date on the warrant is not in all cases unconstitutional or unlawful, it is a serious problem where, as here, the investigators hold on to a search site for a very lengthy period of time.

Related to the absence of an end date and time is that it also offended the execution by day requirement as required by section 488 of the *Criminal Code*. The purported authority for the OSPCA to occupy the THS premises between November 26, 2009 and January 21, 2010 was pursuant to a warrant under s. 487 of the *Criminal Code*. Section 488 of the *Criminal Code* requires that a search warrant issued under s. 487 be executed by day unless the Justice is satisfied that there are reasonable grounds for it to be executed at night. The warrant in this case did not authorize execution at night and the

Information sworn to obtain it did not provide grounds to support why it might be required.

In the particular circumstances of this case, it is the Crown's view that the absence of appropriate limitations in the warrant on the duration of and times permitted for the search represents a serious breach of s.8 of the *Charter*.

The use of the s.487 warrant to conduct veterinary checks

Another significant problem is the investigating authorities' use of the warrant obtained under section 487 of the *Criminal Code* to conduct veterinary checks of the animals on the premises. Section 487 authorizes the seizure of tangible things. By contrast, a general warrant obtained under section 487.01 of the *Criminal Code* which must be authorized by a judge, permits the use of procedures and techniques to gather information concerning offences. Veterinary checks to determine the condition of an animal with a view to establishing grounds for laying an animal cruelty offence fall squarely under the latter section. In the alternative, the investigating authorities could have applied for a warrant under s. 12 of the *OSPCA Act* to enter and inspect the animals found. The OSPCA elected not to pursue this course of action in the investigation and thus was legally and constitutionally obligated to confine its search within the parameters of the s. 487 *Criminal Code* warrant that was sought and obtained.

The Over breadth of the Warrants and Seizures:

A further issue of concern was the overbreadth of the warrants and seizures. The items listed to be seized in the warrants in this case are notable for their breadth. While items need not be described with exactitude, to the extent it is possible they should be described with reasonable particularity so as remove as much discretion as possible from the executing officer.

In this case the investigation appears to have been focused on a time period beginning in the spring of 2008. The items authorized to be seized were not circumscribed by this same time period in any meaningful way. The items listed for seizure in the THS warrant included:

- All statistical records
- All adoption records
- Inventory and other financial records
- Records recorded on Chameleon Computer Systems
- E-mail communications
- Handwritten notes
- All correspondence
- Computers and electronic storage devices including thumb drives and wireless communication devices and their contents
- Personnel records
- Payroll records

Leaving aside issues of relevance and the absence of a timeframe, the items seized were based on an unlimited and unfocussed description that failed to comply with the principle of reasonable particularity, given the circumstances of this case.

The Crown recently received an inventory of items seized from THS premises and the residence of Tim Trow. The seizure involved an enormous volume of material, some of which related to animal care, and a significant portion of which either predated the time period which was the focus of the investigation or was unrelated to animal care. This material included personnel records and correspondence; financial and banking information, donor and volunteer records, membership applications, newspaper articles and magazines, invoices for many aspects of the operation of THS; cell phones, mailing labels, thank you letters; credit card statements for one of the individuals charged; WSIB correspondence; disciplinary records; doctor's notes for employees; letters to government officials; and blue prints and floor plans of the THS. We have been advised by counsel for the defence that clearly labelled prescription medication was taken from Mr. Trow's home, as well as other items such as a diamond pendant, ball point pens, his birth certificate and passport.

The computer imaging that took place with respect to the computers seized is also of concern. The warrants did not require any restraint over what might be searched for within the computers.

Media presence during the search

The presence of the media at the search during the execution of the warrant at the THS poses significant concerns with respect to the reasonableness of the search within the meaning of s. 8. The OSPCA invited the media into the premises while executing the search warrant. There was no authority for the OSPCA to do that. The media attendance created additional and unnecessary intrusions and, as a result, is likely to be treated by the Court as a serious breach of s. 8 of the *Charter*. In addition, the Crown is concerned that the Informations to Obtain the warrants were posted on the OSPCA website, including the home address of one of the individuals charged. The media's presence for the arrest of several accused persons is also of concern.

