

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT
STROFIELD, Magistrate

No M6213/08

GERALDINE FOOI FONG ROBERTSON	Appellant
and	
DEPARTMENT OF PRIMARY INDUSTRIES AND FISHERIES	First Respondent
and	
ROYAL SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS	Second Respondent

BRISBANE

..DATE 07/08/2008

..DAY 1

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BENCH: This is a matter of Robertson and the Chief Executive, Department of Primary Industries and Fisheries and the Royal Society for Prevention of Cruelty to Animals; is that correct?

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MS MELLIFONT: That's correct, your Honour.

BENCH: Yes.

MS MELLIFONT: Your Honour, just in terms of announcing appearances I note that the appellant, Ms Robertson appears self-represented this morning.

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BENCH: Yes.

MS MELLIFONT: My name is Mellifont, M-E-L-L-I-F-O-N-T, initials K A, barrister instructed by the Department of Primary Industries and Fishing and I'm for the first respondent.

BENCH: Yes.

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MR DUONG: Good morning, your Honour, my name is Duong, D-U-O-N-G, initial P. I'm a solicitor from Clayton Utz lawyers and I'm acting on behalf of the second respondent.

BENCH: Mrs Robertson, now.

APPELLANT: Your Honour, I'm Mrs Geraldine Robertson.

BENCH: Yes, Mrs Robertson. Can you tell me what this is about?

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APPELLANT: Yes, the - on the 9th of January the RSPCA came to my property.

BENCH: 9th of January this year.

APPELLANT: Yes, 2008.

BENCH: Yes.

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APPELLANT: And they have a warrant to enter and they - I went out to greet them. It was about 9.45, 9.42 exactly when they came and they - he introduced himself, he asked me personal questions and then they served me a summons later and took-----

BENCH: The summons was served on that day, was it?

APPELLANT: Yes, summons served on the day and within 15 minutes somebody - another inspector came to the door and said, "Seize all the dogs" and they just took all the dogs.

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BENCH: How many dogs are you talking about?

APPELLANT: That day they took 100 - in total, 109 plus [indistinct] bitches and bitches that were due to whelp.

BENCH: Sorry, 109 dogs in total were taken on that----- 1

APPELLANT: More than that - yes, physically, yes, but they also took [indistinct] bitches, your Honour.

BENCH: Sorry, they also took - also took-----

APPELLANT: We were breeding a show - ex-show and breeding kennel. 10

BENCH: Yes. And you say they took 109 dogs and what's-----

APPELLANT: There was out the 109 dogs there were about 16 bitches that were mated and were due to whelp.

BENCH: Right.

APPELLANT: And since has whelped.

BENCH: Right. 20

APPELLANT: The forfeiture by DPI, Department of Primary Industries through-----

BENCH: So the dogs were seized on the 9th of January.

APPELLANT: Yes.

BENCH: What happened after that? 30

APPELLANT: They took my dogs. They took all my dogs.

BENCH: Yes, they've taken all your dogs, yes.

APPELLANT: Yes.

BENCH: And what happened to the dogs after that?

APPELLANT: They took them to the----- 40

BENCH: Pardon?

APPELLANT: Well, the dogs since have been held by RSPCA. I believe some of them have been sold; some of them have died. The puppies that were scheduled to be born from the date of seizure to 63 days, that's the gestation cycle have been sold, I believe.

BENCH: So you haven't got any of the dogs back, is that----- 50

APPELLANT: No, they have submitted - under the Animal Care and Protection Act they have 20 days after which they can make a submission to DPI, Department of Primary Industries and Fisheries to forfeit my dogs for the State and according to the Act too we could lodge - I could lodge an appeal which I did and that appeal has been disallowed so this is-----

BENCH: The appeal has been disallowed.

APPELLANT: Yes, so this is my appeal - is my appeal under the Act to the Court for the return of all my dogs and property.

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BENCH: Right, so you're seeking the return of your dogs.

APPELLANT: Yes, please.

BENCH: Including any progeny.

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APPELLANT: Yes.

BENCH: Right.

APPELLANT: And also there was another raid on the 22nd of February.

BENCH: Does it relate to this application?

APPELLANT: Yes.

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BENCH: Right.

APPELLANT: Whereby they took all my personal, my business records.

BENCH: And who's they?

APPELLANT: The RSPCA.

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BENCH: Right. You have to understand, Mrs Robertson, I don't know anything about this at all.

APPELLANT: The two respondents, your Honour, the RSPCA comes under the umbrella of the Department of Primary Industries and Fisheries because I think they fund two per cent of their costs. So-----

BENCH: All right. Well tell me what happened on the 22nd of February.

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APPELLANT: They came with a warrant again.

BENCH: Another warrant.

APPELLANT: Yes, another warrant and there were three inspectors - RSPCA inspectors. They took more dog that was left, it was an old desexed, neutered female. They took her. She was the only dog left and they also seized all my records, personal, legal, privileged. They also took items of intrinsic value, jewellery, they remove, as in the first instance they refused to give me a receipt. I had two lawyers present and a steno who arrived shortly after and they managed to convince my lawyers that it was all right. They will send us a receipt the next Monday or something like that, the next few days and most of the things were not receipted. I think they receipted 13 items out of three truckfuls and nothing has been returned, your Honour.

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BENCH: So your application relates to the return of that property which was taken on the 22nd as well, does it?

APPELLANT: Yes.

BENCH: All right, okay.

APPELLANT: I have been continuously threatened by their lawyers, RSPCA, of being charged. I'm still not charged today.

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BENCH: All right, I think I understand your position.

MS MELLIFONT: Your Honour, there are a deal of preliminary matters. Could I firstly deal with the nature of the jurisdiction that this Court has and take your Honour to the provision so you have a statutory framework.

BENCH: Yes, thank you.

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MS MELLIFONT: Your Honour, I'll hand up, please, a copy of the Animal Care and Protection Act.

BENCH: This is - it's in force as at today.

MS MELLIFONT: Yes.

BENCH: All right.

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MS MELLIFONT: And in so far as the relevant provisions are concerned they have remained the same throughout the relevant time. Your Honour, there are two decisions under appeal here. The first is the decision to forfeit 104 dogs.

BENCH: The decision to forfeit.

MS MELLIFONT: Yes. The appeal is against the decision to forfeit 104 dogs. The decision was made on the 8th of February 2008 by delegate of the Chief Executive of the Department, that's a lady - Ms Ferguson. Those dogs relate to a seizure which occurred on and following the 9th of January 2008.

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BENCH: Right.

MS MELLIFONT: The first respondent's position is that 100 dogs were taken.

BENCH: 100 dogs were taken.

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MS MELLIFONT: On the 9th of January 2008 and that four dogs were then provided to the RSPCA soon after by a lady named Vlahos, V-L-A-H-O-S. They came into her possession because as is alleged, at this stage, Mrs Robertson had hidden them from the RSPCA but Mrs Vlahos made a decision to surrender them to the RSPCA. That's the first decision.

BENCH: Right.

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MS MELLIFONT: The second decision was made on the 14th of March 2008.

BENCH: 14th of March.

MS MELLIFONT: Yes.

BENCH: Yes.

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MS MELLIFONT: Yes. Again by Ms Ferguson, the delegate of the Chief Executive and that was to forfeit one dog, that dog having been seized on the 22nd of February, 2008. Your Honour, I'll come back to the statements just made by the appellant in so far as allegations of seizure of material and non return. 1

BENCH: Yes.

