

## PUBLIC

### THE PARLIAMENTARY STANDING COMMITTEE ON PUBLIC ACCOUNTS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 14 JUNE 2013.

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#### INQUIRY INTO THE RSPCA

Mr JAMES MICHAEL O'NEILL, SENIOR PARTNER, JAMES O'NEILL AND ASSOCIATES WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIR** (Mr Dean) - Welcome, James. This session is open to the public and will be recorded on *Hansard*. If at any stage you believe there is a need to go in camera to give evidence in another form, the committee will make a decision on that. Whilst you are here parliamentary privilege is provided to you but once you leave this environment, should you talk about your evidence or make any statements, you are no longer covered by parliamentary privilege.

You have not provided any written documentation but you have seen our term of reference. This term of reference was provided to us by the House of Assembly, in order for us to carry out this inquiry. I will give you an opportunity to make any statement you may wish to make. I believe you have an involvement somewhere with the RSPCA inquiry. We are trying to get to the bottom of that, as to what your involvement was and what you can pass on to this committee.

**Mr BEST** - Before you start - with your contract, are you being paid for today?

**Mr O'NEILL** - No, I am not being paid for today.

**CHAIR** - James, I will get you to start off with your profession, your background and details of your employment, and your expertise in these areas.

**Mr O'NEILL** - I have been in industrial relations my entire career, which is now just on 30 years. I am degree qualified and have a Bachelor of Arts with majors in political science, administration and sociology. I have some post-graduate qualifications. I started my career at the former Hydro Electric Commission and worked there for 12 years. I left there as an HR account manager and went to the state Education Department where I worked as a principal workplace relations adviser for two-and-a-half years. I then went to the TCCI as a workplace relations advocate for eight years. I briefly went to Searson Buck as a manager of their people and performance division. I spent two-and-a-half years there and then started my own business in December 2007. The business is now a statewide operation. We have offices in Hobart and Launceston.

**Mr BOOTH** - And the nature of your work, James?

**Mr O'NEILL** - It is industrial relations. We prepare contracts and enterprise agreements, and we work on investigations, disputes, hearings for unfair dismissal, antidiscrimination matters, and workers compensation matters.

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**Mr BEST** - What are the terms of your contract with the RSPCA?

**Mr O'NEILL** - That was purely a consultancy. Many of our clients engage us on a regular basis - we have a relationship-type arrangement with them. In some cases, particularly for some of our smaller, not-for-profit organisation clients, they will use us as their locum HR manager because they cannot afford to have that sort of expertise on site, which makes sense. With the RSPCA, that was a pure consultancy, where we were engaged and instructed to undertake an investigation.

**Mr BEST** - So there is no ongoing engagement, it was just this one particular job?

**Mr O'NEILL** - That's right. At this stage that is how it has been, but that is not to say they wouldn't engage us in the future. At this stage, there is no ongoing arrangement or relationship with the RSPCA.

**Mr BEST** - Prior to that -

**Mrs TAYLOR** - Could you let James finish his sentence? He said he was engaged to investigate - and then you interrupted him. Could we just hear the rest of that sentence?

**CHAIR** - Order. I intend to go back to where I started, and that is to allow James an opportunity to make any opening statement he would like to make to the committee. Then we will go into questions because he may well cover some of those issues, if he wishes, in his statement. James, is there any statement you would like to make in relation to your involvement with the RSPCA?

**Mr O'NEILL** - Certainly. We were engaged by the board to conduct an investigation. Obviously, I can go into a lot more detail about that but essentially it was a workplace investigation. There were some allegations that, on the paper, seemed very serious. Our investigation process initially involves what we call 'discovery' and discovery can involve documentation discovery, and interviews with staff. Then we analyse what we have and prepare a report, with findings. That was what we were instructed to do in relation to the RSPCA.

**CHAIR** - Is that all you wish to say? If you have a prepared statement you want to read by all means read it. Do not feel uncomfortable about that.

**Mr O'NEILL** - I do have a prepared statement. I am happy to read parts of it, but I understood the committee had it.

**CHAIR** - I have not seen it, James. There has probably been a breakdown in communications somewhere.

**Mr O'NEILL** - Certainly.

**Mr BOOTH** - Just for clarification, you mean that prepared statement?

**Mr O'NEILL** - Yes. I was asked by Leonard Fernandez, Barristers and Solicitors, to prepare a statement and I have done that under statutory declaration.

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**Mr BEST** - Chair, that is what I was trying to ask. Is the witness providing evidence on behalf of the committee or is he providing evidence on behalf of the RSPCA? He has just told us that he was instructed by the barrister for the RSPCA to provide a statement, and I find that highly unusual. I think he should be under our instructions, regarding our terms.

**CHAIR** - We have invited the witness here to discuss, or raise any information or evidence in relation to, his involvement with the RSPCA. The fact that he has been asked to make a statement to another organisation is another issue.

I have invited James here to make any statement that he would like to make to this committee. If he wants to read from another statement, that would be a matter for him, I would have thought, provided that statement is not defamatory in any way of anybody. If it was, we would ask him to hold off while we made a decision about where we should go with it.

**Mr BEST** - Chair, I respect what you are saying, but I do have a problem when it appears that the barrister for the RSPCA has given direction to a witness, who should have come in here to provide evidence by himself, not under the direction of the barrister or the RSPCA.

**CHAIR** - I understand what you are saying but the witness is giving evidence under oath. He understands that position and I have no doubt that the evidence is going to be -

**Mr BEST** - It looks like collusion, Chair.

**CHAIR** - No, I will listen to Peter.

**Mr GUTWEIN** - James, can I ask a question? The statement that you have there - was that prepared at the request of the RSPCA's solicitor for their use, or for the use of this committee?

**Mr O'NEILL** - I understood that it was for the use of this committee - that this committee would see the statement.

**Mr BEST** - I am seriously concerned. It appears there is collusion.

**CHAIR** - That is another issue and we need to be very careful here. The witness has now given information on why he has prepared a statement - on the understanding that it would be coming to this committee, as a part of this committee's work and requirements.

**Mr BEST** - But under the direction of the RSPCA's solicitor, Chair.

**Mr BOOTH** - Point of order, Chair. I would like to move on and let the witness give answers to the questions we want to ask.

**CHAIR** - I know and I uphold that as well because I do not think there is any position at this stage that we should really be too concerned about. I will allow the witness to proceed at this time unless anybody has a contrary view on the committee.

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**Mr BEST** - I do, but I will reserve that, Chair, and move on.

**CHAIR** - If it is felt that we need further discussion I would be happy to adjourn the meeting for a very short time for a discussion in camera.

**Mr BEST** - I would like the opportunity to discuss it further if we could. I think it is a pity we are not necessarily going to hear from Mr O'Neill now because his statement has been vetted, if you like, by a barrister for the RSPCA.

**Mrs TAYLOR** - We do not know if that is correct. You are making assumptions.

**Mr BEST** - That is what we need to know.

**Mrs TAYLOR** - If you let him speak we might find out.

**Mr BOOTH** - You are making some allegations.

*Interjections..*

**CHAIR** - Order. I think we will continue at this stage and see where this leads, and take the matter you mentioned on notice, Brenton. Can you continue, Mr O'Neill?

**Mr O'NEILL** - I prepared this statement, and it has been amended in no way. I am happy to read it - it is factual and it probably gives a very clear account of my dealings with the file.

**CHAIR** - Yes, if you could continue.

**Mr O'NEILL** - It is a bit over two pages, but I will work through it.

I, James O'Neill of 24 Thornley Street in Glenorchy Tasmania do declare the following -

I, James O'Neill and Associates Proprietary Limited, was engaged by the RSPCA Tasmania on 7 September 2012 to conduct a workplace investigation.

1. I was advised that the board received an anonymous written staff complaint raising a number of allegations against the CEO, Mr Ben Sturges. These included bullying, intimidation, advising staff that he was going to get rid of the board at the AGM on 15 September 2012, and circulating a petition via another staff member against the board.

2. I was also advised that on Thursday 6 September 2012 the board was advised by the government review panel that they had received a signed petition from staff regarding the board. Particulars unknown.

3. I conducted the investigation by way of document discovery, and interviews with staff statewide.

4. I found that the Hobart shelter and the vet clinic staff were reluctant to participate. I was contacted by Mr Brendon Honner of the Australian Services Union on Friday,

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21 September 2012 advising that his members at the Hobart shelter and the vet clinic wanted to have representation when I interviewed them. I assured Mr Honner that the staff were not subject to the investigation and advised him that I had no issue with staff being represented by the union when I interviewed them.

5. I found that Ms Gaby Lawson was very reluctant to participate in my inquiries. Ms Lawson was initially to be interviewed by me on 25 September 2012 but claimed that there was a lack of procedural fairness as there was an allegation against her in the questions that I was asking. I assured Ms Lawson that she was not the subject of this investigation however she still believed that this investigation was not being conducted fairly. I therefore advised Ms Lawson that I would terminate the interview and seek instructions from the board.

6. Following the initial interview with Ms Lawson, Mr Honner advised me that the other employees namely Joanna Meyer, Hannah Wright and Kerry Lambert did not want to be interviewed by me as a result of Ms Lawson's unfair treatment. I did not insist that they were interviewed until I had received instructions from the board in relation to Ms Lawson.

7. At the second interview with Ms Lawson in the presence of Mr Honner at our offices, which at that stage were at 2 Melville Street, Ms Lawson asked if she could record the interview and I said, 'No'. She requested a copy of the interview notes and I said, 'No'. Ms Lawson still had concerns about the investigation and procedural fairness. I again stressed that the investigation was into complaints received by the board against the CEO.

8. As the interview proceeded Mr Honner advised me that in his view my tone of voice was becoming aggressive. I advised Mr Honner that I was not being aggressive rather I had a very loud tone of voice. I apologised to Ms Lawson if she felt that I was being aggressive and said that I would tone my voice down.

9. On Friday 21 September 2012 I received a telephone call to my mobile from Mr Kevin Harkins. Inter alia, Mr Harkins asked me what was going on with the RSPCA. I responded by saying I would not discuss this matter with him as he had advised me that he had been contacted by staff concerned about my investigation. I then advised Mr Harkins that I had also received a call from Mr Brendon Honner of the ASU requesting that the staff to be interviewed could be represented by him, which I advised was fine. Mr Harkins said to me words to the effect, 'You want to be careful because everyone is watching you on this'.

10. Later on Monday 5 October 2012 I saw Mr Harkins when I was leaving a meeting with one of our clients, Wrest Point Casino, on site. I understand that Mr Harkins was attending the WorkSafe Conference hosted by Wrest Point. Mr Harkins again mentioned, inter alia, the RSPCA and specifically said to me, 'Everyone is watching you.'

11. In a letter dated 5 October 2012 Mr Sturges had indicated he was making a complaint against the writer, James O'Neill and Associates, to the Anti-Discrimination Commission. The basis for this complaint is not known. I am of the view that such letter is without jurisdiction under the Anti-Discrimination Act 1998 and is an attempt by Mr Sturges to interfere with my investigation by threatening me with administrative action for conducting an investigation in accordance with my instructions.

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12. In a letter dated 5 October 2012 Ms Lawson, in identical terms to Mr Sturges, on the same date as his letter referred to above, indicated that she was making a complaint against the writer, James O'Neill and Associates, to the Anti-Discrimination Commission. The basis for this complaint is not known. I am of the view that such letter is without jurisdiction under the Anti-Discrimination Act 1998 and is an attempt by Ms Lawson to interfere with my investigation by threatening me with administrative action for conducting an investigation in accordance with my instructions.