The use of civilians in the execution of the searches

Additionally, the Crown is concerned with the OSPCA's extensive use of civilians, such as private investigators and security guards, in the execution of the searches. Given the significant number of civilians used during the searches in this case, it would have been advisable for the OSPCA to seek an Assistance Order or, at least, to provide information about this to the issuing justice.

The failure to address the likely presence of solicitor client privileged materials present at the locations to be searched:

The OSPCA could reasonably have anticipated that solicitor client privileged material would be present at the locations being searched. These issues ought to have been identified in the sworn information in support of the warrants so that appropriate conditions of execution could have been addressed. In the alternative, if the presence of solicitor-client materials could not have been reasonably anticipated, judicial direction should have been sought as soon as the privileged materials were located.

Conclusion – s.24(2) of the Charter

In the Crown's view, the cumulative effect of all of these concerns would lead to an inevitable finding of a s.8 *Charter* breach.

In addition, it is the Crown's view that that the evidence obtained during the search would be excluded pursuant to s. 24(2) of the *Charter* under the recently modified test in *R. v. Grant* (2009), 245 C.C.C. (3d) 1 (S.C.C.). This analysis involves a consideration of the long-term implications of admitting or excluding evidence.

The first avenue of inquiry relates to the seriousness of the *Charter* infringing conduct. In the Crown's view the breaches outlined above are serious and cannot be characterized as either "technical" or "minor" breaches. Given the nature of the breaches, the Court would be called upon to consider the presence or absence of good faith exhibited by the OSPCA investigators. The OSPCA demonstrated good faith when it re-attended before the Justice of the Peace on November 30, 2010. In the course of an application by the THS before the Superior court on December 22nd, Nordheimer, J., expressed concern with respect to the lawfulness of the continuing occupation by the OSPCA of THS premises, and explicitly indicated he was not making a determination on this issue in allowing the animals to be cared for. The OSPCA continued the execution of the warrant until January 21, 2010. This is not the only difficulty with the obtaining and execution of the warrant and there are other aspects of the case that would detract from a finding of good faith.

The Crown is cognizant of the similar mandates and goals of the OSPCA and the THS, both of whom are responsible for the health and welfare of animals in the community. It is evident that both organizations rely on private donations to sustain their respective mandates and funding requirements. A review of the history between the OSPCA and the THS reveals differing philosophies relating to the treatment and care of animals that has on occasion resulted in litigation. As already noted the THS and the OSPCA were engaged in litigation before the Animal Care Review Board in relation to the OSPCA's inspection of the THS in June, 2009. It is against this backdrop that decisions by the OSPCA in relation to obtaining and executing the warrant, including the presence of the media during the search and at the arrest of individuals, must be considered. The manner and timing of the OSPCA's conduct during the course of the search would undoubtedly be raised at trial to challenge the motivations and good faith surrounding the search.

In *Grant*, the Court held that "wilful or flagrant disregard for the *Charter* by those very persons who are charged with upholding the right in question may require the court to

dissociate itself from such conduct”. In the Crown’s view there are significant issues related to the good faith exhibited by the OSPCA in the context of the nature, timing and execution of the warrant.

The second avenue of inquiry in a 24(2) analysis relates to the impact of the *Charter* infringing conduct. The THS premises are a place of business and that attracts a lower expectation of privacy than would a private home. However, the privacy interests of a business are still important and protected under the *Charter*. The THS was precluded from conducting business for a lengthy period of time. In the course of executing the warrant, the OSPCA was the arbiter of who was permitted to enter the premises and who was excluded. Many of the documents seized directly related to the organization’s ability to operate. In addition, the consequence of the OSPCA investigation generally and the execution and public nature of the search seriously impacted upon the reputation of the organization and members of senior management.

The final area of consideration in a 24(2) analysis relates to the societal interest in adjudicating these charges on their merits. The Crown is mindful that the community interest in prosecuting cases of animal cruelty is very high. However, *Grant* directs us to be similarly mindful of the prospective impact on the administration of justice. It is the Crown’s view that to prosecute the charges brought by the OSPCA on the basis of the evidence obtained in the particular circumstances of the execution of the warrant would bring the longer-term repute of the administration of justice into question. It is of paramount importance that the prosecution of animal welfare cases is fair and reasonable, and this must remain the ultimate goal of our office.