MS MELLIFONT: Because they have in fact already been dealt with by way of interlocutory applications in this matter. Her Honour Bradford-Morgan on Tuesday of this week had a three hour interlocutory application. During the course of those proceedings her Honour dismissed the appellant's application for disclosure of documents by the second respondent. There was an allegation at that time during the interlocutory application that trucks full of material - documentary material was seized and not returned but there was affidavit material by Mr Dean of Clayton Utz, the solicitors for the second respondent, that the appellant had over the course of a four hour period the opportunity to examine each and every document seized, with the - and with the exception of some documents which the appellant said could be discarded as rubbish was provided with a copy of the documents or originals and thus the application for disclosure was dismissed. 10
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There was an application also that the second respondent was in contempt.

BENCH: The second respondent. 30

MS MELLIFONT: Yes. That too was dismissed. There were further applications for declaratory type orders that material seized by the second respondent was unlawful. That was dismissed. There was an application for declaratory orders to the effect that the appellant suffers from a disability, namely a psychological injury, and that the Disability Discrimination Act Commonwealth should apply so as-----

BENCH: In this Court. 40

MS MELLIFONT: Sorry?

BENCH: In this Court?

MS MELLIFONT: Yes, and the submission I made was, of course, that that is a function of the Federal Court. That application was dismissed.

Last week there were further interlocutory matters dealt with again by her Honour Bradford-Morgan - I think it was the 31st of July but I'll check the date - in which the appellant sought to litigate allegations that the second respondent had stolen goods and property belonging to the appellant. 50

BENCH: Is that the material - the truckloads of material; is that what that's alleged to be?

MS MELLIFONT: As I understand it in part, but things like -
allegations that the animals were stolen, that jewellery was
stolen, that cash was stolen, et cetera. Her Honour ruled
that that is a matter for criminal allegations and not the
basis for separate relief in these proceedings. Further, on
that date your Honour will observe that there is an amended
notice of appeal. I need to take your Honour to that document
now if I might please.

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The interlocutory was on the 30th of July.

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BENCH: 30th of July.

MS MELLIFONT: Yes. The document I wish to take your Honour
to is headed, "Amended notice of appeal."

BENCH: When was that filed, Ms Mellifont?

MS MELLIFONT: It's undated. I'll see if I can assist in
terms of filing. Some time before the 24th of July. I have
got a copy if that assists.

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BENCH: Before the 24th of July.

APPELLANT: No, your Honour, it was lodged on the 25th of
July.

MS MELLIFONT: Thank you.

BENCH: On the 25th, Ms Robertson.

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MS MELLIFONT: I'm indebted, thank you.

BENCH: Doesn't seem to be on the Court file for some reason.

MS MELLIFONT: I'll hand up a copy. The copy I'll hand up has
the material that was filed with it which was some affidavit
material. On the 30th of July her Honour made a ruling
striking out various grounds. Can I tell your Honour which
grounds were struck out please?

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BENCH: So, on the 30th?

MS MELLIFONT: 30th of July, Magistrate Bradford-Morgan struck
out ground 2, 3, 4 and 5 and grounds 12 through 14. While
your Honour has that document you will see in the preamble
which commences, "Take notice that," the appellant appeals
against the whole of the DPI decisions to confirm forfeitures
for dog seized on the 9th of January 2008 and 22 February
2008.

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BENCH: Yes.

MS MELLIFONT: It then proceeds to talk about on the 11th of
January 2008.

BENCH: Yes.

MS MELLIFONT: By way of clarification at this point in time there were no dogs seized from the defendant's property on the 11th of January 2008. Now, the appellant then referred to a total of 108 dogs. There have been forfeiture - has been forfeiture of a total of 105 dogs only. The jurisdiction of this Court is limited to dogs in respect of which there has been a forfeiture order, so this notice of appeal needs to be read down. If there is some suggestion of dogs somehow coming outside - dogs somehow being held by the RSPCA or the first respondent in addition to the dogs forfeited that's a separate issue - separate issue for separate litigation if there be any, but this Court only has jurisdiction in respect of which there's been a forfeiture.

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BENCH: The 9th and the 22nd - seizures of the 9th and the 22nd.

MS MELLIFONT: Yes, as articulated in those two decisions that I referred your Honour to and I can take your Honour to that, so 104 dogs and one dog. There is also the suggestion that - it appears in this preamble that the appeal can relate to puppies scheduled to be born. Again, if there were puppies born between seizure and forfeiture those puppies have not yet been the subject of forfeiture and this Court doesn't have jurisdiction to deal with that.

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If there were puppies born after forfeiture that's essentially irrelevant in the sense that whatever was seized - sorry, whatever was forfeited on the date of the forfeiture decision was forfeited, so anything in utero flows with the forfeiture. Thank you for the opportunity of clarifying those issues, your Honour. There are some additional preliminary matters which I need to take your Honour to. May I start then with the nature of the decision that your Honour is required to make in this appeal?

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BENCH: Yes.

MS MELLIFONT: I've handed up, your Honour, a copy of the Act. Before taking you to specific provisions can I tell your Honour this? There's a power under section 154 to forfeit the dogs. There's also an internal review process and that internal review process occurred here and that confirmed the original decision. The relevance of the review is really only as a pre-requisite to there being jurisdiction to bring the appeal, so there needs to be the internal review before the matter can come here. But your Honour is required to do in this case is to stand in the shoes of the decision maker. So, can I take your Honour now please to section 154.

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So, a power to forfeit arises under section 154 subsection (1) if an animal or thing has been seized under the Act. The nature of the power then is set out in subsection (2). The Chief Executive may decide to forfeit the animal or thing to the State if an inspector or police officer reasonably believes it is necessary to keep the animal or other thing to prevent it from being used in committing or becoming a subject of an animal welfare offence.

Section 17 sets out what an animal welfare offence is and it is in essence a breach of a duty of care owed to an animal, so you'll see in subsection 3 that there is a breach of the duty if a person does not take reasonable steps to-----

BENCH: Yes.

MS MELLIFONT: For example, those matters set out therein, so provide adequate food and water, accommodation, et cetera.

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Your Honour, that is a relevant provision apart from your statutory power for a separate reason. The appellant will be cross-examined in these proceedings by the first respondent and there may arise-----

BENCH: If she elects to give evidence.

MS MELLIFONT: No, this is - this is her appeal.

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BENCH: Her appeal.

MS MELLIFONT: She has filed affidavit material.

BENCH: Oh, I see.

MS MELLIFONT: So, she's thus required.

BENCH: She's filed affidavit material, I follow now, yes.

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MS MELLIFONT: I hope I'm not overstepping the mark here, your Honour, but I wanted to make clear that at this point in time Mrs Robertson has not been charged with animal welfare offences or other offences under this Act, but there's an ongoing investigation and in her giving evidence there may arise a time for her to be warned in respect of the privilege.

BENCH: Yes.

MS MELLIFONT: She's, of course, not represented.

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BENCH: Right.

MS MELLIFONT: Privilege against self incrimination, of course.

BENCH: Yes, thank you.

MS MELLIFONT: Now, your Honour, can I please take you to the powers of this Court.

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BENCH: Before you do that can you just take me to the power to delegate the Chief Executive's power to make the decision under section 154(2).

MS MELLIFONT: Yes, in fact that's a matter of evidence, your Honour. The affidavit of Ms Ferguson which has been filed in

these proceedings speaks to - and annexes a copy of the delegation-----

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BENCH: Yes.

MS MELLIFONT: -----her position number and that she holds the position.