13. In a telephone call to my mobile on 10 October 2012, Mr Honner said that Mr Sturges had requested that I interview him as part of my inquiries. I advised Mr Honner that I would not interview Mr Sturges and that he would be given an opportunity to respond to any allegations and evidence put to him. I also said to Mr Honner that it was inappropriate that he put the request for the interview to me from Mr Sturges, given that Mr Sturges was claiming that I was victimising him.

I signed that declaration on 10 May 2013.

**CHAIR** - Thanks, James. Is there anything else you want to say at this stage?

**Mr O'NEILL** - No.

**CHAIR** - I will open it up to questions from the members.

**Mrs TAYLOR** - James, is the investigation ongoing? Have you completed it?

**Mr O'NEILL** - Yes, I have. It is complete.

**Mrs TAYLOR** - You have reported back and done the discovery stage?

**Mr O'NEILL** - Yes, we have analysed it. We have prepared a report with findings and, again, that report went to Leonard Fernandez, the RSPCA's barristers and solicitors.

**Mr BOOTH** - Has that report reached its final conclusion?

**Mr O'NEILL** - Yes, it has.

**Mr BOOTH** - Is it possible to table that report? Can the committee look at that evidence without prejudicing something you are already doing?

**Mr O'NEILL** - No, I have no issue with that.

**Mr BOOTH** - Could we have that report tabled?

**Mr O'NEILL** - I am happy to do that. I don't have copies, but the report can be copied.

**CHAIR** - We can take a copy of that.

**Mrs TAYLOR** - Is it appropriate, Chair, to ask what the findings were?

**Mr O'NEILL** - I am happy to talk to the findings.

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**Mrs TAYLOR** - If that is appropriate, it would be good. I do not know. That is why I am asking whether we can ask for the findings.

**CHAIR** - I just need to be a little bit careful here. If we are going to talk to your findings on that report I am conscious of the need for us to consider what they might be and whether they could be defamatory of any persons. I suspect they might well be - I do not know. It might be advisable for the committee to first view that report before we make that determination. I need to be fair to all parties, so I would be reluctant to ask James, at this stage, to go through the findings of that report. Does anybody else have a contrary view?

**Mr BEST** - I think a couple of people have been defamed anyway in the statement that has just been made, but that cannot be taken back.

**CHAIR** - I do not quite see it that way.

**Mr BEST** - There have been a whole heap of allegations read out.

**CHAIR** - That is another matter. Does anybody else have any comment in relation to the report? I am not sure what is the appropriate course of action at this time. I am seeking some support here as to whether we need to adjourn at this stage to look at the report, and then make a determination on where we go.

**Mr BOOTH** - Perhaps, Chair, if we could ask -

**CHAIR** - To have it tabled?

**Mr BOOTH** - We have agreed to have it tabled. Without mentioning any names, perhaps we could ask about the specific nature of the investigation.

**CHAIR** - I think that is dangerous and, as the chair, I do not think I could support that position. I am open to comment from the other committee members on that.

**Mr HARRISS** - I concur with your view, Mr Chairman. Notwithstanding that James has indicated the finalisation of the report, it is a report for the organisation.

**Mr O'NEILL** - Correct.

**Mr HARRISS** - There may well be a whole raft of issues in the report that should not be ventilated in this forum, at this stage, without further consideration. On that basis, I suggest it would be appropriate, if James was of a mind, to table the report in camera, so that we receive it in camera. If we do not do that, it becomes a public document the moment it is tabled. I would move that the report be received by the committee in camera.

**CHAIR** - I am open to a bit of support on this. To do that, I do not think we need to go in camera. We can just receive it. It can be tabled in camera for the purposes of viewing by this committee.

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**Mrs TAYLOR** - I do not disagree that it should be tabled in camera, but for the purposes of this inquiry and for the sake of the public good, if it is possible that some of those findings, or all of those findings, were able to be published, then I would like to think we could do that. I would prefer that we take a little break in camera, and look at the evidence or even speak with James about it. When we come back, we can ask him to speak in public about any matter we think is safe enough to speak about in public - any finding.

**Mr HARRISS** - If I could add to that, in terms of the in camera process, we have already explained to James in the chair's opening remarks that there is a process for further dealing with matters taken in camera. After we have digested the whole document, we could write to James and outline the position of the committee, in accordance with the chair's earlier instruction.

**Mr O'NEILL** - It is a fairly detailed report.

**CHAIR** - I think that is the appropriate course here - that we receive that document in camera. We will consider the report and if we need to bring you back, James, the committee will make further contact. Any evidence in respect of the report will most likely be given in camera, I would think. It may not be. But, the report is tabled in camera and in confidence.

**Mr GUTWEIN** - I am happy with that outcome. I am wondering whether on the basis of some of the public evidence James just gave you, can I ask him a question about some of the issues he raised?

**CHAIR** - Absolutely. Once we can finalise this, which is just about finalised now, we will go back into the questioning of James on other issues.

**Mr BOOTH** - I would like to ask some questions.

**CHAIR** - Yes, certainly. This is on the document being tabled in camera.

**Mr BOOTH** - No, on the evidence that he has already given.

**CHAIR** - You want a question on that.

**Mr BOOTH** - Yes.

**CHAIR** - We can proceed. The document is received in camera. Thank you for that.

**Mr GUTWEIN** - The comments you just made in regard to Kevin Harkins. You said that he told you that people were watching you very closely.

**Mr O'NEILL** - Yes.

**Mr GUTWEIN** - Could you explain in what context you took that comment to be? Was that a threat?



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**Mr O'NEILL** - I took it as a threat. Kevin can be fairly forceful in his views. I have had dealings with Kevin, with enterprise agreements, but I did take that as a veiled threat to be careful with what I was doing.

**Mr GUTWEIN** - When you say - 'with what I was doing' - that threat went to what?

**Mr O'NEILL** - It was just a comment that was made. It did not concern me but, thinking about it, it was clearly, in my view, an attempt to make me a little bit twitchy about what I was doing.

**Mr GUTWEIN** - And that threat was made twice?

**Mr O'NEILL** - It was. It was in a telephone call the first time. That is where he had rung me to inquire about what was going on with the RSPCA. It took me by surprise because I wasn't sure what the head of Unions Tasmania had to do with the RSPCA. It was at the end of that conversation that he said what he said. When I was leaving one of our client's, Wrest Point Casino, I ran into him and we had a bit of a chat. Towards the end of that chat it got onto the RSPCA and he again said I should be careful because everyone is watching me.

**Mr GUTWEIN** - Why did Mr Harkins have an interest in your activities within the RSPCA?

**Mr O'NEILL** - I am not sure, to be honest. That is why I said that when we rang me it took me by surprise because I was wondering how the head of Unions Tasmania would even know I was doing the investigation at the RSPCA, given the early stages of my inquiry.

**Mr BOOTH** - Was the phone call solely about that or was it a general chit chat and, 'By the way, you'd better be careful'?

**Mr O'NEILL** - I thought it was specific. When I ran into him in the corridor at the casino it was more of a chit-chat initially and then got onto the RSPCA, but the initial phone call to me was, I thought, for the sole purpose to say to be careful with what I was dealing with there.

**Mr BOOTH** - What did you say to that?

**Mr O'NEILL** - I didn't respond. I just said, 'Okay, Kevin'. I didn't inquire into it. I did not take it as concerning but in thinking back on it, it was, in my view, a threat to make me twitchy, to back off, to say, 'This is too hot. I don't want to deal with it'.

**Mr GUTWEIN** - You are in the industrial relations business. Is it usual to get those sorts of calls from a union to attempt to make you twitchy, or was this behaviour that you would not normally expect?

**Mr O'NEILL** - If I had been working in IR in the 1950s and 1960s, perhaps I might have expected that. But in today's industrial relations environment, it is not how we do business. I thought it was unusual.

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**Mr BEST** - I want to ask a couple of procedural matters. You mentioned Brendan Honnor from the ASU, and you mentioned you began your investigations with employees. Did you contact the ASU before you began your investigations?

**Mr O'NEILL** - No, I didn't.

**Mr BEST** - Do you think the employees may have felt they didn't get the proper process to be able to speak to their representative union before you began your investigation?

**Mr O'NEILL** - Normally when I do investigations I try to keep it at the lowest common denominator in the sense that people you are wanting to participate in your inquiries are not under investigation, therefore it is not my normal practice to invite them to have somebody with them.

**Mr BEST** - It is their right, though.

**Mr O'NEILL** - It is, but it was not a disciplinary process with them or a performance-based investigation.

**Mr BEST** - No, but you would have to advise them of their rights.

**Mr O'NEILL** - I appreciate these things are never easy for staff and I try to put them at ease, but if somebody wants to have somebody there I would be more than happy to terminate any meeting and allow them to do that. Essentially that is what happened, because I was at the RSPCA offices and after I had the initial interview with Ms Lawson where I terminated the meeting to get further instructions, Mr Honnor said, 'The other staff are feeling uncomfortable' and I said, 'That's fine. Let's just let the dust settle today and I will get my instructions and come back'. I ended up interviewing them with Mr Honnor present.

**Mr BEST** - From what you have given us in your evidence, it seems the process you embarked upon failed in the sense that people you interviewed felt you were too high in voice and aggressive.

**Mr O'NEILL** - That was one person.

**Mr BEST** - I would have thought that if you wanted to go through the proper process, you would have at least notified people so they would have had that opportunity to contact the ASU. Perhaps maybe they contacted Unions Tasmania, or alternatively perhaps the ASU -

**Mr BOOTH** - Point of order. This is just complete badgering and heckling the witness with fantasies that you have made up in your own mind about it. The witness is not under some sort of criminal prosecution here. He has actually come to give evidence about this.

**CHAIR** - Having heard that I will allow Brenton to continue but you need to identify a question and you need to put it to the witness in the form of a question rather than your position on it.

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**Mr BEST** - There is a whole heap of allegations that have been made by the witness -

**CHAIR** - You can ask a question and I do not have a problem with that.

**Mr BEST** - I understand that. What I am saying is that as a seasoned IR practitioner I would have thought that the people that you wished to interview would have been given the courtesy to be represented because they are not seasoned IR people like yourself.

**Mr O'NEILL** - They were advised by the RSPCA that I would be conducting inquiries and they were asked to participate openly and honestly with my inquiries. They were given notice and, as I said, I was more than happy to allow representation once people requested that. But, as I said, and I maintain that my normal approach with investigations is because it is not a disciplinary process or performance management process against that person, my approach is that I normally just do it one on one.

**CHAIR** - Just to take that and be fair to you, James, from the time you notified them of the fact that you wanted to talk to them and until the time that you did talk to them what was the delay in time?

**Mr O'NEILL** - It was a good couple of days. In fact, it could have even been a bit longer because I did some initial inquiries and then I was working my way through all the stuff. It was possibly a week but at the minimum it was two days.

**CHAIR** - Thank you.

**Mr BEST** - I have some other questions but Mr Booth may want to ask questions around this matter, I do not know.

**CHAIR** - If it is on this point we can clarify this one point but if it is a different matter I will continue.

**Mr BOOTH** - It is to do with the investigation. I wanted to ask about the investigation on specifically as to whether he notified anybody or not but the question was basically whether you were obstructed by anyone in terms of the inquiry?

**Mr O'NEILL** - I felt that Ms Lawson was concerned and I tried to alleviate those concerns because she felt that there were allegations against her. I tried to assure her that I was not instructed to investigate her. Not so much obstruction, but I think the staff were worried. They were generally worried that if Mr Sturges came back to the employment and they had participated openly and honestly in my inquiries and that got back to him they were concerned. I felt that staff were generally concerned - I would not say as much of obstructing me it was just a natural concern. I tried to alleviate that as much as I could so I would not say it was obstruction, it was just genuine concern.

**Mr BEST** - Can I ask did anyone raise - and I am not allowed to disclose this because this is evidence that we have received so I cannot say the sources of it - but we have had numerous evidence from witnesses who have said that there was pressure from the board interfering on a daily basis in the operations of the RSPCA. Did you hear any of those concerns?