Conclusion re: counts 6-43

The summary provided above highlights the major concerns the Crown has with respect to the search issues in this case. In our view, the cumulative effect of these issues would be fatal to the Crown’s ability to lead the evidence obtained from the warrants, with the result that there is no reasonable prospect of conviction on counts 6-43. The Crown asks that those counts be withdrawn and that all items seized pursuant to the warrants be returned to their owners forthwith.

Counts 1 to 5

The Crown has also determined that Counts 1 to 5 of the replacement Information should be withdrawn.

These counts relate to the condition and treatment of specific animals during a period of time prior to the execution of the warrant. The Crown has reviewed the disclosure provided to date by the OSPCA in relation to these counts, including witness statements and THS Board minutes, and has concluded that there is insufficient evidence to establish knowledge, recklessness or wilful blindness of the mistreatment of animals by former Board members of the THS. Further, the materials provided to the Crown to date fail to establish that the former Board members authorized, permitted or participated in the acts

of cruelty alleged. There is no evidence that individual board members had specific knowledge of the treatment of a handful of the thousand animals at the THS. Accordingly, the Crown concludes that there is no reasonable prospect of conviction and asks that these charges be withdrawn.

In assessing whether to proceed with these charges the Crown has taken into consideration that the factual foundation for the majority of the remaining counts (Counts 1 to 4) was the subject of an earlier OSPCA investigation in June of 2009. That investigation involved the inspection of over 1000 animals and was characterized by the ACRB as “a systemic and exhaustive inspection of the THS for the purpose of determining whether the prescribed standards of care were being complied with”. The investigation resulted in the OSPCA issuing compliance Orders in respect of four cats. These Orders were rescinded four days later on the basis that they had been complied with.

On December 3, 2009, the Final Decision of the ACRB concluded that there were no reasonable and probable grounds for the OSPCA to believe that three of the four animals in question were in distress because they were under the continuous care of THS veterinarians. Importantly, the ACRB commented upon the unique character of the THS in respect of its mandate to admit animals who are in significant distress:

Because of the nature of the THS facility, which takes in animals that are abandoned, abused, or surrendered by people who are unable or unwilling to provide veterinary care, a significant proportion of the animals, at the time of their admittance, are sick and in pain and suffering and, therefore are in distress, as defined in the Act.

The Crown is mindful that one of the four cats in question was not treated in a timely fashion. This finding does not, however, support a reasonable prospect of conviction against former Board members in respect of the charges before this Court.

The fifth count relates to the cat that was bitten by a dog named Bandit on October 10, 2009. A review of the materials made available to us to date indicates that there is no evidentiary basis for attributing any responsibility to former Board members for that incident. (I will return to this incident as it relates to Tim Trow, the former President of the THS, momentarily).

THS Corporate

Two months after the arrests of individuals and the beginning of the execution of the warrant on November 26th, 2009, the THS Corporate was charged with six counts under the *Criminal Code* and nine counts under the *OSPCA Act* (based on the same allegations).

The charges against the THS in its corporate capacity were laid the afternoon before the Superior Court was to hear an application by the THS to challenge the warrant. The ability of the THS to bring the application in that forum at that time was predicated on the

fact that they had not been charged. Once charges were laid, the THS was prevented from seeking pre-trial relief. When the parties appeared before the Superior Court the following day, Justice McMahon expressed the importance of the Crown intervening and taking carriage of the prosecution.

To the extent that these counts rely on evidence obtained during the execution of the search, for the reasons already outlined there is no reasonable prospect of conviction. Counts 1 and 2 relate to Casper, the cat found in the ceiling of the THS during the execution of the warrant. Counts 3 and 4 relate to a raccoon. The materials we have received from the OSPCA to date (6 months after the charge was laid) do not set out the factual basis for counts 3 and 4, but they do appear to rely on evidence obtained during the search. Counts 5 and 6 are general counts relating to animal cruelty

Some staff at the THS provided statements that raised legitimate concerns with respect to the ability of staff to appropriately deal with over 1000 animals on site at the time. These statements appear to be the basis for counts 5 and 6.