BENCH: Yes. Yes, yes.

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MS MELLIFONT: Does that answer your Honour's question?

BENCH: Is there a particular power under the Act?

MS MELLIFONT: A particular power. There is and I'll just - I'll just turn it up, I'm sorry, your Honour. So, sections - sorry, I'll just get this correct before I continue.

BENCH: They're often under the provisions where it sets up the Chief Executive's office or position.

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MS MELLIFONT: Yes. I won't be a moment, your Honour. Oh, yes, section 212 provides that - subsection (2) provides that the Chief Executive may delegate the Chief Executive powers under the Act to various persons.

BENCH: All right. Yes, all right.

MS MELLIFONT: And the first annexures to both of Ms Ferguson's affidavit annex the actual delegations and [indistinct].

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BENCH: That's fine, Ms Mellifont. I'm just inquiring at an early stage to be satisfied that there was that power there. You told be about the delegate making decisions.

MS MELLIFONT: Yes, quite right, thank you, your Honour. Can I take your Honour then please to section 203 of the Act which sets out the Court's - oh, sorry, I should start with 202. Section 202 sets out the powers, so subsection 1A provides that your Honour has the same powers as the Chief Executive in making the review decision appealed against. You are not bound by the rules of evidence but of course must comply with natural justice. It's an appeal by way of re-hearing unaffected by the review decision.

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BENCH: It's a hearing afresh.

MS MELLIFONT: It's a hearing afresh. There are, in my respectful submission, some limitations and that is this. Your Honour is standing in the shoes of the decision maker at a point in time, that is the forfeiture application was made. So, in so far as there is evidence which is relevant to the circumstances at that time it can be adduced before your Honour even if it was not before the decision maker.

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BENCH: Well, I think as a question of law that's correct.

MS MELLIFONT: Yes. And my submission is that evidence which goes beyond that point in time, so, for example - it's not the case here - I'm not sure it's the case here. The appellant says, "I've cleaned everything up and everything's great now." In my submission that's not a relevant matter for your Honour to take into account.

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BENCH: You say that's not a relevant consideration.

MS MELLIFONT: It might be different that if there were - I'm speaking hypothetically. If a decision maker at that point in time had evidence that there had been very substantial rehabilitation of a property and demonstrated ability for the animals to be cared for without the attendant risk then that would be a relevant consideration at that point in time, but not subsequent; that's my submission.

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BENCH: Do you say that section 202 would require me to - as in other matters, have regard to the original decision maker's opinion?

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MS MELLIFONT: You're not obligated to take into account her opinion.

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There is, as your Honour would be aware, a body of case law which deals with the nature of hearings de novo----- 1

BENCH: De novo, mmm.

MS MELLIFONT: -----in the sense that the current tribunal may be persuaded by the reasoning process of the original decision maker, or not, but - but the difficulty in applying that as strict application here is that there will be additional evidence which was not before the decision maker. So the true relevance in terms of establishing through the decision maker that these decisions were made----- 10

BENCH: Mmm.

MS MELLIFONT: -----is that the initial forfeiture was made. She also established that a review decision was made and thus grounding the jurisdiction for the appeal.

BENCH: Mmm. 20

MS MELLIFONT: You'll see when we get to it that Ms Ferguson's affidavit does annex the material that she had reference to, it will be before the Court. And your Honour's entitled to take into account any of those features. But for the most part that will - that will be produced by way of witnesses to the actual matters which are reported in that material. So you'll have the first hand evidence of those witnesses who are available for cross-examination and testing. 30

BENCH: Mmm.

MS MELLIFONT: So your Honour may, of course, take into account the reasoning process adopted by the decision maker. Your Honour may consider that to be helpful to you.

BENCH: Mmm.

MS MELLIFONT: Or not. But that's really as far as it goes, in my respectful submission. I might hand up, if your Honour doesn't mind, the only decision that we have in respect of this particular statutory power, just by way of completeness, decision by Magistrate Braes in the Atherton Magistrates Court on the 7th of February 2008 40

BENCH: Have you provided a copy to Ms Robertson?

MS MELLIFONT: I have just now. I'm sorry, I should have done that earlier. I'll just take your Honour to the relevant parts, if I might. 50

BENCH: Yes.

MS MELLIFONT: You'll see on the first page there's a very large paragraph that starts about halfway down, there is - there is a matter about the conduct of this appeal that concerns me, and his Honour starts - states, "This appeal is by way of a re-hearing unaffected by the review decision."

BENCH: Mmm.

MS MELLIFONT: And then his Honour looks at the relevant authorities. And then on the following page in the second paragraph, the one commencing, "The scope of section 202," his Honour states that this appeal is broad enough to allow the matter to proceed as a hearing de novo.

Your Honour, the other matter that I wish to take you to in this decision relevant to just outlining the nature of the Court's power in this matter appears on page 6 and it's in the second paragraph, four lines from the bottom. His Honour notes, "I'm not asked to make an order in respect of the appellant's attitude today, nor with regard to the condition of the cattle today"-----

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BENCH: Mmm.

MS MELLIFONT: -----"I expect that the appellant would gladly received the well nourished cattle even if only for sale purposes." I raise that just in support of my submissions earlier that it's a decision at a point in time in terms of what's relevant. So steps taken, for example, since the date of forfeiture would not be relevant in this proceeding.

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Can I take your Honour then to the next relevant provision?

BENCH: Mmm.

MS MELLIFONT: Which is section 203.

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BENCH: Mmm.

MS MELLIFONT: And that sets out the nature of your Honour's power so you can confirm the decision, you can set it aside, you can set it aside and send it back to the chief executive with - with some directions.

There is just one further matter, your Honour, because of the use of the terminology "original decision" and "review decision" in the Act, it sometimes - it appears at first glance to be quite confusing. Can I just take your Honour to a couple of provisions please. Section 199, this sets out the jurisdiction that is, "If an interested person has applied for a review of original - an original decision, any interested person for the decision may appeal against the review decision to the Magistrates Court."

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BENCH: Mmm.

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MS MELLIFONT: But then going back to section 197 subsection 4, that provides that if the review decision confirms the original decision for the purposes of an appeal, the original decision is taken to be the review decision. Yes, very circular, but in essence, distilling what the Act is saying is that the decision under appeal is the original decision to forfeit. That's what it comes to.

BENCH: Mmm.

MS MELLIFONT: And so what your Honour is doing is - in this appeal - is making a decision under section 154.

Now, in so far as that decision is concerned - just returning to 154 for a moment, please. In order for the discretion to forfeit to arise there must be that reasonable belief by an inspector to keep the animal or other thing to prevent it from being used in committing or becoming the subject of an animal welfare offence.

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BENCH: Mmm.

MS MELLIFONT: So that's a pre-condition before - that has to be fulfilled before the discretion can be exercised. Once that arises then your Honour has the discretion to forfeit and the exercise of that discretion in terms of what's relevant and irrelevant is to occur in accordance with the ordinary principles of an administrative law, so to take into account relevant considerations, et cetera, et cetera.

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BENCH: Et cetera, mmm.

MS MELLIFONT: And in so far as that is concerned, your Honour will of course be bound to take into account the scheme of the Act, including the purposes-----

BENCH: Yes.

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MS MELLIFONT: -----which include promoting the responsible care and use of animals and to provide standards for the care and use of animals. That's the nature of the matter before your Honour.

BENCH: Right.

MS MELLIFONT: The next preliminary matter is this: On Tuesday of this week the appellant made an application for a McKenzie's friend.