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**Mr O'NEILL** - No, because I was not asking questions in relation to those.

**Mr BEST** - Why not?

**Mr O'NEILL** - Because that was not the scope of my inquiry.

**Mr BEST** - But wouldn't you want to get a fulsome report to know what the pressures were in the workplace and if there were specific people interfering with the operations on a daily basis, and you are getting a full picture. Would you not want to ask those questions?

**Mr O'NEILL** - I did not because the scope of my inquiries was to deal with the allegations that were put to me and that was purely the scope. You will see once you -

**Mr BEST** - What was the contact regarding the scope?

**Mr O'NEILL** - Sorry?

**Mr BEST** - What were the discussions prior to your engagement with the RSPCA?

**CHAIR** - Who spoke with you?

**Mr O'NEILL** - Sorry, Angela Ayling initially contacted me.

**Mr BEST** - How did she contact you?

**Mr O'NEILL** - She contacted me by phone and we had a phone conversation, and then there was essentially some instructions via e-mail.

**Mr BEST** - Do you have those instructions by email; what communications did you have by email with them?

**Mr O'NEILL** - I could find them in the detail.

**Mr BEST** - Chair, I would hope that we could be provided with those communications between Ms Ayling and Mr O'Neill.

**CHAIR** - Are you able to provide those emails to which you have just referred to James or not? You may not have them there today with you -

**Mr O'NEILL** - I would have to research them but they are certainly available.

**CHAIR** - Sure.

**Mr BEST** - Were there any ongoing instructions from Ms Ayling regarding the interviews that you were undertaking as you were proceeding? Were there any discussions or contact as you were undertaking these interviews?

**Mr O'NEILL** - Certainly, and in my view that is not unusual.

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**Mr BEST** - What were the specific instructions that you received?

**Mr O'NEILL** - It was to investigate the complaints that were received by the board?

**Mr BEST** - Were there any specific requests by Ms Ayling regarding the way that you -

**Mr O'NEILL** - No.

**Mr BEST** - Can you share with us what were the discussions then that you received?

**Mr GUTWEIN** - I think he is going to provide the emails.

**Mr O'NEILL** - Yes, it is a better little hard without -

**Mr BEST** - What was the direction that you were given regarding the interviews?

**CHAIR** - Order. I take it that you cannot answer that without reference back to the emails -

**Mr O'NEILL** - That is right.

**CHAIR** - That you would have received on this matter as Mr Gutwein has mentioned so I think, Brenton, clearly we have asked James to table or see if he has those documents to see if they can be tabled and we can take it further.

**Mr BEST** - If I can just finish off? There were numerous discussions as you were undertaking the interviews with Ms Ayling is that right?

**Mr O'NEILL** - There was communication, yes.

**Mr BEST** - And you cannot recall what specific instructions you may have received from Ms Ayling regarding the interviews you would have interviewed and reported back. You were not directed in any way to ask the questions?

**Mr O'NEILL** - No, no. It was more around arranging contact with staff. It was that sort of thing. I had my instructions; it was more process or administrative -

**CHAIR** - I think we have done that and we have been fair there and we have had enough time there, Brenton. I will go to Peter on a matter that he has.

**Mr GUTWEIN** - James, I am sure once we have a look at the report matters will become clearer in regards to how things progressed.

There are two questions I want to ask you. Firstly, have you ever been contracted by the RSPCA before?

**Mr O'NEILL** - No.

**Mr GUTWEIN** - So this is the first time?

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The second issue goes to the state of mind of the staff. You were saying they were concerned about what might happen if they were provided - I think it was full and frank discussions with you?

**Mr O'NEILL** - Yes.

**Mr GUTWEIN** - As somebody experienced in industrial relations would that be a normal reaction from people if you were asked to go in and do an investigation in a workplace? Would staff normally have some hesitation around these sorts of issues or not? I am trying to get an understanding.

**Mr O'NEILL** - They do, particularly when the person under investigation is more senior. If they are a CEO, or a senior manager, I can appreciate it is very difficult for staff to have to do that. That is why in answering Mr Booth's question it was not obstruction, it was more - it obstructed me in a sense that they were concerned and they were sort of jamming up as oppose to - is what I sensed.

**Mr GUTWEIN** - Would I be right in saying, I do not want to put words into your mouth, that would be a normal reaction from people whose bosses were -

**Mr O'NEILL** - Most definitely.

**Mr GUTWEIN** - My final question was in regards to your - again I guess it is subjective and it is a subjective view I am looking for - based on your experience the health of the organisation that you went into look at. Can you make any comment in regards to how you found things? What was your sense of the RSPCA at the time you were asked to conduct this inquiry?

**Mr O'NEILL** - I find that a little bit hard to answer. Not having had dealings with the organisation prior other than what one might see and hear in the media, as I said when I was answering Mr Best's question that I had a clear scope and that is essentially what I focused on.

**Mr BOOTH** - This inquiry that you were requested to undertake, was that the sort of normal thing that you would do as an investigator?

**Mr O'NEILL** - Yes.

**Mr BOOTH** - Was there anything unusual about the fact that you had been asked to do something like this?

**Mr O'NEILL** - No, I did not feel it was unusual. Some serious allegations had been raised and I was asked to investigate those. That is it pretty much in a nutshell.

**Mr BOOTH** - Was that the only part of the investigation that you were involved in? You investigated pre-finding and then I understand the CEO ultimately left the organisation or was stood down. Was there some issue with regard to obtaining evidence - a computer, for example, getting hold of the laptop computer?

**Mr O'NEILL** - Yes, there was a bit of difficulty there but we eventually obtained that.

## PUBLIC

**CHAIR** - What did you obtain?

**Mr O'NEILL** - As part of discovery we wanted to have access to the CEO's laptop and there was some difficulty in obtaining that. We eventually obtained it. I attended the offices of his father - that is where I was instructed to pick up the laptop from.

**Mr BOOTH** - By the RSPCA?

**Mr O'NEILL** - Yes. Arrangements were made between Mr Ben Sturges and the RSPCA that that is where I would collect the laptop from.

**Mr BOOTH** - Why would you collect it at his father's office?

**Mr O'NEILL** - That is where it was left. I acted on my instructions that that is where I was to obtain it from. I then took it back to our offices, which at the time were at 2 Melville Street. The IT forensic guys then collected it from our offices.

**Mr BOOTH** - What happened then? Did you get the information off the computer?

**Mr O'NEILL** - No, unfortunately the hard drive of the computer had been damaged.

**CHAIR** - That is not evidence you were able to identify? Who did you pass the laptop on to?

**Mr O'NEILL** - I won't say the name of the IT firm because I will get it wrong, but it is here -

**Mr BOOTH** - Is that unusual that you would, first of all, not be able to get hold of the laptop? Second, that it be left at a parliamentarian's office and, thirdly, that the machine would be inoperative? Is that normal in your experience?

**Mr O'NEILL** - No, I found it highly unusual. I just expected we would be able to get it. There were some issues around contractual arrangements and the laptop, which caused some issues about obtaining it. I understood that Mr Sturges felt it was part of his contract. He was stood down on full pay so to withdraw any element of his package would have been highly inappropriate at that point.

**Mr BOOTH** - What were you told as to why the machine would not yield any data?

**Mr O'NEILL** - Because the hard drive had been damaged. The report from the IT forensics was that it had been tampered with.

**Mr GUTWEIN** - When you say 'tampered with', the machine had not been dropped; it had been tampered with?

**Mr O'NEILL** - It hadn't been dropped because there was no damage on the casing of the laptop itself.

**Mr BOOTH** - You said the machine had been tampered with, what do you precisely mean by that?

## PUBLIC

**Mr O'NEILL** - The hard drive had been broken. I was told it was rattling around.

**CHAIR** - I need to be clear for the record. Did you view that yourself or was that what you were told by the IT experts?

**Mr O'NEILL** - Correct. I am not an IT person. I can turn my computer on and off but that is as far as I go. I followed my instructions. I collected it and took it to our offices where the instructions were that it would be collected.

**Mr BOOTH** - Why didn't you get the emails or whatever it was you were trying to get off that computer? Was it emails you were wanting to look at?

**Mr O'NEILL** - Yes.

**Mr BOOTH** - Why didn't you just get those emails off the server?

**Mr O'NEILL** - Some of them we were able to get but, again, I am not 100 per cent sure on this point, but I think some of them may have been deleted.

**Mr BEST** - Were you ever provided with any data, back-up discs or anything like that, from the machine?

**Mr O'NEILL** - I think these are questions you would really need to be asking the -

**CHAIR** - I think all you need to answer and say no, I cannot answer that you will have to ask the experts.

**Mr BEST** - That is not in your report, then, that you received the full data that was on the hard drive.

**Mr O'NEILL** - My report does cover that.

**Mr BEST** - Maybe you could enlighten us. Did you get the data off the machine from a backed up CD or something like that? Did you get the data that was on the machine?

**Mr O'NEILL** - We retrieved some data.

**Mr BEST** - Are you saying you never retrieved all of it?

**Mr O'NEILL** - I don't think we retrieved all of it.

**Mr BEST** - You don't think you retrieved all of it.

**CHAIR** - I think we need to be fair here. The witness -

**Mr BEST** - I have other questions. I don't really care -

**CHAIR** - Order. The witness would not know what was on there, so the witness would not be able to say whether he retrieved it all or what. You just need to be fair.



## **PUBLIC**

**Mr BEST** - Sorry, what is the name of your company?

**Mr O'NEILL** - James O'Neill and Associates.

**Mr BEST** - Have you ever employed anybody from the RSPCA?

**Mr O'NEILL** - We did employ a former employee, yes.

**Mr BEST** - What was that person's role at the RSPCA?

**Mr O'NEILL** - That person's role was - I understood she was the human resources manager.

**Mr BEST** - And when was she engaged with James O'Neill and Associates?

**Mr O'NEILL** - It was in about June 2012.

**Mr BEST** - So that would have been prior, then, to your -

**Mr O'NEILL** - Engagement, yes.

**Mr BEST** - Are you aware of any discussions with the person that you employed and the RSPCA regarding your engagement?

**Mr O'NEILL** - Sorry, am I aware?

**Mr BEST** - Are you aware of any discussions with the person that you employed from the RSPCA who was a human resources officer and the RSPCA regarding your engagement?

**Mr O'NEILL** - Not that I am aware of.

**Mr BEST** - You are definitely not aware of any of those?

**Mr O'NEILL** - No, as I said I was contacted by Angela Ayling.

**Mr BEST** - Are you aware of the close relationship with the person who you employed and Angela Ayling?

**Mr O'NEILL** - Yes. I was aware that they got along well. Yes.

**Mr BEST** - What was the role of this person, then, working in your organisation?

**Mr O'NEILL** - We had a vacancy for a workplace relations consultant and we advertised and that person won the job on merit.

**Mr BEST** - Regarding the review or the investigations that you undertook at the RSPCA, what discussions did you have with this person that you employed from the RSPCA, the human resources officer that you employed prior to your investigation?

**Mr O'NEILL** - I did not formally interview that person in relation to my inquiries, no.

## PUBLIC

**Mr BEST** - No, that was not the question. What discussions did you have about the investigations that you were undertaking at the RSPCA with the prior human resources officer that you were employing?

**Mr O'NEILL** - I didn't ask her any questions in relation to that.

**Mr BEST** - So you had no discussion with her about the RSPCA?

**Mr O'NEILL** - We had discussions, but when I was engaged to conduct this inquiry I was not going to her asking her questions, okay. She obviously had things to say about the RSPCA, but I -

**Mr BEST** - What sort of things?

**Mr O'NEILL** - Do I need to answer that?

**Mr BEST** - I think so.

**CHAIR** - I am just wondering where it is leading. I would probably -

**Mr BEST** - There has been a range of serious allegations.

**CHAIR** - Sorry, once again if there is a need to go in camera to answer any of this, if it is considered that it might be defaming of somebody, the conversation that you may have had with your employee, then we would need to listen to that. Other than that, I would ask you to attempt to answer the question.