In assessing these charges the Crown is mindful that the investigation resulted in positive changes at the THS. With respect to the public interest in proceeding with a prosecution against the THS and former volunteer Board members the Crown has considered the following:

- There is a new Executive Director of the THS appointed for a 2 yr term. He has prepared comprehensive new policies and procedures in consultation with the OVC, Edmonton Humane Society, and vets from the University of California Davis Shelter Medicine Program. Two veterinarians from that program are retained to continue providing consultation on intake, adoption, population management, shelter medicine, housing and animal care for the year following the re-opening of THS. These consultants were recommended by the OSPCA
- THS has conducted intensive re-training of staff from April 12-June 11/10, involving sanitation, veterinary care, customer service, intake and adoption, and disease control. The training was endorsed by the consultants above.
- THS has retained an HR consultant for advice on organizational reform
- THS now employs 4 full-time and 2 part-time veterinarians, 6 vet techs and 25 animal care workers. The staffing complement is based on population model recommended by the consultants

We have also been advised that all of the former Board members charged are no longer sitting on the newly constituted Board. There are now two veterinarians on the new THS Board. The Board will be provided with statistics on intake numbers, adoptions and euthanasia to provide ongoing monitoring. The newly created THS organization has demonstrated a commitment to proper management and treatment of animals, with many aspects of the changes being supported and approved by the OSPCA.

Based on these changes the Crown is satisfied that the conditions that existed at THS in the fall of 2009 will not reoccur.

The Crown requests that all charges against the THS and former Board members be withdrawn at this time.

Charges Against Senior Management

Vijay Kumar is facing two charges under the *Criminal Code* that were not laid until March of this year. Mr. Kumar was the shelter manager during the time period set out in the information, that is, between April 18, 2008, and March 1, 2009. Vijay Kumar had not worked at THS since March of 2009, well before the June 2nd inspection. After reviewing the information provided to date, the Crown has concluded that there is no reasonable prospect of conviction in respect of the charges against Mr. Kumar and requests that all charges against him be withdrawn.

Andrew Bechtel, Gary McCracken, Romeo Bernardino, Stephen Sheridan and Timothy Trow are before the court on conspiracy charges, obstruct charges, and wilfully permitting unnecessary pain, suffering or injury to animals. Counts 1 and 5 are conspiracy charges. Based on the information we have been provided with to date the Crown would not be able to prove the existence of an agreement to commit these offences by the individuals charged. There is no reasonable prospect of conviction and the Crown asks that these charges be withdrawn.

Count 3 charges that Tim Trow wilfully permitted a dog named Bandit to bite the leg of a cat and then withheld medical treatment. The material provided by the OSPCA indicates that Bandit lunged at a cat that was in a cage and bit its leg, fracturing it. The veterinarian on staff that day had just started a medical procedure and wasn't able to attend to the cat for approximately one hour. In the Crown's view we would not be able to prove the elements of the offence beyond a reasonable doubt. There is no reasonable prospect of conviction and we ask that this charge be withdrawn.

Count 2 involves allegations that all five accused individuals wilfully permitted unnecessary pain, suffering or injury to animals by failing to exercise reasonable care or supervision during the time period from April 16, 2008 to November 26, 2009. To the extent that this charge relies on evidence obtained during the search, as I have previously indicated, the Crown's view is that this evidence would not be admissible.

Materials have been provided by the OSPCA in the form of witness statements taken prior to November 26, 2009, indicating that some animals may have suffered missed feedings and treatment, and that the cleanliness of cages and food storage was of concern at various times. The statements also reflect concerns relating to the general management and financial responsibility of the THS. However, expert evidence advanced at the ACRB hearings by the THS as well as evidence that was given by OSPCA Senior Inspector Mindy Hall indicate that "there were no concerns with cleanliness, and ventilation and

the size of cages for the animals”. Moreover, the Final Decision of the Board noted that “food and water was available to the cats and the cages were clean and tidy”. It will be difficult for the Crown to prove beyond a reasonable doubt that Senior Officers of the THS wilfully permitted animal suffering by failing to exercise reasonable care in light of the highly contested expert and civilian evidence in the circumstances of this case. Given the issues identified by the Crown to date in respect of the allegations and a careful consideration of the Final Decision of the ACRB released on December 3, 2009, the Crown will be asking that the charges be withdrawn.