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BENCH: Mmm.

MS MELLIFONT: That person is Mr Krohl who is seated with the appellant at the Bar table today.

BENCH: Mmm.

MS MELLIFONT: That application was refused, but neither the first nor the second respondents have any objection - had any objection then or have any objection now to Mr Krohl sitting with Ms Robertson at the Bar table and assisting in a non-participatory sense.

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BENCH: Thanks for that. That's your position, Mr Duong?

MR DUONG: Yes, your Honour.

BENCH: Thank you. Yes?

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MS MELLIFONT: The next issue I need to raise, your Honour, is this: On Tuesday during the interlocutory applications there was some suggestion by the appellant that she had not been provided by the second respondent with all of the video footage, all of the audio recordings in respect of this matter.

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BENCH: Right.

MS MELLIFONT: The appellant has been provided with some and I gave an undertaking to the Court on Tuesday-----

BENCH: Mmm.

MS MELLIFONT: -----that if there were any recordings of that nature which had not been provided that they would be provided by close of business on Tuesday. What then occurred is that a copy of all recordings in the possession of my client was provided and delivered to Mrs Robertson on that day, and that will duplicate some that she already have, but I wanted to make sure that everything was delivered.

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BENCH: Mmm.

MS MELLIFONT: In the course of a conference with a witness yesterday-----

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BENCH: Mmm.

MS MELLIFONT: -----as late as 4.37 p.m.-----

BENCH: Mmm. Well these things happen.

MS MELLIFONT: Yes. It became apparent to me that there was a recording which had not been provided.

BENCH: Right.

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MS MELLIFONT: The context of that is that during the first seizure date Inspector Stageman had a standard old-fashioned recording going and we had provided-----

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BENCH: When you say standard, old fashioned recording, do you mean an audio or video recording? 1

MS MELLIFONT: Oh, both, but in this context, I'm talking about audio. So, I think it was-----

BENCH: Tape-recording.

MS MELLIFONT: Yes, like police when they execute search warrants, he was recording it. I think it was - it was either a micro cassette or a standard size audio cassette recording. That had been provided the day prior. So, that's been provided in accordance with the undertaking. 10

The other inspector, though, Inspector Towers Hammond disclosed to me in the course of this conference I've spoken about that he had a digital recording that he was taking separately which I had taken from the affidavit, simply to be the same thing but I was advised that that's not the case and in fact, simply isn't a concurrent recording but contains additional recordings of conversations with Mrs Robertson. so, recordings on later dates during later seizures. 20

BENCH: Yes.

MS MELLIFONT: Now, arrangements were made immediately for that to be copied but Mrs Robertson was not provided with a copy of that until 9.15 last night. I'm instructed by Inspector Towers Hammond that it's about 90 minutes of recording. 30

That's the first matter I needed to raise and I raise these matters because there has been some additional material that I have provided to Mrs Robertson this morning which, if I had handed them over to lawyers would have taken them 2 to 3 hours to go through and I indicated to Mrs Robertson but I will be telling the Court that there is a failure to comply with the undertaking in respect of the provision of the audio equipment and some additional medical material that needed to be provided as a matter of fairness. 40

BENCH: Medical material?

MS MELLIFONT: That from the reports.

BENCH: Oh, yes, sorry.

MS MELLIFONT: And that if Mrs Robertson wishes to make an application to have time to look at that material, then there would be consent to having the matter start after lunch. 50

BENCH: Mmm.

MS MELLIFONT: And if further time is needed, then that could be considered at that point in time.

BENCH: Mmm.

MS MELLIFONT: I need to tell you about the additional material so you can understand what's occurred this morning.

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BENCH: Mmm.

MS MELLIFONT: There are a number of vets who provided statements in this matter, affidavits in this matter for the first respondent. They refer to the state of some of the animals, most of the animals, when they were received by the Fairfield RSPCA, the medical conditions of the animals and the treatment.

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Now, the affidavits really speak to - there are recollections but also draw from the veterinary records which were available but they did not annexe the veterinary records to their affidavits.

I had been acting under the assumption, as had my instructing solicitor that a 10 or 11 page Excel spreadsheet of veterinary records was the complete version but I am informed this morning that, in fact, due to a computer glitch, data base failure, if I can call it that, that is not correct and the full records, in fact, run to a 50 page Word document in tabular form.

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BENCH: Mmm.

MS MELLIFONT: Mrs Robertson is entitled, obviously, to look at this material and have sufficient time to absorb it and so, I explained that to Mrs Robertson this morning and told the Court that as well.

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In addition to that, but certainly of a lesser magnitude in terms of size and time, I provided to Mrs Robertson a list of the weights of the animals because Mrs Robertson speaks of the weights in her affidavit and I thought it important that she should have access to that information and Mrs Robertson speaks to - in her affidavit material, a dog which is said by the RSPCA to have died of respiratory-related issues and I've obtained a copy of the University of Queensland medical report for her - well, sorry, for that dog and have provided it to Mrs Robertson.

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BENCH: Yes.

MS MELLIFONT: Now, I just wanted to raise those matters, just in the event that Mrs Robertson seeks to have more time to place - first of all, to apologise for the failure to comply with the undertaking and secondly to make it clear that there has been provision of material this morning which is a matter of fairness, in my respectful submission, Mrs Robertson would need.

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BENCH: Mmm.

MS MELLIFONT: I should also say that this matter has been listed for 2 days. There are 14 witnesses for the first respondent. We have been advised by the appellant yesterday,

in accordance with the direction made, that she would require every witness for cross-examination. 1

BENCH: Yes.

MS MELLIFONT: For my own part, I will probably be cross-examining Mrs Robertson for two hours, thereabouts, depending on answers given. It may be longer than that and there is another witness to cross-examine. 10

The 2 days, even if we had a full 2 days, wouldn't cut it, can I put it that way and I suspect it will take probably an extra 2 days of Court time. I wish to preserve, if at all possible, that we do start with the matter today or in the morning.

BENCH: Well, we'll start today.

MS MELLIFONT: Thank you.

BENCH: And subject to what Mrs Robertson has to say about the material. 20

MS MELLIFONT: Yes.

BENCH: And there is a lot of material that she's been given at a late stage.

MS MELLIFONT: Absolutely.

BENCH: Well, in addition to that, subject to what everyone else has got to say, over the luncheon break, I'll have my clerk see what - where it's anticipated I will be next week. 30

MS MELLIFONT: Yes.

BENCH: If I'm available and if everyone else is available.

MS MELLIFONT: I am.

BENCH: We can sit next week. 40

MS MELLIFONT: Yes. That would be appreciated because-----

BENCH: Today, I have a commitment this evening which means I must leave here at about 4.30.

MS MELLIFONT: Yes.

BENCH: But tomorrow, I see no reason why we can't start at 9 o'clock sharp. 50

MS MELLIFONT: Yes.

BENCH: Go through to 11, have a 15 minute break, go through till 1, start again at 2 and go through to 5, in my view.

MS MELLIFONT: Yes.

BENCH: Subject to everyone else's availability, bearing in mind that it is a Friday. 1

MS MELLIFONT: Yes, your Honour, I have no difficulty with those matters but I should bring your Honour's attention to a psychiatric report which has been filed by Mrs Robertson, indicating some anxiety disorder, so, she may need some breaks.

BENCH: Oh, I see. 10

MS MELLIFONT: But she'll know best as to how she's coping with things.

BENCH: I see, all right. All right, I can appreciate-----

MS MELLIFONT: But certainly - oh, I'm sorry to interrupt. Sorry, I interrupted.