**Mr O'NEILL** - The person in question who we employed said that she had a difficult time when she was at the RSPCA, and that in fact she had left the RSPCA because of the difficult time that she was having. That was just in discussion. Those discussions were even had prior to us being engaged, because she started with us and you want to find out about somebody's past and their employment, and those things were discussed.

But as far as any influence that that may have had on my inquiries, I do not see that.

**Mr GUTWEIN** - It appears to me to be a very close fit that a couple of months or thereabouts before being engaged to investigate the CEO, that your firm had hired the former human resource manager. Did you think that there was any conflict of interest at all on the basis of taking that engagement when you had a senior person from that organisation working for your firm who had left, as you have indicated you were aware, after having difficulty, presumably with that particular person? It seems to me that there is an obvious conflict of interest there. I am wondering what your thought processes were in accepting that engagement under those circumstances?

**Mr O'NEILL** - I believe that when I conduct investigations that I go in and I look at the evidence before me. I do not let external influences or other comments cloud my thinking. I can see what you are saying but at the time I have no hesitation on taking on that engagement.

## PUBLIC

**Mr GUTWEIN** - I want to form no judgement about this at all. But from where I sit, this issue of somebody leaves the RSPCA because of concerns within that organisation, comes to work for your firm, which has never done work for the RSPCA before, all of a sudden is appointed to investigate the particular person that one of your staff members had left the RSPCA for and no thoughts of a conflict of interest or discussions. Did you have any discussions with the RSPCA board about the fact that there could be at least a perceived conflict there?

**Mr O'NEILL** - No, I did not.

**Mr BEST** - I was going to raise the question again about Mr Fernandez. What was the relationship with him and your submission today? He contacted you, is that right, the solicitor for the RSPCA?

**Mr O'NEILL** - No. I received my invitation to attend this inquiry. I prepared a statement and I went to Leonard Fernandez's office and I signed my statement before him.

**Mr BOOTH** - As a witness?

**Mr O'NEILL** - Yes.

**Mr BEST** - Mr Fernandez did not contact you regarding your statement? Are you saying this is something you did of your volition?

**Mr O'NEILL** - No. He asked me to make a statement in relation to my investigation.

**Mr BEST** - For this committee?

**Mr O'NEILL** - Yes.

**Mr BEST** - In some ways you would have to admit that he would want to approve what you have presented today?

**Mr O'NEILL** - Can I take that back because the statement was prepared, on reflection, in case I needed to participate in the Fair Work Australia hearing which did not proceed.

**Mr BEST** - I am trying to get this clear because the witness has told us at the very start that this was a statement that he prepared in evidence for the committee.

**Mr O'NEILL** - I understood that you would have it. I understood that when I signed this because I prepared this a fair while back, it was not used in those proceedings and I went to Leonard Fernandez's office to sign this statement and I understood that it would be received by this committee and that I would be asked questions in relation to this statement.

**Mr BEST** - When did he sign off on it?

**Mr O'NEILL** - I signed it before him on 24 May of this year.

## PUBLIC

**Mr BEST** - Only a matter of a few days. In regard to Mr Fernandez, did he provide any advice to you while you were doing interviews? Have you had any advice or needed to seek any legal questions of any sort with Mr Fernandez? Did you have any contact with him?

**Mr O'NEILL** - Yes, I did.

**Mr BEST** - While you were undertaking the investigation?

**Mr O'NEILL** - Yes, and I felt that was appropriate because Leonard Fernandez had been the solicitor at the RSPCA and he had had some dealings. So as part of my inquiries and particular discovery I needed to engage and communicate with him which I did.

**Mr BEST** - If you wanted to undertake an investigation with the employees around a whole series of matters that have been raised, do you think that could have been more objective in the absence of people discussing matters with you on a daily basis such as may be the RSPCA solicitor or Angela Ayling?

**Mr O'NEILL** - No, I did not think it was unusual. Again, as I said, I look at these things based on the evidence before me. I don't lead -

**Mr BEST** - You are trying to form your own opinion aren't you without other people influencing your view?

**Mr O'NEILL** - I did not feel they were influencing my view.

**Mr BEST** - But you sought their advice?

**Mr O'NEILL** - No, I did not seek their advice.

**Mr BEST** - But you just told me that you sought Mr Fernandez advice.

**Mr O'NEILL** - No, I didn't.

**CHAIR** - The record will demonstrate that what was said on that.

**Mr BEST** - Okay, fine, I will not take that any further then, thank you.

**Mr BOOTH** - Just a clarification. You are saying it is not unusual, if you are engaged by an organisation, to speak to their legal representative? Is that what you are saying it is not unusual to do?

**Mr O'NEILL** - No, that is right, particularly that Mr Fernandez had a long association with the RSPCA. He had dealt with a lot of their legal industrial relations type matters.

**Mr BOOTH** - That document you say you originally prepared it, did you say a Fair Work Australia hearing?

**Mr O'NEILL** - Yes.

## PUBLIC

**Mr BOOTH** - You said it was not used at the hearing? Why wasn't it used at that hearing?

**Mr O'NEILL** - Because the matter did not proceed to hearing.

**Mr BOOTH** - Why didn't it proceed to hearing?

**Mr O'NEILL** - I was not involved.

**Mr BOOTH** - Okay.

**CHAIR** - Just on that. Again, for me how long have you been involved in this investigatory work for, James? How many investigations similar to this would you have done through your company, through your career?

**Mr O'NEILL** - I would have done them at TCCI, I did them when I was at Searson Buck; I have been in business now for nearly six years. I tend to do most of our investigations. To put a number on it -

**CHAIR** - I am trying to get a bit of background and you have covered that.

**Mr BEST** - Can I finally, on the back of that, Chair, if I may have you ever had a circumstance where you have had these contracts or points of engagement where you have had a senior person such as a human resources officer resign from an organisation and then come and work with you, and then you gained the contract for that organisation where they previously worked? Has that ever happened before?

**Mr O'NEILL** - No, I will think back through our staff. No, I think the person whom you are referring to is the only one.

**Mr BEST** - Thank you.

**CHAIR** - Are there any other questions?

**Mr HARRISS** - Just one to follow that if I might, James. Is that former human resources person from the RSPCA still with your company?

**Mr O'NEILL** - No, no, she is not.

**Mr HARRISS** - Where is she now?

**Mr O'NEILL** - She has gone back to the RSPCA.

**Mr HARRISS** - How long did she stay with your company?

**Mr O'NEILL** - She stayed with us I think it was around June 2012 she - December 2012, six months.

**Mr BEST** - How long did your review take to complete?

**Mr O'NEILL** - It was September 2012 when we were engaged to around the end of October.

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**Mr BEST** - How long prior to your, I think I might have asked this, how long prior to your engagement had this person from human resources been working with -

**Mr O'NEILL** - It would have been a few months.

**Mr BEST** - A few months, so what was the beginning?

**Mr O'NEILL** - I think it was June but, again, without her employment records I can't.

**Mr BEST** - Can we have that please? Is that possible?

**CHAIR** - If you would be able to provide that.

Just on the RSPCA employee what were her reasons for going back to the RSPCA? Was it the offer of a better job, a higher job, or simply wanted a change again?

**Mr O'NEILL** - She had a love of animals and there was an opportunity - I understood when Mr Sturges left and things were sorted out that there was a restructuring. She really did have a love of animals and the cause. She had made that known to us during the course of her employment. She went back to what she loved. She loved it when she first went there and -

**CHAIR** - A point, if I may - it was after Mr Sturges had left that employ?

**Mr O'NEILL** - Yes, correct.

**Mr BOOTH** - Could I ask a question?

**CHAIR** - A question on that?

**Mr BOOTH** - No, in regard to the ASU. You said that they were involved - I think his name was Brendon Honner -

**Mr O'NEILL** - Yes.

**Mr BOOTH** - from the ASU, which was the union that represented those staff at the RSPCA. Is that correct?

**Mr O'NEILL** - Yes, that is right.

**Mr BOOTH** - Did you have any ongoing feedback from the ASU with regard to the conduct of your investigation? Did you have any threats that were made by Kevin Harkins, for example?

**Mr O'NEILL** - No, none whatsoever. I get on very well with Brendon, and Brendon conducted himself in a professional manner. He was there to represent and support his members and that was fine.

## **PUBLIC**

**Mr BOOTH** - Has he said to you that he had any issues at all in regard to the way he conducted the inquiry or are there some outstanding matters as far as you are aware?

**Mr O'NEILL** - No, and nor did I ask him. He did not say anything to me, no.

**Mr BEST** - He was happy with the way you undertook the investigations and agreed with what you have presented?

**Mr O'NEILL** - Yes.

**CHAIR** - Unless there is something new that we need to continue with, I need to shut off this period because it has gone past the time. Thank you very much for coming here today. Thank you very much for the way and the manner in which you have given your evidence. If you are able to provide those further emails that have been referred to that you might be able to locate and the further information in relation to the employment date.

**Mr BEST** - The employment date and the emails, and any discussions things you might have.

**CHAIR** - The statutory declaration - I think you were tabling that, too?

**Mr O'NEILL** - Yes, I am happy to do that.

**CHAIR** - And the inquiry report.

**Mr O'NEILL** - I need to forward those documents to Jenny.

**CHAIR** - Thanks, James.

**THE WITNESS WITHDREW.**

## PUBLIC

**Mr ROBERT RUDDICK**, PARTNER; AND **Ms LYNDAL KAYE KIMPTON** MANAGER, R J RUDDICK AND COMPANY WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** - Welcome to the committee. This is a public session and today's evidence will be recorded on *Hansard*. If we get to a stage where you think the evidence you give could be defamatory or ought to be taken in confidence, please raise that issue because the committee can then make a determination on where it goes. While you are here you have parliamentary privilege in relation to the evidence you are giving, but once you move outside these premises you are no longer protected in anything you may say about this, so you need to be mindfully aware of that.

Mr Ruddick, you have provided a report that was done and members have a copy of that document. Would you like to make a statement at this stage, or add to the document you have provided? Or you may want to go into matters outside that report, so feel free to do so, and then we can go to questions.

**Mr RUDDICK** - I will give a bit of background to our firm and why we were appointed. We have been auditors of the RSPCA since 2005-06. We are also auditors for quite a few of the significant not-for-profit organisations within the state including St Vincent's and St Giles. I personally have been on the university board so I have a fairly high level of governance in relation to not-for-profit organisations. On that board I was chair of the audit and risk management committee. I was also appointed to the AMC board - the Australian Maritime College board - for my financial background under the Maritime Act.

The RSPCA is an organisation in Tasmania that we audited for some time. That organisation does not have the same level of reserves as other organisations and not-for-profit organisations we deal with, nor does it have the same level of reserves that other RSPCA state organisations have. We have had a fair bit of charting on that and we can pass over as evidenced the level of reserves that some of these organisations have. Generally, to run an organisation such as this you do require to have reasonable reserves, especially when that organisation is reliant on bequests and other non-committed funding.

During our time, the RSPCA is quite reliant on bequests as part of its overall funding and those bequests are incorporated within their recurrent expenditure. They are dependent on a certain amount of money coming in each year from uncontracted sources, and that money is applied for the recurrent day-to-day commitments of keeping the organisation going rather than going into reserves or capital items.