Counts 4, 6 and 7 relate to allegations that some documents were placed in desks and animals moved around during the inspection by the OSPCA in June of 2009. We have been provided with disclosure which indicates that on June 2nd, when OSPCA investigators attended THS, some animals were moved within the premises, as the investigators were inspecting the site. On this basis, there were grounds to lay the obstruct charges. However, a careful review of the witness statements and the decision of the ACRB reveal that all the animals were ultimately seen in the course of the inspection and that reasonable standards of care were being met at the THS with the exception of one cat of the more than 1000 animals examined.

Romeo Bernardino was initially hired by THS in 2002 as managing Director of Animal Care Services. From the end of 2006 to his arrest on November 26th, 2009, he was the business manager for THS. His responsibilities included fundraising, accounting, maintaining business documents, labour and union issues, contracts, and communications on behalf of THS. He was not involved directly in animal care. The materials provided by the OSPCA to date to indicate that there is insufficient evidence on each of the offences charged. There is no reasonable prospect of conviction and the Crown asks that these be withdrawn.

Andrew Betchel was the Shelter Supervisor. The Crown understands that Mr. Betchel would have general knowledge of conditions at the shelter on a daily basis. However, based on careful review of the disclosure available to us there is not sufficient evidence to establish guilt on the part of Mr. Bechtel. There is no reasonable prospect of conviction and the Crown requests that these charges be withdrawn.

Tim Trow was the former volunteer President of THS, Gary McCracken was the general manager, and Stephen Sheridan was the Chief Veterinarian. Based on the materials available to the Crown to date, it is apparent that there were problems that arose with the operation of THS under the management team led by Mr. Trow. There is evidence to suggest that Mr. Trow was a controlling and dominating President, and required staff to check with him before doing some medical procedures, including euthanasia, and that his management style resulted in the loss of staff. Under his management the shelter was overcrowded, at times there may have been insufficient staffing and resources, and some of the staff was not properly trained. Consequently, the treatment, cleaning, feedings, and appropriate decisions to euthanize were often delayed and there may have been shortages of some medications.

In assessing the viability of the prosecution, the Crown is aware that this evidence would be highly contested and that conflicting expert evidence would be presented by all parties. Moreover, the Crown is aware that defence counsel for each of the parties charged will be strenuously advancing an abuse of process motion. Such a motion would involve a comprehensive analysis of the motivations of the OSPCA in initiating the investigation and laying the charges, the manner and execution of the search warrant and the arguable conflict of interest inherent in the OSPCA serving as the expert and the investigating authority in the context of being a privately funded organization with policing powers. It is the Crown's view that these issues would adversely impact our ability to successfully prosecute the allegations before the Court.

In addition, the Crown has carefully balanced and considered the public nature of the arrests of these accused, the fact that none of these individuals continue to work at the THS. The Crown has taken into consideration that the THS is an entirely reconstituted organization that has demonstrated a meaningful commitment to positive and constructive change in the care, treatment and welfare of animals who are in distress in the community.

Finally, Dr. Sheridan is himself facing complaints by former veterinary staff at the College of Veterinarians of Ontario. There are differing veterinary opinions with respect to the care of animals at the THS during this time period. It is the Crown's view that in the circumstances of this case the College of Veterinarians of Ontario is more appropriately situated to decide issues with respect to standards of care, including when to euthanize animals that are in distress which is the primary basis of the charges.

The THS is a charitable organization. As a result of the investigation by the OSPCA, the reputation and financial stability of the THS have significantly diminished. The conditions that existed at the THS in November 2009 may well have merited further investigation by the OSPCA. Senior management at the THS might have, and likely should have, done better in the day-to-day operations in the care of such a large number of animals in distress. The investigation and subsequent charges by the OSPCA prompted the THS to take comprehensive steps to address the issues of concern and it is now operating under the leadership of a completely new Board of Directors.

For the reasons I have outlined, the Crown is asking that all of the charges before the Court be withdrawn at this time.