BENCH: No, no, no, no, I'd----- 20

MS MELLIFONT: But certainly if we are able to continue with the matter next week, that's the preferred course in the sense that the RSPCA can't sell these animals until this matter is determined and so there are extensive costs and the day to day care of these animals.

BENCH: Oh, I can appreciate that. I suppose I did make the observation that there are certain rights available to Mrs Robertson under the Act. I've provided those rights. They were pursued expeditiously. If the Court's available, the Court's available. 30

MS MELLIFONT: Yes, yes, thank you, your Honour. There are some more preliminary matters but rather than traversing all of them, would it be a convenient time for Mrs Robertson to indicate whether or not she does need additional time because of the further material?

BENCH: Yes, but before I go to Mrs Robertson, Mr Duong, is there anything that you want to raise that you think I need to know at this stage? 40

MR DUONG: Sorry, your Honour, in so far as the housekeeping matters, the second respondent certainly concurs with all of the submissions made by my friend, the first respondent.

BENCH: Okay.

MR DUONG: We certainly agree that, if it's necessary, a short adjournment of the matter should be made available for the appellant to consider the additional materials provided to her. 50

BENCH: Mmm.

MR DUONG: As regards the cross-examination of witnesses and the time-tabling of this matter, we again agree with the submissions made by Ms Mellifont. 1

I won't necessarily need to cross-examine all of the witnesses but certainly, I'd like to have an opportunity to cross-examine the appellant.

BENCH: I have no difficulty with you exercising that right but out of an abundance of caution, there's no need to go over ploughed ground that Ms Mellifont might traverse----- 10

MR DUONG: Yes, certainly.

BENCH: -----with the appellant.

MR DUONG: Certainly.

BENCH: In cross-examination. All right. Mrs Robertson, now, you've received some material very late last night and----- 20

APPELLANT: Yes, your Honour.

BENCH: -----this morning about quarter past 9.

APPELLANT: Yes, your Honour.

BENCH: Would you like some time to consider that material?

APPELLANT: I have spent time [indistinct] I was waiting. I don't need any more time. 30

BENCH: You don't need any more time?

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APPELLANT: Yes. There is a couple of things that I'm not completely clear about, your Honour, if I may ask. 1

BENCH: Well, just before we go to those - those matters. All right, so we'll proceed shortly with - with the matter but what is your position about - if we sit - if we have to sit next week because, you know, we're - it's now as good as 12.30 on the first day. Two days have been set aside apparently but-----

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APPELLANT: Yes.

BENCH: -----Ms Mellifont and Mr Duong say that it will take probably twice that long.

APPELLANT: It doesn't matter to me as your Honour-----

BENCH: Doesn't matter to you? Are you sure?

APPELLANT: Yes, if it pleases. 20

BENCH: All right. Well, you have no difficulty if I have my clerk check over the luncheon adjournment as to my availability next week?

APPELLANT: No, your Honour.

BENCH: So that we can proceed with the matter-----

APPELLANT: Yes, yes. 30

BENCH: -----sooner rather than later?

APPELLANT: Yes.

BENCH: And if it can continue next week?

APPELLANT: Yes.

BENCH: Are you available all next week? 40

APPELLANT: Yes, your Honour.

BENCH: So if we set 2 days aside next week. Are you both in a position of any day next week is-----

MS MELLIFONT: I am, your Honour.

MR DUONG: Yes, I'm available, your Honour. 50

BENCH: All right. Now, Ms Robertson, you were going to raise something with me that you weren't clear about?

APPELLANT: Yes. There was - this issue about the number of dogs. When the RSPCA came to my premises to pick up the dogs and the order of seizure was given by the RSPCA inspectors, I ask them, I beg them, to allow me to have a vet come in to microchip and identify my dogs. They're pedigree dogs, your

Honour. I spent 20 years breeding those lines and my standard poodles are known all over the world. I helped increase the gene pool, we do genetic health testing and all those things, and they wouldn't allow me. They took my dogs and-----

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BENCH: All right. Well-----

APPELLANT: -----I sat down and listed the dogs, so they all had names and that was what I went on, and-----

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BENCH: All right. Well, that - I think that's - that sounds like evidence, what you're wanting to have put before me as evidence, and that could be done through the course of-----

APPELLANT: Yes.

BENCH: -----the hearing.

APPELLANT: Yes.

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BENCH: But do you have a - there is agreement on the 9th there were a number of dogs taken?

APPELLANT: Yes.

BENCH: And then again on the 22nd of February there were other dogs taken?

APPELLANT: Yes.

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BENCH: All right.

APPELLANT: Yes, all right, thank you. The other - the other matter is I've got 2 witnesses and they both travel at least e - well, they live about 3 hours out of Brisbane.

BENCH: Yes.

APPELLANT: And they have come to the Court on numerous occasions.

40

BENCH: Yes.

APPELLANT: Is it possible, instead of me being - giving evidence first that they be-----

BENCH: They give evidence before you?

APPELLANT: Yes, please, yes, today?

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BENCH: Have you had any discussion with your friends at the Bar table?

APPELLANT: No, it just occurred to me, I'm sorry.

BENCH: Well, from my point of view I don't necessarily have a problem but it may not set the scene, so to speak. Do you

have a view on - I don't know who the witnesses are or what they might - might - evidence they might give. 1

MS MELLIFONT: Yes. Can I - so far as I understand, one of the witnesses is Annette Barrell. Can I just ask if that's correct?

APPELLANT: Yes, yes.

MS MELLIFONT: I don't know who the second witness is. 10

BENCH: Who's the second witness, Ms Robertson?

APPELLANT: That's Margaret Watt.

BENCH: And don't tell me what their evidence is, but what sort of things will they talk about? What sort of evidence can they give? Can they give evidence about the condition of the dogs at the relevant time? 20

APPELLANT: Yes, yes. Yes.

BENCH: All right.

APPELLANT: About the question of neglect, you know, because Annette has been assisting me for over 10 years, you know, so that she is also a breeder and she knows how I run the kennels, the condition of the dogs.

MS MELLIFONT: Your Honour, in respect of Ms Barrell, that is one of the preliminary matters I wish to raise with your Honour. 30

BENCH: I see.

MS MELLIFONT: There will be some objections to certain parts of her evidence, but-----

BENCH: Is there a statement by her or something, is there? 40

MS MELLIFONT: There's a - there is a statutory declaration which has been filed and yesterday we received also a handwritten one-page document attaching a couple of certificates of registration of pedigree, the relevance of which I'll need to query. I don't-----

BENCH: Can you do that whilst these people are sitting in the witness box or-----

MS MELLIFONT: No, I'll have to----- 50

BENCH: You need to do it as a preliminary matter now?

MS MELLIFONT: I need to do that as a preliminary matter. In so far as Margaret Watt is concerned, I'm not sure if these people are present in Court at the moment but they shouldn't be-----

APPELLANT: They are not.

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MS MELLIFONT: -----respectfully. Thank you.

APPELLANT: They are not, your Honour.

BENCH: They're outside, Mrs Robertson?

APPELLANT: Yes, they are outside.

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MS MELLIFONT: Thank you. In so far as Margaret - Watt?

APPELLANT: Watt, yes.