It is a bit unfortunate that the RSPCA, with its current structure within Tasmania, does not have the same level of depth of wealth that other not-for-profit organisations may have. They have operated under that situation for several years. That also makes the task we have had to a bit more difficult in that we must make sure that anything we say is taken into context, that this organisation does not have a large pool of funding that would back up any significant deviations from the information we are examining.



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Until recent years what we have seen is the RSPCA has operated and cut its cloth to suit what its recurrent funding was. During the periods through 2006-09 it operated within a reasonably structured budget scenario. It would appear to us that in about 2010 there was a benefactor who came in and gave some level of commitment to expand the overall scale of this business, and that included the taking on of a vet clinic and also the expansion of the inspectorate. Therefore, the RSPCA went from a certain size up to a next level of scale based on its understanding that that commitment would be there into the future and brought in a lot of infrastructure, both recurrent and capital infrastructure, to meet that sponsorship obligation. It was unfortunate that that sponsorship did not last too long, it lasted about two years, and in 2012 that sponsorship started to get withdrawn through a whole series of issues between potentially the board and that sponsor.

That left the RSPCA in 2012 in quite a difficult position where it had committed to this increased scope of business that was going to be based on a recurrent level of sponsorship and that sponsorship, unfortunately, was withdrawn during that year. Any organisation that finds itself moving up to the next level also has difficulty in scaling down and in 2012 it was not quite known whether that level of funding was still going to be available. Because that funding did not come in and was significantly reduced that year that created a situation where there was a significant increase in recurrent expenditure without the application of the sponsorship to offset that. That created a situation where there was significant deficit in that year.

In 2012, as auditors, we refused to sign the audit report until such time as during the 2013 year we could establish ourselves that there was going to be sufficient funding to continue this organisation for at least the following 12 months.

**Mr GUTWEIN** - That was 2011-12?

**Mr RUDDICK** - That was during the 2011-12 year. There was about a \$850 000 deficit during that year. That was because there was an expectation of the year before I think there was something like \$750 000 worth of donation coming in from the benefactor and it then it got reduced to just over \$100 000 in that year and yet their scaling down could not occur in that year.

We went through quite a process at that point in time to see whether there was going to be sufficient cash for the RSPCA to operate during that year. The turning point of that was a \$400 000 special grant that was given by the government and once that was confirmed and received then we were in a position to be able to sign that audit report.

That is the background where we got to. When the RSPCA was required to therefore give some credence to their go forward position, their future budgeting, given that we had done significant work in that arena they asked us would we have a look at their budgets going forward and establish the integrity of those budgets, which we did, and that was the source of that report that we then produced.

**CHAIR** - That is the one we have now?

**Mr RUDDICK** - Yes, that is the one that you have now.

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**Mr GUTWEIN** - I note in that report that you produced there is \$800 000 a year in bequests, has that been consistently that \$800 000 pre Jan Cameron's involvement or not?

**Mr RUDDICK** - These are bequests through wills and nothing to do with the sponsorship. I can show you that. We have also an analysis of what is coming in from bequests and from what is coming in from sponsorship. If you look at the two years prior to that, it was around the \$800 000 mark. Prior to that it was a \$600 000 amount, and it has gone as low as \$200 000. In this current financial year, it has risen to, by the time we fully account for it, it would be somewhere close on \$1.3 million.

**Ms KIMPTON** - To date, and they have another \$850 000.

**Mr RUDDICK** - Yes, just in bequests that will come into the accounts this year. There are other amounts that have been willed to them that at this stage are in the form of property or unsettled estates, and they total in excess of \$800 000. So we are expecting that amount to come in over the next 12 months.

**Mr GUTWEIN** - Can I just ask a question then, in regard to where you estimated that the RSPCA would finish at this financial year, for the 2012-13 year, an operating cash deficit of \$184 000, there have been more bequests than what were expected and obviously that deficit position will improve substantially or not?

**Mr RUDDICK** - No, it will not improve beyond that because we were aware of those bequests that were sitting there at the time we did our report. We have monitored this on a fairly close monthly basis since that time. There is one bequest that is in the form of over \$200 000 worth of shares and that has not been converted to cash at the moment. Had that been converted to cash and where we are sitting at the end of May is within a very slight percentage differential from where we had budgeted. So we are still expecting that those shares plus the cash balance will be around that \$770 000 that we had budgeted. Therefore, they had been able to maintain a fairly close control over expenditure during that period of time.

**Mr BOOTH** - You indicated that there was a \$400 000 funding injection by the government to enable the organisation to remain solvent at that point in time. Was that deficit entirely the result of the withdrawal of the sponsorship and commitments that had been made as a result of the apprehension in the RSPCA mind that they would have ongoing funding for vet centre, for example?

**Mr RUDDICK** - I think you would have to say that a very significant portion of that could be attributed to that. We have not done the full costing. You had a commitment in 2010 of \$600 000 and about \$750 000 the following year, and the organisation had been structured to expect that level of donation again. They put on four new inspectorates and opened up the vet clinic. There was an expectation and it was not even resolved during that financial year as to whether that support was going to come in or not come in. There is a protracted argument there. I would think that a very significant portion, if not all of it, could be attributed to that withdrawal of the support.

**Mr BOOTH** - Had the commitments not been made on a basis of the promise of support, then ordinarily they would not have had to take another \$400 000 from government

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because they would not have made the commitments that resulted in needing the \$400 000?

**Mr RUDDICK** - That would be our view.

**Mr BOOTH** - I note on your report that you say, 'As part of my review I shall request written representations from management concerning assertions made in connection with the review.' Do you have them?

**Mr RUDDICK** - We have those in the office but we do not have them with us.

**Mr BOOTH** - But you have received them?

**Mr RUDDICK** - Yes. We received them before we issued the report.

**Mr BOOTH** - You are not in a position to obtain the level of assurance necessary to express a positive opinion as assumption. It is an interesting report, in a sense and you can only go on the information you are provided, so I am not criticising you for that. If you were a bank, for example, you would hardly be likely to lend money, I would have thought, on that report.

**Ms KIMPTON** - The unfortunate thing is, we are bound by the auditing standards and the wording in that is following the auditing standards and that is what it requires us to say.

**Mr BOOTH** - If you were not bound by those words, could you say to the committee, with any level of confidence, that the measures that the RSPCA has put in place recently, which is the financial decisions to down-size numbers of staff and operational matters, that you would be confident that they should be able to continue on, remaining solvent and operating the business in a way that it originally did?

**Mr RUDDICK** - In the 2013-14 budget we show that there is still a deficit even with an expectation of \$800 000 worth of revenue coming in.

**Mr BOOTH** - Was that \$190 000?

**Mr RUDDICK** - About \$190 000. There is still a deficit there, and there is still a requirement in the future to assure that up to \$800 000 worth of bequests are brought to account. It is totally arbitrary as to what they might be, and fortunately we have seen a very good run over the last couple of years. From that point of view, yes, we are relatively comfortable and we were able to give that assurance or to satisfy ourselves with the 2013-14 budget because know that level of bequest is already there and has not converted itself into cash at this point in time.

We still have concerns that this is an organisation that, in that scaling down, have removed their CEO and we now still have a board trying to operate the oversight of an organisation. From my experience with organisations in this sector and of this size, I do not think that is a sustainable position going forward.

**Mr BOOTH** - Are you in a position to be able to - part of what we are looking at is whether there is a fifth body to take public funding and that goes to the management of it but also

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the inherent structure of the RSPCA itself in the way the board functions and the governance. Do you have any advice to give the committee as what you would see that they would need to do to be more certain of being able to remain solvent and do the proper governance?

**Mr RUDDICK** - My personal view is the core of the organisation is not broken. It is still an organisation that is capable of delivering the services that it has out there. The governance of these sorts of organisation, however, does require some fairly strong and experienced people to play those roles. It is a little bit unfortunate that we have a lot of very good meaning people running this organisation at the moment, but I do not believe that they have the depth of experience that is required to engage and to manage both the board and the CEO of an organisation like this. That is why we have had some troubled times over recent periods. We really need somebody that is the next step up who does understand the full breadth of governance more so than people that have that passion towards the animal side of this organisation.

**Mr BOOTH** - I just want to clarify that. Is that historically or the new board. I believe there is now another three new board members, which makes up six.

**Ms KIMPTON** - We have not had a lot of involvement with the new board members at this stage.

**Mr BOOTH** - Okay.

**CHAIR** - Sorry, you said you haven't had?

**Mr RUDDICK** - No. One of the problems with the organisation is because it is thinly capitalised and because it relies on recurrent expenditure coming from bequests, it is an organisation that has difficulty attracting board members who have good financial skills when they know the responsibility they have as a director of a not-for-profit organisation is no different from that of any other corporation. Therefore, an organisation such as this one will bring a certain amount of risk to anybody taking this position.

When we look at our other not-for-profit organisations that might have \$6 million or \$7 million worth of reserves, if we look at the RSPCAs around Australia, Western Australia has \$6 million worth of reserves, New South Wales has \$40 million worth of cash reserves, South Australia has about \$8 million worth of cash reserves. So you have organisations that you can afford to take a degree of risk because you know that if there are significant fluctuations in any year that you have the reserves to do that. Unfortunately Tasmania has been unable to create those reserves to date.

**Mr BOOTH** - In terms of good governance and good probity arrangements would you have a suggestion in terms of what size of a reserve that ought to be quarantined, effectively, and provide for a period of downturn to make this organisation safe, effectively, for really well credentialed people to sit on the board?

**Mr RUDDICK** - I would have thought you would need a reserve of about \$2 million for the size of this organisation, which would allow you two, three, maybe four years of very diminished bequests coming through. The rest of the organisation is - while it still relies on a certain amount of donations and a certain amount of fundraising, it is fairly

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formulated in that respect and the level of service that they have can be easily, or the total expenditure can be easily determined because that is the level of service they will give to the community. Whether that is the right level or the wrong level, that is the level they can afford.

They can work within that framework that at the moment still requires them to have some level of additional support coming in, but it would be fantastic if above that support they had reserves so that if that support was fluctuating they could draw down on those reserves. I would have thought \$2 million was about the right figure.

**Mr BOOTH** - Do you have a kind of template of a typical board, and the governance arrangements you have already mentioned, the reserve funding and so forth, but the structure of the board and the separation between the board and the CEO that you could provide to the committee as a template effectively?

**Mr RUDDICK** - Only my personal experience dealing with some very strong Tasmanian people, such as Michael Vertigan and Miles Hampton, people like that. I think we did have when we first were appointed here Michael Kent was the president at that point in time. You need people of that ilk who can then take control and work with a CEO. Also we have seen instances of board members or directors coming into this organisation that are a little bit singly-focused on one issue and do create some real upset within the organisation. They are generally there not for a long time, but they do seek political and media routes to try to push their cause which is not good for this organisation.

**CHAIR** - How long have you been involved with the RSPCA?

**Mr RUDDICK** - We were appointed in 2005-06, so about six or seven years.

**Mr BOOTH** - You have pretty well covered at this point in time the issues I wanted to cover.

**Mrs TAYLOR** - Thanks for that. I am involved in a number of boards in the not-for-profit sector myself. It would certainly concern me if I was a member of a board where there was the risk of possible fluctuation. So that bequest risk, would you say that was a high, low or medium risk? It would seem to me, if I was on the board, my gut feeling would have been that it would be high risk.

**Mr RUDDICK** - If I was a board member I would take it as high risk unless I had reserves there to back it up.

**Ms KIMPTON** - Especially the current media play because I think -

**Mrs TAYLOR** - I was going to ask you that what do you think the current media play could well have on bequests over the next few years and if an organisation - the RSPCA lives on its brand in a sense?

**Mr RUDDICK** - This could have some detrimental effects. At the same time it might even highlight there is a plight out there and maybe at a capital level the plight might then create awareness. We don't so.

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**Mrs TAYLOR** - This financial year they are getting \$1.3 million then that is significantly more than the \$800 000 that they might have budgeted for originally. So that will make up the shortfall this year, or are you still expecting a deficit?

**Mr RUDDICK** - They will have a slight surplus this year; that is what we have budgeted. That surplus is made up of \$400 000 worth of government grant coming in, \$1.3 million worth of bequests, and a sale of some of their properties as well. So they have structurally changed a lot of this and it has taken them from a very poor cash balance up to where we consider will be a \$700 00 or \$800 000 cash balance. That would be good if that could be isolated as reserve but, as I say, I prefer to see a \$2 million cash balance at the end of any year for this size organisation.

**Mrs TAYLOR** - That was my next question to you. The size of the reserve is a direct responsibility of the board?

**Mr RUDDICK** - Yes.

**Mrs TAYLOR** - Again, if I was on a board and I knew that there was such a high risk component of the annual operational budget then I would make sure that there was in fact that kind of reserve. So you would think that really the board ought to be budgeting for a surplus each year, that they could put into a reserve until such time as they had a reasonable reserve, would you think?

**Mr RUDDICK** - I would have thought that a new chairman going in there would make that his key responsibility to ensure that he secures new forms of funding and has sufficient reserve there to avoid the problem of the board being subject to risk.

**Mrs TAYLOR** - Or perhaps go back to core business and not have such a high expenditure operational budget?

**Mr RUDDICK** - That is correct.

**Mrs TAYLOR** - Thank you.

**Mr RUDDICK** - I think they are working back towards core business at the moment. They went outside of that for a while.

**Mrs TAYLOR** - Can I ask one other question and that is about asset register? We have heard today that there was no clear valuation of the assets. Has that been rectified? Is that your responsibility or does it come into your auditing at all, what the assets of the organisation are and how long ago since their valuation was updated?

**Ms KIMPTON** - The accounting standards allow them to record their assets on a cost basis. So basically what they paid for them is what they carry them at and you depreciate them over the term of the life. You can then go on to a revaluation basis. They have chosen not to do that because if you go on a revaluation basis you have to revalue every three years and there is a cost associated with that. That decision was made back in about 2007-08, something like that, to stay on the cost basis.

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**Mr RUDDICK** - Also, once you revalue then you have to depreciate on the revalued amount. So you get no merit for doing a revaluation because there is no additional cash as a result, and when you are reporting you are reporting a much substantial depreciation each year.

**Mr GUTWEIN** - Puts your profit up.

**Mr RUDDICK** - Yes, which reduces your overall surpluses and makes it look like you are not operating as well. So they have chosen, since the accounting standards do not require you to do revaluations, not to revalue for a -

**Mrs TAYLOR** - Do you think that is good?

**Ms KIMPTON** - They have done some ad hoc revaluations as they have needed to for some properties. So they have known the value of the properties but just haven't booked it. My understanding is that they are going through a revaluation of all the properties at the moment

**Mr RUDDICK** - We do not see a lot of merit in revaluation. We see merit in having cash and liquid resources available to an organisation.

**Ms KIMPTON** - These are non-current assets, so they are not going to help with the liquidity of the organisation.

**Mrs TAYLOR** - No, but they might if you were needing to be seen as a viable organisation that you had at least non-current assets backed, so that if you are trading insolvent as these guys almost look as though they do have, then at least you have an asset basis to fall back on.

**Mr GUTWEIN** - Can I just clarify a couple of points, just so I am clear? From your note for the 2012-13 year, so for the year just finishing, they had forecast \$800 000 worth of bequests, which seems to be the average, again for next year as well. There will be \$1.3 million this financial year, there will be some shares in that, is that right?

**Mr RUDDICK** - No, the \$800 000 is what is budgeted for next year.

**Mr GUTWEIN** - It actually says here the 2012-13 year.

**Mr RUDDICK** - They originally did budget that. When we did our work they had already exceeded the \$800 000. So the work we are talking about is the continuing budget in the last five months, where the movement between cash at February and cash at 30 June has already taken into account the bulk of that.

**Mr GUTWEIN** - That was what I was wanting some clarification on. If their original budget budgeted for \$800 000 worth of bequests, but they have actually received \$1.3 million, albeit I think \$200 000 of that was in shares so that will end up on the balance sheet anyway. They received \$400 000 in cash from the government this financial year as well. If in their original budget they were budgeting for \$800 000 in bequests but they have actually received \$1.3 million plus \$400 000 - \$1.7 million - I am just wondering how that materialises itself. Or were they planning for a deficit?

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**Mr RUDDICK** - They had come off an \$800 000 deficit and 2012-13 was not going to look a lot better.

**Mr GUTWEIN** - It was going to look about the same.

**Mrs TAYLOR** - Would they not have been trading insolvent on that basis?

**Mr RUDDICK** - I go back to the point we were going to qualify the audit report on the basis of solvency unless they could prove to us and unless it was banked \$400 000 from the government.

**Mr GUTWEIN** - I want to come back to some of the issues that Mr Booth raised. You guys have probably been in the best position to look externally at this organisation now in the last seven years. You are the best placed out of anyone. We have heard a lot of evidence about issues in regards to the board, issues in regards to management, of the board acting almost as a board of executive directors as opposed to allowing the CEO to get on with the job.

How do you fix it right now? We are in the process of looking at a report as to the capacity of this organisation to manage and to continue to receive public funds. What needs to be done, right now, Bob and Lyndel? We understand the challenges and the fact that it is undercapitalised, that they are in a very elastic situation in regards to planning for future revenues on the basis of bequests. We have heard today as well that in fact in regards to some bequests, like at the end of the day with the stakes there can be a whole range of things that might mean that what we originally thought was going to arrive might not arrive, albeit they seem to have done better this year than what they may have done in the past.

What would your recommendation be right now to actually help this organisation, which really does have the benefit of an extraordinarily strong brand, but some difficulties around that?

**Mr RUDDICK** - My view would be that the government should seek out a strong president. They should pay that president, and the government should underwrite the payment of that president. They should also indemnify that president. They should allow him or her to put forward a three-year program. They should allow that person and, if they have the proper skill base, to get a new CEO. The CEO should be the sort of person who will engage closely with the chairman and the board. They need a strong president who will also realign the board. Unfortunately, as I said earlier, there are a lot of people who get on these boards who are single issue and seek media outlets for their cause. That all has to be nullified.

If you found a good, strong person to do that, I believe that over a three-year period that person would put into line the requirement to recapitalise this organisation. Hopefully, a new CEO would also engage much better with the community and create situations where they can find alternative sources of revenue. I believe it purely needs a change at the top.



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I am not trying to discredit the current president or board, but it is a board that has just occurred and people on there at the moment have the best intentions but I do not think they have the business acumen to achieve the outcomes that are required by this organisation.

**Mr BOOTH** - Just for clarification, you said you have not met the three new members of the board?

**Mr RUDDICK** - No, we haven't.

**Mr GUTWEIN** - With the corporate governance arrangements of the organisation as it stands, you would almost need to set aside the current constitution and completely review it. As the constitution stands at the moment, my understanding is the board members are elected by the membership. It works a little bit like a political organisation: if you have the numbers you have the position. I wonder how practically that suggestion you have made would work on the basis that you would have to set aside the current corporation governance arrangements?

**Mr RUDDICK** - I have not thought that one through, but I do not think it would serve any purpose for that administration role that was put in there. I go back to the comment that if you put the terminology 'administrator' in there, I think you start to destroy the brand. Somehow this has to change or be supported. Unfortunately it is through the members, so I am not quite sure how it would occur, but unless that occurs we are going to end up with this continual problem that we have at the moment.

**Ms KIMPTON** - They do have the ability to appoint people to the board between AGMs and it is ratified at the AGM.

**Mrs TAYLOR** - You are suggesting that the government should take over?

**Mr RUDDICK** - Somebody has to underwrite that position. If you can get the type of person you require -

**Mrs TAYLOR** - I hear what you are saying but this is a not-for-profit community, DGR-status organisation.

**Mr BEST** - From what I have seen so far this board is probably the most dysfunctional board I have seen. If I was doing a comparison, maybe when the Kentish Council was dissolved, but I think it is even worse than that. With the Kentish Council, for example, there was administration that was put in to get the whole thing going with people in the community and the council. If there was something for an interim period to settle everything down - and you mentioned the three-year program, in your view - maybe you would need to have something like that. I am interested in what your thoughts might be about some sort of administrative position. I know that is put in on top of everybody -

**Mr BOOTH** - I think he just answered that, Brenton.

**Mr BEST** - Okay. Can we get a list of what has been spent on consultants?

**Ms KIMPTON** - I do not have that with me.

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**Mr BEST** - No, but can we get that from you? And can we get a figure for each year from 2009 to 2010 -

**CHAIR** - Brenton, when you ask for a list on consultants do you mean solicitors as well?

**Mr BEST** - Yes, thank you, Chair. I was going to ask for consultants and solicitors from 1 July 2009 until 30 June 2010, and then the next financial year to date if we could? You may not have this one.

**Mr RUDDICK** - We would have access to that, yes.

**Mr BEST** - I am also interested in what accounts have been paid for James O'Neill and Associates. You would have that provided, wouldn't you?

**Mr RUDDICK** - We could request that.

**Ms KIMPTON** - We would have access to that.

**Mr BEST** - Okay, I would like to see all of those accounts. Do you know what the terms are for the solicitor, Mr Fernandez? Is that an hourly rate? I am very keen to find out what the retainer is because I understand, this to be the case, that Mr Fernandez was paid to sit in the gallery whilst the RSPCA gave evidence when we were in committee room 3, Chair, which I found highly unusual.

**CHAIR** - If that evidence is with you and you may not have that -

**Mr BEST** - It seems like a waste of money when they need to be looking after animal cruelty.

**CHAIR** - We will have to do that through another path because the evidence is not here.

**Mr RUDDICK** - You would have to request that directly from the RSPCA.

**Mr BEST** - Okay, but I would be able to find out how much the retainer is though - you would have the figures for those proceedings?

**Mr RUDDICK** - We could get those.

**Mr BEST** - Can you get those for me?

**Mr RUDDICK** - Yes, we can get those for you but we do not have them at our disposal now as I said.

**Mr BEST** - Thank you.

**CHAIR** - We have the RSPCA coming back to us, some members, I think on Thursday don't we, so it is a possibility we can get that evidence from them rather than Bob having to do it and then we have to get it back from you.

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**Mr BEST** - Okay, I am happy with that provided it matches.

**CHAIR** - We can ask that they provide that evidence when they attend. We can write to them and ask that they bring that evidence with them, Brenton.

**Mr BEST** - One final question I have. We had heard from one witness, and I am sure I will not be identifying the witness, that they found it difficult - and no way is this put towards yourself because this is how it has been managed - that the sundry expenses for example were 2010-11 were \$3 874 but then for 2011-12 sundry expenses were \$83 025. There is a significant increase as you could see, but there is no explanation.

**Mr GUTWEIN** - Chair, can I through you, I would have thought that is a question we should put to the RSPCA.

**Mr BOOTH** - Exactly.

**Mr GUTWEIN** - Bob counts the numbers they do not actually spend it.

**Mr BEST** - Okay.

**CHAIR** - It is and I was going to say I suggest you do not have that evidence?

**Mr RUDDICK** - No, we don't have that evidence.

**CHAIR** - No, so once again, we can include that, Brenton, and we will talk about that.

**Mr BEST** - Sure I am happy with that, thank you.

**CHAIR** - Are there any other questions? If not we thank you both very much for coming in today and for the way in which you have given your evidence. You have certainly given us quite a bit of very good information and we appreciate that very much.

**Mr RUDDICK** - We have a lot more information on the other RSPCAs, the reserves they have, et cetera. If you wanted that information we could table that.