MS MELLIFONT: Is concerned, in the preliminary applications there were - there are a couple of letters or statutory declarations from Ms Watt. I'm not sure I've got this precisely right, if we're talking about the right person, who speaks about being present at the time of some seizure of the documents and seeing papers - papers taken away. Now in so far as the disclosure application, there was some discussion about the relevance of her evidence in that context and it was ruled inadmissible. So I don't know what Ms Watt's evidence is going to be about in the substantive hearing, so currently I'm not in a position to make submissions as to her relevance.

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BENCH: So someone had made a determination, another magistrate's made a determination about the relevance of any evidence that she might be able to give at the time of the seizure of some materials?

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MS MELLIFONT: Only in so far as the disclosure application.

BENCH: Right.

MS MELLIFONT: And the essence of the submission, which - by me which was accepted by her Honour was this. Ms Watt attests to having observed boxes of material - sorry, boxes with paper being put into the RSPCA vehicles, observes RSPCA officers taking documents of a certain character, and then my submission was that her evidence was not relevant on the disclosure issue because the point litigated was what had been returned back, and there was no evidence by Ms Watt that could be prefaced to the Court that she could say "I saw this document taken"-----

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HIS HONOUR: And that document, right.

MS MELLIFONT: -----or "This category taken - document taken and this given back. So there was a ruling but it is in that narrow sense. I wouldn't - I certainly wouldn't submit that there's been any ruling in the context of the substantive hearing, but I don't know what she proposes to say in any sense in respect of the substantive hearing and I can't make submissions about it until I hear it.

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BENCH: What-----

APPELLANT: Mrs Watt.

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BENCH: What will Ms Watt say?

APPELLANT: Mrs Watt actually owned 2 puppies. She bought 2 puppies from me that were removed and taken by RSPCA and she was - I met Mrs Watt as a client, a customer, and she couldn't pick up her puppies till after Christmas.

BENCH: So her evidence will be about ownership of some of the dogs seized, will it?

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APPELLANT: Yes, and also since then she has sort of been to my property, she's been trying to get those puppies back to - to RSPCA and initially they promised them to her if she filled up all the legal - like, ownership papers, which she did, and then they refused her the puppies and it's to do with the dogs seized, 2 of them, and she hired a lawyer and they couldn't get anywhere with RSPCA, they just ignored her completely.

20

BENCH: All right. Well - but that's the nature of her evidence, about ownership?

APPELLANT: Primarily, yes.

BENCH: Primarily. Anything else that she can-----

APPELLANT: And the conditions of the dogs that were seized, because she has been a regular visitor since she-----

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BENCH: All right.

APPELLANT: -----paid for those puppies, and she had - she's a grandmother, she had commitments so she couldn't pick up the dogs because of that, and she was due to pick them up about the following weekend and they were taken.

BENCH: She can give evidence about - what she says, an issue of ownership and an issue about the condition of the dogs-----

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APPELLANT: Yes.

BENCH: -----at the time of seizure. It seems to me that that would be relevant to these proceedings.

APPELLANT: And the kennels too because she had been a regular visitor since she paid me all the money. I mean, she wanted to see everything.

BENCH: All right.

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APPELLANT: You see.

MS MELLIFONT: It's certainly accepted that in so far as a description of the premises is relevant - is concerned at times proximate to the point of seizure that that evidence is relevant and there's no objection in that respect.

In so far as the issue of ownership, that's really a matter of separate civil litigation but because the forfeiture is of the animals which were in possession, which were seized, so in terms of how she gets her animals back, what happened after the event of forfeiture, that's a separate matter for civil litigation. But certainly she's - it's accepted that she could give evidence if she delivered her dogs there.

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BENCH: Yes, yes.

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APPELLANT: Your Honour, I don't think there's any - any grounds or any law she could get it from civil litigation, the recovery of those dogs.

BENCH: Well-----

APPELLANT: The Animal Care and Welfare Protection Act is very precise. There's no - no regard for third party-owned dogs.

BENCH: I'm prepared to allow her to give evidence if she - about her - if she can give evidence about saying that she owned a particular dog and its condition was XYZ, but if one of those dogs has been - that she says she owned, her evidence is she owned one of the dogs and it was seized, it would seem to me that Ms Mellifont is right in that it is a matter between Ms Watt and the RSPCA.

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APPELLANT: But there's no provision for third party dogs, as I have been told.

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BENCH: I think it's a question of contract.

APPELLANT: It's only me because they were in my possession. If your dog was in my possession and they took it, it didn't matter, they wouldn't give it back to you, according to them, and as the interpretation of the Act as I see it.

BENCH: All right.

APPELLANT: I've gone through the whole Act.

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BENCH: I see, all right.

MS MELLIFONT: I'd be repeating myself. I don't need to raise it any further.

BENCH: No, you don't need to repeat yourself. Mr Duong, is there anything you want to say?

MR DUONG: I have no difficulty to turning to those two witnesses at their convenience, and I've got nothing further to add.

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BENCH: All right.

MS MELLIFONT: Can I deal with the additional preliminary matters, your Honour.

BENCH: Yes. I'll need to-----

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MS MELLIFONT: We say there's-----

BENCH: We need to get the - excuse the phrase, but the show on the road, I think.

MS MELLIFONT: Yes, I appreciate that. I'm getting to the end of them. The first is in respect of identifying the affidavits that Ms Robertson seeks to place reliance on for the substantive hearing, because there have been a number of affidavits filed in respect of the interlocutory applications, and I'll need to hear that from Mrs Robertson.

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BENCH: Mrs Robertson, did you hear - were you able to hear what Ms Mellifont was saying?

APPELLANT: Yes.

BENCH: What she's wanting to know is what are the affidavits - am I to take it there are a number of affidavits which have been filed? What Ms Mellifont is asking is which ones are you relying on for the purposes of these proceedings?

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APPELLANT: I would think all the affidavits. This is what it's all about.

BENCH: All of the affidavits?

APPELLANT: Yes.

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BENCH: All right.

APPELLANT: Regarding it. There's only one purpose for those - for these, they're for my dogs and my personal belongings. They took my life away, you know, everything I own, my past, my future.

BENCH: All right. So you say all of these affidavits are relevant. I haven't - I haven't perused the affidavits at all.

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APPELLANT: Oh, sorry. The first affidavit I lodged was on the 21st of July.

BENCH: The - sorry, what date? 21st of July?

APPELLANT: Yes.

BENCH: It's an 11-page affidavit with a number of exhibits, that's right?

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APPELLANT: The one on the 28th of July, 20 - yeah.

BENCH: Sorry, there's one dated the 21st of July.

APPELLANT: Yes.

BENCH: Are you relying on that?

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APPELLANT: Yes, and the 28th of July, which is-----

BENCH: It's a 12-page affidavit.

APPELLANT: Yes.

BENCH: Now, there seems to be a number - just looking at that there's a number of lines-----

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APPELLANT: There is an affidavit lodged on the-----

BENCH: Mrs Robertson, did Magistrate Bradford Morgan make some orders about certain parts of that affidavit?

APPELLANT: I beg your pardon. Sorry. 21st of July, the 28th of July. The 28th of July.

BENCH: 21st and 28th of July, yes.

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APPELLANT: Yes, and the 4th of August because - the 4th of August has got the list of all the dogs I listed.

BENCH: The 4th of August?

APPELLANT: Yes. The list of my dogs, item - yes. That is a crucial one because it identifies all my dogs.

BENCH: And that's an 8-page affidavit with a number of exhibits of the 4th. So you're not relying on the affidavit of the 1st of August?

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APPELLANT: Affidavit on the 1st? I think that was the one that I - there was some - I think Ms Mellifont mentioned - talked about it earlier on. It was tendered too I think, that one, Monday, it's on the 1st of August.