**CHAIR** - That certainly would be useful for us if you are -

**Mr RUDDICK** - And also some of the cash flows over the last six years to seven years as well.

**CHAIR** - If you are able to provide that information as well that would certainly be very good for the committee to have.

**Mr BOOTH** - I would be really interested, Chair, also if you have any further thoughts beyond this committee basically if you could write to the committee with a recommendation or suggestions or guidance in regard to good governance procedures or something like that beyond what you have already said would be very useful too.

**Mr RUDDICK** - We will do that.

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**Mr BOOTH** - Thank you.

**CHAIR** - We appreciate that very much and thank you both.

**THE WITNESSES WITHDREW.**

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**Mr BJARKE PEDERSEN**, GENERAL MANAGER, AND **Mr SIMON HUGHES**, TECHNICAL SUPERVISOR, ANDERSON MORGAN, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** - Thank you. Today's session is a public session. The evidence given and question asked will be recorded by *Hansard* here and whilst you are in here you have parliamentary privilege in relation to any matter that arises in here but once you are outside of this environment you no longer have that form of protection. If we get to a stage of where you believe that the evidence might be defamatory or could create some real concern, then if you raise that here we can then make a consideration as to whether we would go in camera to receive that evidence. If you get to that stage, please raise that issue.

You have seen the terms of reference that we have. It is one term of reference. This matter came here from the House of Assembly to us to carry out this inquiry and that is what we have embarked on. They have not provided us with any written documentation. But first of all, if you could give me an understanding of your company, your organisation and your background and your experience in the area of which you will be talking about.

**Mr PEDERSEN** - Anderson Morgan is one of the leading ICT companies in the state. We have been around for over 13 years founded out of Devonport. We have the largest geographical footprint of any ICT firm in the state. We have major branches in the south, the north and the north-west. We are a HP warranty agent. We are a supplier for equipment, all forms of ICT equipment. We are a major service provider in the industry as well with a multitude of accreditations from level 1 engineers right through to level 7. Probably not a lot more to say, it is what we live and breathe.

**CHAIR** - Peter might have a question.

**Mr GUTWEIN** - I was going to lead straight into it.

**CHAIR** - That might be the better course. Normal procedure is to give you an opportunity to raise the issue, make any statement on the matter that we were talking to you about, or we can go straight into questions and that might be the easiest way.

**Mr PEDERSEN** - Absolutely. This is a very simple matter from a technology point of view. We are quite happy to speak to it.

**CHAIR** - That might be the best at the present time. If you could speak to the item and then we will take questions from there.

**Mr HUGHES** - We were handed the laptop in question by the IT consultant employed by the RSPCA's lawyer at the time. I am not entirely sure who that is. We were asked to investigate the working order of the laptop. When we investigated the laptop it was in no working state. It would not power on, would not make any noise that you would expect when turning on a laptop on a normal morning. Further investigation, moving the laptop around, revealed a rattle inside at which point I dismantled the laptop and took the hard drive out. The hard drive was the source of the rattle. What I have done is carefully dismantled the hard drive casing and within the hard drive there are other small discs,

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called platters, and a few of those are smashed. Hence, no data is recoverable, at which point we put the parts back in, resealed the disc back into the laptop and the laptop is currently secured in a drawer in our office at the moment.

**Mr GUTWEIN** - How would they have become smashed, under what circumstances?

**Mr HUGHES** - Dropping a laptop would not cause that kind of damage.

**Mr GUTWEIN** - What would have had to have happened?

**Mr HUGHES** - More than likely the laptop would have been dismantled in pretty much the fashion that I have done. So malicious damage occurred. How that has occurred, I do not know, with what tools they have used, but that is really the only way that it would have happened. Dropping it does not cause that damage.

**Mr GUTWEIN** - I am familiar with the laptop case. I have never opened one but I am presuming that you undo the screws in each of the corners and you pull it to pieces.

**Mr HUGHES** - On the base of a laptop there are several screws that hold the hard drive in place. You can literally undo those four screws, slide the hard drive out. The hard drive is within its own little tray. On top of the hard drive there are four screws that hold the case together. They have to be undone and then they expose the internals of the hard disc itself.

**Mr GUTWEIN** - Is there any way whatsoever that the damage could have been inflicted without taking the hard drive out and then taking the lid off?

**Mr HUGHES** - In my experience, no - absolutely not.

**Mr BOOTH** - Was there any indication that it had been pulled apart?

**CHAIR** - Sorry, Kim - Brenton was next.

**Mr BEST** - I think you said the IT consultant for the RSPCA gave the computer to -

**Mr HUGHES** - We are the IT consultants and we look after day-to-day operations. So if they have a problem with a PC, email, et cetera, the usual problems that would occur, we look after those. The person who gave us the laptop was an IT consultant, I believe employed by the RSPCA's lawyer. So they brought somebody else in to begin investigations and he handed the laptop to us.

**Mr GUTWEIN** - Was that James O'Neill?

**Mr HUGHES** - I can't remember his name, unfortunately, but I can probably find out, though.

**Mr BEST** - I just want to know, you did not get the computer from James O'Neill. You got it from an IT consultant for Mr Fernandez?

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**Mr HUGHES** - If that is the lawyer's name - I am not aware of the lawyer's name. We were not given those details.

**Mr BEST** - When were you given the computer? What was the date that you received it?

**Mr HUGHES** - I don't know off the top of my head. We would have to go back through our systems.

**Mr BEST** - Would you be able to? Could I just ask would we be able to get that information of the date that it was received and who you actually received it from, Mr Hughes?

**CHAIR** - I suspect there could be some other evidence we would want as well. We will take a note here. We will write to you asking you for the additional evidence that the committee would require. Brenton, we will follow that.

**Mr BEST** - Can I ask then, has there been any discussion between your company or any representative of your company about this matter, about being here today at this hearing?

**Mr HUGHES** - In what relation?

**Mr BEST** - In relation to, say, the computer, or in relation to any matter?

**Mr PEDERSEN** - There obviously has to be discussion between myself as the general manager of the company and any of my staff prior to them attending any of these sort of events in any way, shape or form. The time frame that we have been given is relatively short and asked to appear at an incredibly busy time for us. We do respect the fact that the letter has been sent out in a timely fashion, however, you are talking about a time of year where we do in excess of 40 per cent of our business in three months and for a sizeable company that is not an easy thing to try to juggle things around.

Having said that, has there been any form of conversation that could lead to collusion or anything along those lines - absolutely not. Simon was the individual who did the work and that is why Simon is sitting here right next to us today. I am the general manager and that is why I am next to him and no-one else.

**Mr BEST** - I didn't know that you were here for all of the last - that is interesting.

**Mr BOOTH** - Point of order.

**CHAIR** - The comment that you made then, Brenton, we are asking questions and you need to be careful making comments. What did you mean by that comment?

**Mr BEST** - I did not know that this is being broadcast because just the comment that was made that was all.

**Mr PEDERSEN** - What was the comment?

**Mr BEST** - About collusion. I have not made any allegations.

**Mr PEDERSEN** - No, I dare say you haven't.

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**Mr BEST** - Okay, sorry. I am just wondering, though, has there been any discussion with Mr Fernandez and your company?

**Mr PEDERSEN** - No.

**Mr BEST** - And not with the RSPCA either?

**Mr PEDERSEN** - No.

**Mr BEST** - Thank you. That is all I wanted to know.

**Mr BOOTH** - Was there any evidence of how the hard drive had been broken?

**Mr HUGHES** - There was no obvious evidence of any damage. So none of the heads of the screws were stripped or rounded off, as you might say. The screws are not hard to remove. They are not sealed in any way. They are not tightened or glued, so a simple screwdriver can undo the screws and remove them without causing any damage. If you are careful doing that, as we have to be on a day-to-day basis, it is pretty straightforward.

**Mr BOOTH** - So you are saying that there was no evidence of any screws that had been threaded, as they say?

**Mr HUGHES** - Not threaded, no.

**Mr PEDERSEN** - There was no damage at all to any form of the external hard drive or its case in any way, shape or form. It is very difficult to assume that that could have happened in a drop or anything else because there would be some form of physical damage.

**Mr BOOTH** - You were able to actually lift the lid off the hard drive, take out - you described it as a platter, did you?

**Mr HUGHES** - Yes, inside the hard drive itself because in hard drives there are other discs which are called platters and they lay it. So after removing the cover you just lift the cover off. We did not remove the platters as such. The broken platters were just sitting on top loosely around.

**Mrs TAYLOR** - They had not been touched, or you have not touched them?

**Mr HUGHES** - I have not touched them, no. The investigation we have done is to find out what was causing the rattle and why the laptop would not work. That was the cause.

**Mrs TAYLOR** - Yes, I wonder whether there would be fingerprints?

**Mr BOOTH** - Did you photograph them?

**CHAIR** - Just keep going at this stage.

**Mr BOOTH** - Did you photograph the damage - the broken platters?



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**Mr PEDERSEN** - There was no requirement to. We had not been given a brief to do that. We had purely been asked to investigate it. We had not been asked to look at it in any other way.

**Mr BOOTH** - You didn't actually remove the broken bits from the hard drive?

**Mr PEDERSEN** - No, the broken bits were all still inside - the hard drive was back.'

**Mr BOOTH** - You lifted the lid and saw they were broken? I want you to say that, not me.

**Mr HUGHES**- I took the lid off, saw they were broken and put them back inside and the screws were done back up. The hard drive had been slipped back into the laptop by itself.

**Mr BOOTH** - Sorry, when you say, 'put them back inside' does that mean that you actually had those broken bits out?

**Mr HUGHES** - No, I didn't take the broken pieces out. The broken pieces were left inside the lid of the hard drive and screwed back on. The physical hard drive itself was then slid back into the laptop and those screws were done to secure that back into the laptop, and the laptop is now in a drawer.

**Mr BOOTH** - And no evidence, either on the hard drive or the cover that covers the hard drive, that somebody had unscrewed it?

**Mr HUGHES** - No.

**Mr BOOTH** - None at all.

**Mr HUGHES** - No.

**Mr BOOTH** - Is this an unusual event to find broken platters in a hard drive?

**Mr HUGHES** - In my experience, yes. It is the first laptop that I have come across in my career where the platters have been broken inside. The only other time you would even find that kind of evidence was if someone had taken, let us say an old server, the hard drives out and put a drill through them, which again can be standard practice. At the end of a server's life, the hard drive is taken out, a drill goes through it and they can then be disposed of. That is a practice, there are other practices but that is another practice where you would probably find that.

**CHAIR** - Who was the computer handed to in your office?

**Mr HUGHES** - Myself.

**CHAIR** - You actually took possession of it from the IT person you referred to?

**Mr HUGHES** - Yes.

## **PUBLIC**

**CHAIR** - Where was it kept inside your office?

**Mr HUGHES** - It is kept in a drawer under my desk and has been since we have had it.

**CHAIR** - And it is still there today?

**Mr HUGHES** - It is still there now, I still have the laptop.

**CHAIR** - To break the components inside the hard drive that you referred to, what sort of activity would that require? Would it need a screwdriver - how would it have likely occurred?

**Mr HUGHES** - The most obvious would be a hammer to cause the kind of damage. I would imagine you could possibly wedge a flat-head screwdriver inside and twist -

**CHAIR** - The amount of pressure or energy that would be required to break it, that is what I am getting to now.

**Mr HUGHES** - It would be a fair amount. If you liken the platters inside to a CD or DVD disc, they can be quite hard to break in half, they would rather bend, but the platters inside a hard drive are a lot more fragile because there is a needle inside that reads those as they go around. They are a lot more fragile - a hammer or a screwdriver with a tap, or a reasonably hard bang, would cause that damage.