BENCH: Is this in relation to one of the matters that Magistrate Bradford Morgan ruled was related to the discrimination issue?

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APPELLANT: Affidavit-----

BENCH: All right. 21st, 28th of July and the 4th-----

APPELLANT: The affidavits that was lodged through DPI, could we - could we - could I use that?

BENCH: Well, tell me where it is, I don't know where it is.

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APPELLANT: 28th of March.

BENCH: 28th of March?

APPELLANT: Yes. When I submitted my appeal initially to the Department of Primary Industries, on the 28th of March.

BENCH: Was that part of the material that the authorised delegate had?

APPELLANT: Sorry?

BENCH: Is that part of the material that the authorised delegate had before her when she made the decision, is it?

APPELLANT: Yes. Yes, your Honour.

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BENCH: 28th of March.

MS MELLIFONT: Sorry, your Honour, it wasn't.

APPELLANT: It was, this year.

MS MELLIFONT: The last of the 2 decisions was made on the 14th of March 2008. This affidavit was the 28th of March 2008. It is-----

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BENCH: Where is it in the material, Ms Mellifont? I can't put my finger on it at the moment.

APPELLANT: But that was lodged before she made the decision. After she made - that was the-----

BENCH: Well-----

MS MELLIFONT: It may have been provided, your Honour, before the review decision. In so far as where it appears on the Court file I don't know whether Mrs Robertson has in fact filed it.

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BENCH: I see.

APPELLANT: It wasn't filed in the Court because this was lodged to the Department of Primary Industries and against the forfeiture. We didn't lodge this to the Court. The affidavit that was done, that was sworn by me on the 28th of March, and lodged with the Department of Primary Industries against their forfeiture, against Ms Ferguson's forfeiture.

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MS MELLIFONT: Your Honour, we have a copy. I have no objection to Mrs Robertson seeking to place reliance on it subject to some objections.

BENCH: So you have no objection to it being-----

MS MELLIFONT: Relied on. There are - I'm sorry that I have to raise these matters as preliminary matters but there are some objections to the nature of the evidence sought to be adduced and the rulings on them, depending on what they are, may seek to narrow the case but I have - certainly have no objection to it being handed up and we think we can assist with a clean copy.

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BENCH: Thank you. Do you have any objection, Mr Duong? 1

MR DUONG: Well, if I could just put on the record, your Honour, that our side would be at a distinct disadvantage because we certainly don't have a clean copy and we haven't seen the materials upon which the appellant's seeking to rely. That said, I think I concur with Ms Mellifont in that objections can be made once the evidence is adduced.

BENCH: Well, once I've had a look at the affidavit myself I can arrange for it to be copied and you provided with a copy of the same affidavit that I have. 10

MR DUONG: Thank you, your Honour.

BENCH: All right. Whilst I'm waiting for that, Mrs Robertson, is there any other - just those three affidavits?

APPELLANT: Four. Four, your Honour.

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BENCH: Four?

APPELLANT: Yes, Four.

BENCH: And what's the other one.

APPELLANT: The 21st of-----

BENCH: Sorry, yes, you're right.

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APPELLANT: -----July.

BENCH: 21st, 27th, 4th-----

APPELLANT: 28th - 21st, 28th, 4th-----

BENCH: 4th of August and this one from May.

APPELLANT: Yes, the old one. Yes, please.

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MS MELLIFONT: Your Honour, in respect of the affidavit of the 28th of July 2008, the 12 page affidavit, it is correct. Your Honour queried as to whether Her Honour Bradford-Morgan? made some ruling in respect of it.

BENCH: The reason I ask is that - yes.

MS MELLIFONT: There were a number of paragraphs struck out. Does that appear on the face of the affidavit, your Honour, or should I take your Honour through the matters which were struck out? 50

BENCH: Sorry, Ms Mellifont?

MS MELLIFONT: Do the strike outs appear on the face of the affidavit or should I take your Honour through those?

BENCH: No, they appear on the face of it. There's a line through paragraphs and most of them have got the word strike out.

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MS MELLIFONT: Thank you. There is in fact a second affidavit of the 28th of July, it's a 6 page affidavit.

BENCH: Similarly marked? 28th of July, that's a 12 page.

MS MELLIFONT: There is a 12 page one, but there is a separate one-----

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BENCH: Oh, all right.

MS MELLIFONT: -----which is 6 pages on the 28th of July 2008 which was filed in respect of the application for discovery and respect of the matters contained therein really aren't matters relevant to these proceedings and I presume that there's no reliance on it.

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BENCH: Well, that's my understanding.

MS MELLIFONT: In respect of the affidavit of the 4th of August, your Honour, this is the one with the list of dogs, again, there are wholesale sections there to do with the disclosure issue and the search and seizure issue. But perhaps rather than descend to the minutiae at the moment, your Honour.

BENCH: There appears to be notes by her Honour not part of the application for discovery on that affidavit.

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MS MELLIFONT: Sorry, not part of the application for discovery?

BENCH: Not part of the application. "Not part of the application of discovery"-----

MS MELLIFONT: Oh, yes.

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BENCH: -----is what her Honour has written.

MS MELLIFONT: What occurred - deciphering as best as I can what that means is that there was a list of property for which recovery was sort by the appellant. In Court, there were some deletions in respect of the matters.

BENCH: Right.

MS MELLIFONT: So perhaps that's what that notation relates to.

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BENCH: Right.

MS MELLIFONT: But so far as I understand that from what the appellant's just said, the relevance of that affidavit is that she sets out what she thinks was - she thought - the animals she thought was seized.

BENCH: Right.

MS MELLIFONT: There is 1 final affidavit-----

BENCH: Yes.

MS MELLIFONT: -----that was filed by the appellant and that is an affidavit of the 1st of August 2008 annexing a psychiatric report, in fact, 2, by Dr Slaughter. It's not been one listed by Mrs Robertson, so I presume it's not being relied on. If it is, I canvassed on Tuesday that if there is a proposal to rely on psychiatric reports that I will require Dr Slaughter for cross-examination. So I don't know whether there's any intention to seek to rely on those matters.

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BENCH: Do you understand, Ms Robertson, what Ms Mellifont was just saying about-----

APPELLANT: I couldn't afford Dr Slaughter another - to pay another bill, so I think we'll have to forgo him.

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BENCH: Well, it's a matter for you, but if you seek to rely on what Dr Slaughter has got to say in this affidavit in that if you seek to rely on the affidavit, Ms Mellifont has put you on notice that reliance will, as a consequence, require Dr Slaughter to come along and to be cross-examined.

APPELLANT: Yes. I think if I'm going to - if my case is important and does depend on the - what else is different? I mean, they've cost me everything I own just about.

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BENCH: It's a decision-----

APPELLANT: They want my home now, so I might as well give something-----

BENCH: It's a decision for you to make. If you're going to rely on - what Ms Mellifont is telling me is if you're seeking to rely on Dr Slaughter's report, he will need to be-----

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APPELLANT: He's a doctor that I've known for many years.

BENCH: -----here - no, no, no. The rules of Court are-----

APPELLANT: Yes.

BENCH: -----when someone's talking, I'll be quite, when I'm talking, you be quite. If you want Dr Slaughter's report to be relied on, he'll have to come along to be cross-examined by Ms Mellifont.

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APPELLANT: Yes.

BENCH: All right.

MS MELLIFONT: And I did indicate also that we would consent to telephone evidence in that respect if an application was made.