**Mrs TAYLOR** - Could you lift them out and break it?

**Mr HUGHES** - Not without dismantling further screws and you need specialised tools to do that.

**CHAIR** - The point I am trying to make is that that could happen without fingers involved, it could be done with a lever screwdriver, hammer or what have you.

**Mr PEDERSEN** - Potentially, yes.

**CHAIR** - And you have never seen this type of damage before in a computer or laptop like this?

**Mr PEDERSEN** - No.

**CHAIR** - I suspect you have checked out many computers that have been dropped, where they have been dropped off tables?

**Mr PEDERSEN** - We look after a lot of schools and we are also HP's warranty agent for laptops and they have accidental damage policies.

**CHAIR** - Even the computers that have been dropped, similar to this one, you have never seen this type of damage before?

**Mr HUGHES** - No.

## PUBLIC

**Mr GUTWEIN** - You were asked to have a look at the laptop to see what was wrong with it. I am assuming that whoever had looked at it first of all had not been able to get it going and brought it to you to look at. This is not an issue for your firm but I wonder why if once it was reported to the RSPCA that the reason it wasn't working was that it had been interfered with internally some way, why they didn't refer the matter to the police?

**Mr PEDERSEN** - We honestly don't know. For us, we will do the investigation, we will do the fault find and then go back to the client with what we found and await instructions, which is exactly what we did in this case.

**Mr GUTWEIN** - And there has been no instructions?

**Mr PEDERSEN** - No. If then we got asked - and we quite often do for insurance purposes - to write a report to support an insurance claim or those sorts of things, we will do that. That could entail pictures and other bits and pieces, but none of that was asked for on this occasion.

**Mr HUGHES** - We were asked to replace the hard drive in the laptop because the laptop itself was okay, just the hard drive was damaged. That was then put on hold. One of our contacts at the RSPCA called and said, 'Please don't proceed any further', so we stopped and the laptop is still in the state it was in.

**Mr BEST** - Do you maintain the server for the RSPCA?

**Mr HUGHES** - They don't have a server.

**Mr BEST** - We have had evidence about emails going to a server.

**Mr HUGHES** - They use a product called 'Microsoft Exchange Online', which is an email server in a cloud server. The cloud technology is people taking their data and information off-site and putting it in a secure location such as a data centre. Microsoft has worldwide data centres, and alongside Telstra which offers the product here at the moment, people can say, 'We want to take our information off-site'. In the case of RSPCA they were using Gmail but they are now using Exchange Online through Microsoft via Telstra.

**Mr BEST** - When did they switch over to Exchange Online?

**Mr HUGHES** - It would have been mid to late last year. Any work we do is logged into our ticketing system, so we have all that work just in case you need it clarified.

**Mr BEST** - I don't question that. I am interested in data. With emails and communications within the RSPCA - and I guess coming in or going out - where would that be stored?

**Mr HUGHES** - It is all served on the cloud server, on the Exchange Online server in a data centre. With the RSPCA it is either in Singapore or Hong Kong.

**Mr BEST** - In relation to the information that would have been on the laptop that had the smashed hard drive, would all the communication information have been backed up somewhere?

## PUBLIC

**Mr HUGHES** - Exchange Online works in a way that if a message is deleted it is held online for 30 days. If somebody is made aware of that message being deleted and somebody contacts us and says, 'Please recover', we can go in and see within the last 30 days if a message is still there. If anything is there, we can click a button and recover to the user's inbox.

**Mr BEST** - Can you been asked to find any information off that system by the RSPCA?

**Mr HUGHES** - No, not at all.

**Mr BEST** - If there were concerns about not having information, could that have been obtained at the time the machine was damaged?

**Mr HUGHES** - It could have been, if the information required was within the 30-day period. It would have only been email traffic, unless there were Word attachments or PDFs. If it was just plain email, yes. If it was any other attachments that were locally on the laptop - if you saved Word documents in the My Documents folder or anywhere else, that information unfortunately is beyond recovery.

**Mr BEST** - What sort of back-up does the RSPCA have in relation to files, for example?

**Mr HUGHES** - At the moment, nothing.

**Mr BEST** - Don't they even store it on, say, a CD?

**Mr HUGHES** - We initially - and correct me if I am wrong - got the lead for the RSPCA through Telstra for the Exchange Online services. Following that, we were approached to provide what we call 'managed services'. A monthly retainer is paid to our business and we look after maintenance and any issues that come up with users' computers, email, Word documents, corruption in files - like if an Excel file goes corrupt - we can see if we can recover it, but it is very hard without back-up.

As part of that process, we have begun discussions around creating a centralised data repository using a product called Microsoft Share Point. That has not been actioned; it has been put on hold, for what reason we don't know.

**Mr BEST** - Has there been any other accidental damage of computer equipment at the RSPCA?

**Mr HUGHES** - Not that I am aware of, not accidental damage.

**Mr PEDERSEN** - In relation to back-up, the standard back-up practice is that should always be in place. It is something we strongly recommend.

**Mr BEST** - You think there is an IT officer at the RSPCA?

**Mr HUGHES** - No. There is no IT officer at the RSPCA. The consultant who handed myself the laptop, I believe, was employed by the lawyer.

## PUBLIC

**Mr BOOTH** - You may have already answered this, but I did not quite catch it. What you are saying is that at the time when the emails would have been on that laptop they were stored in such a way that would now be irrecoverable? They weren't on a cloud and you could not access the server that originally held them?

**Mr HUGHES** - The server will still be there, but the mailbox and the messages that would have been there would have been superseded. There is a 30-day recovery period.

**Mrs TAYLOR** - With Gmail as well?

**Mr HUGHES** - Not with Gmail - I couldn't tell you with Gmail. It is not a product we use, as such.

**Mrs TAYLOR** - They were on Gmail previously. We migrated them away from Gmail to -

**Mr BOOTH** - Was that post the laptop incident that you migrated them?

**Mr HUGHES** - That was before that, so pre the laptop.

**Mr PEDERSEN** - Gmail is a consumer product, not a business product as such, so I would be very surprised -

**Mr BEST** - Like Google?

**Mr HUGHES** - It is Google's mail service.

**CHAIR** - Just a couple of questions I had. To know where to access the hard drive and to destroy what was destroyed knowingly, I suspect the person had deliberately done it or what have you, would know that that would likely destroy the information on it. You would need some knowledge, I would take it? I would not know the first place to go to.

**Mrs TAYLOR** - You do now.

**Mr HUGHES** - You would need some knowledge, yes.

**CHAIR** - You would need some knowledge to be able to do that.

**Mr HUGHES** - These days it is not uncommon for people to have that knowledge. To give you an example a lot of the problems we come across -

**CHAIR** - So you are saying I am not competent.

**Mr HUGHES** - I think a lot of the problems we come across on a day-to-day basis some of them are genuine problems, some of them are caused by people fiddling or playing around, for want of a better word, but a little bit of knowledge can be dangerous, I guess, is a way to put it.

**CHAIR** - Just on the person, did you receive it directly to you?

**Mr HUGHES** - Yes, it was handed to me -

## PUBLIC

**CHAIR** - In your office?

**Mr HUGHES** - In our office in the city.

**Mrs TAYLOR** - I am just trying to follow that line, too, Chair. I thought James O'Neill said - and perhaps some of you can remember better than I can - that someone picked it up from his office.

**CHAIR** - No, he said he picked it up from an office.

**Mrs TAYLOR** - And then?

**CHAIR** - He delivered it. You are right -

**Mrs TAYLOR** - I am not quite sure of the chain of events here.

**CHAIR** - You would need to check the *Hansard*.

**Mrs TAYLOR** - He picked it up from the office then where did he take it, whether James O'Neill would do it because they are not IT consultants. I was wondering if it came from the lawyer's consultants that could have been another step in the chain if we need to clarify it.

**CHAIR** - You would know James O'Neill, I take it, do you?

**Mr HUGHES** - I do not know James O'Neill.

**Mr BOOTH** - Who engaged you to fix it then? You said it was like an IT consultant, but you do not know who that was?

**Mr HUGHES** - He had his own business at the time. I can bring up the details if you like.

**Mrs TAYLOR** - It would be really helpful.

**Mr BOOTH** - Basically who brought it in and under what circumstances? Like, 'I am bringing this in for the RSPCA?' Or 'I am doing this for me,' or whatever. The chain of custody.

**Mr HUGHES** - I can find out that information and I will write or email it.

**Mrs TAYLOR** - We are just trying to find out at what point it was broken?

**CHAIR** - To just follow that further. From the time that it was brought in here until the time that you carried out your inspection of it, how long was that?

**Mr HUGHES** - The same day. The directive was that the matter was urgent, can we drop the laptop off and I received the laptop, did the diagnostics or investigation, and then provided the results.

## PUBLIC

**Mrs TAYLOR** - The RSPCA has not asked for the laptop back?

**Mr HUGHES** - No, they have asked us to replace the hard drive, not repair the hard drive because we cannot repair it we have to replace it and reload the Windows operating system onto it so it can be used again. At the moment, that work has been halted through their request. The original hard drive, the damaged hard drive, is still within the laptop in the drawer.

**CHAIR** - I have a further question on that. Have you documented all this information and this evidence of what you have done?

**Mr HUGHES** - I documented it on email and possibly other documents but, again, I would have to find it.

**CHAIR** - Once again, if you had that information we would appreciate that.

**Mr PEDERSEN** - Just do remember that there is no normal course for us to do anything like that because there was no request to do it.

**Mrs TAYLOR** - But you have logged what you did and what you found.

**Mr PEDERSEN** - The ticketing system that we have would allocate the time that was used and what was done in general terms.

**CHAIR** - You could be even asked now to do that and you could do it because you have kept the computer in your premises ever since.

**Mr PEDERSEN** - Absolutely, under lock and key.

**Mr BEST** - I think you did answer this, you have not been asked to recover any data for the RSPCA ever before?

**Mr PEDERSEN** - No.

**Mrs TAYLOR** - There is no way that this data can be recovered?

**Mr PEDERSEN** - That is if it has not been stored.

**Mrs TAYLOR** - That is why I am asking. Is there any way we can recover it?

**CHAIR** - It is a good question. So the question is there any way at all?

**Mr HUGHES** - My skill set would not allow me to do that. From previous experience if a hard drive has failed without any damage inside we send it to a lab in Melbourne. They are in a dust-free environment and they take the things apart and put them into whatever they put them into and use the equipment they have and recover data but generally those platters are not broken. The age of the hard drive is generally the cause of failure normally.

## **PUBLIC**

**CHAIR** - I was going to say, so they are broken in such a way that it is not just a clean break, is it shattered?

**Mr HUGHES** - It is shattered.

**CHAIR** - Which would indicate, I think you are suggesting, a hammer or something like that?

**Mr HUGHES** - They are brittle so it is either a hammer or a lever of some description that has gone in there.

**Mr PEDERSEN** - You can though, if you see fit and you want to, send the hard drive away to a specialist. They can have a look and see if they can recover any sections of data off that. But getting something that is cohesive and is going to make sense and that you can use we would be uncertain of.

**Mr BOOTH** - How many of the platters are broken?

**Mr HUGHES** - I cannot remember to be honest. If necessary we would have to open it up and have another look.

**CHAIR** - Interesting. Any other questions?

We thank you both very much for coming today and particularly at this time of the year when, as you said, is a very busy time for you. We appreciate it very much. It is important for this committee to understand some of the issues about this computer because of the evidence and our terms of reference that we are talking here.

Thank you both very much for the way in which you have given your evidence and we will write to you in relation to that additional information. I am not quite sure what will happen with the computer but you will be retaining the computer quite obviously in the foreseeable future under lock and key?

**Mr PEDERSEN** - Yes.

**Mr HUGHES** - Absolutely.

**CHAIR** - Thank you both very much.

**THE WITNESSES WITHDREW.**