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BENCH: Yes.

MS MELLIFONT: Your Honour, can I hand up for your Honour a working copy of all the affidavit material relied upon by the first respondent? It's indexed.

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BENCH: Is that going to be helpful?

MS MELLIFONT: 2 matters very brief when I say-----

BENCH: No, that's - look, we - I need to - and I appreciate being given information that I need to have to get an understanding of this matter. I'm a little concerned about your heading to your material, Ms Mellifont, it's in the Registry at Townsville, am I in the wrong place am I?

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MS MELLIFONT: Your Honour, that is my fault. My word processing skills-----

BENCH: A good counsel always will blame instructing solicitors, Ms Mellifont.

MS MELLIFONT: No, I can't, I'm sorry. I've cut and paste from a previous case, your Honour. It should be Brisbane of course. My instructing solicitor in fact picked up on that error and I've still maintained it.

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BENCH: All right.

MS MELLIFONT: Your Honour, I seek leave to read and file a supplementary affidavit of Anne Covill, C-O-V-I-L-L. She's referred to in the list I've handed up. She provided an affidavit, she's one of the RSPCA officers. She's a vet. She expressed an opinion in her affidavit. I asked that she explain the basis of her opinion and she referred to some records in her affidavit and those were annexed. Now, this affidavit was provided to Mrs Robertson yesterday but it was for the purpose of (1) stating the basis of an opinion expressed in an affidavit and (2) providing the records which were referred to in the initial affidavit.

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BENCH: All right. Well, Mrs Robertson, you've been provided with a copy of Ms Covill's affidavit, is that correct?

APPELLANT: Yes, thank you.

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MS MELLIFONT: Did you get that yesterday?

BENCH: Sorry, the supplementary affidavit I meant, I apologise.

APPELLANT: Yes, thank you.

BENCH: You have?

APPELLANT: Yes.

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MS MELLIFONT: Ms Robertson's not sure that she had that. I'll just find a copy and show it to her.

APPELLANT: Yes, I've got it.

BENCH: You do?

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APPELLANT: Yes.

MS MELLIFONT: Yes, that's the document, your Honour.

BENCH: Thank you.

APPELLANT: Yes, your Honour, I've got a copy.

BENCH: Very good.

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APPELLANT: Thank you.

BENCH: Wonderful. All right. Now-----

MS MELLIFONT: I have in my hand a CD which records 4 approximately 2 minute pieces of video footage taken at the RSPCA shelter after the animals were seized and during their treatment.

BENCH: How long after?

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MS MELLIFONT: The day after.

BENCH: The day after, okay.

MS MELLIFONT: I'm going to provide a copy to Mrs Robertson and we've got facilities for her to have a look at that at the Court in the event that she doesn't have it already. Can I say that what's depicted on here is [indistinct] to be reflected in any event by still photography which has been provided. Your Honour, that brings me to evidence objections and that will take a bout half an hour depending on the rulings, as I said, may seek to limit the evidence in the hearing.

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BENCH: Mmm-hmm. If you're going to take half an hour, I think we'll adjourn until 2 o'clock, don't you?

MS MELLIFONT: 2 o'clock, your Honour?

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BENCH: 2 o'clock.

MS MELLIFONT: Thank you.

BENCH: We'll go through to 4.30-----

MS MELLIFONT: Thank you, your Honour.

BENCH: -----depending on - I'd like to commence the proceedings this afternoon. Ms Mellifont is signalling to me that there's going to be some objections to some of the evidence that I'll need to make some rulings on this afternoon and as soon as I've done that, we'll start the proceedings.

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APPELLANT: Thank you, your Honour.

BENCH: You should ensure that your witnesses that you want to call this afternoon are available to given evidence this afternoon sometime-----

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APPELLANT: Yes, your Honour.

BENCH: -----around about 2.30 to half an hour.

MS MELLIFONT: Yes, your Honour.

BENCH: And they should be available here today. Now, you need to take them through their evidence, the relevant - what is relevant to this application, this appeal, right?

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APPELLANT: Yes.

BENCH: And you need to put everything that you can which is relevant to them in the witness box so that I can hear their evidence, right? Because they'll also be subjected to cross-examination and I'll hear that as well.

APPELLANT: Yes, your Honour.

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BENCH: Okay. All right. We'll adjourn until - I'm sorry for the delay in starting the ball rolling, but other things-----

MS MELLIFONT: Yes, your Honour, thank you.

BENCH: I will start at 2 o'clock and can we make it 2 o'clock sharp?

MS MELLIFONT: Yes, your Honour.

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BENCH: Thank you.

THE COURT ADJOURNED

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THE COURT RESUMED

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MS MELLIFONT: It is.

BENCH: And what I'm considering is whether or not the inspector, if reliance is placed on section 154.2(c), the decision that I'm considering by way of rehearing is whether or not an inspector reasonably believed it was necessary to keep an animal for one of those reasons. It's that - it's the reasonable belief of the inspector that I'm rehearing.

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MS MELLIFONT: That's part of it.

BENCH: And do you say in the course of rehearing the forfeiture application I can consider any evidence? Evidence which might not have been before the inspector at the time?

MS MELLIFONT: Not quite. Can I-----

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BENCH: This is - I'm just trying to get this clear in my mind-----

MS MELLIFONT: Yes. The belief of the inspector is the factual prerequisite before the discretion even arises. So the power to forfeit only arises if there is a reasonable belief that the inspector - sorry held by the inspector that it's necessary to keep the animal. So that has to be established on the evidence and the inspectors deposed to having that belief. That is a matter which can be subject to cross-examination because your Honour would have to find that there was that reasonable belief. Once you find that-----

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BENCH: On the part of the inspector.

MS MELLIFONT: On the part of the inspector. Once you - if you find-----

BENCH: We have to reach that point first.

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MS MELLIFONT: Yes. Then you have a discretion whether or not to forfeit.

BENCH: Right. Okay.

MS MELLIFONT: So the ultimate decision you're making is a discretionary one as to whether or not to forfeit. That discretion doesn't even enliven unless there's a reasonable belief by the inspector.

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BENCH: Right. Okay. Does anyone else want to say anything about that?

UNIDENTIFIED SPEAKER: No.

MS MELLIFONT: Your Honour raised with me just in passing generally the use of the decision maker's reasoning process in

appeals by way of rehearing - and I submitted that - they can be taken into account subject to modification because, of course, you can have further evidence before you. I've just extracted the case law which speaks of the general process of an appeal by way of rehearing.

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BENCH: Mmm.

MS MELLIFONT: Your Honour, can I hand that up? It does - I've cut it out of a submission on another matter, so it speaks about the context of an appeal to the District Court. But I'm handing it up to your Honour to say that the general rules are that if it's a rehearing on the evidence, you can take into account the reasons of the decision maker. But I need to add to that the write up that I did before lunch which is that you have to modify those principles because your Honour can take into account further evidence.

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BENCH: The reason I asked the question was I am a judicial officer, I have no experience in animal welfare matters.

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MS MELLIFONT: Yes.

BENCH: Whereas one would expect the Chief Executive conversely would have no experience in judicial matters.

MS MELLIFONT: Yes. Yes. And of course you can take into account the reasoning process articulated there by her if you choose to.

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BENCH: Has that been provided to Ms Robertson?

MS MELLIFONT: Yes, I've got a copy here for Mrs Robertson. Your Honour, could I start with the objections to the evidence and can I start please with the affidavit of Ms Annette Barrell - statutory declaration, rather.

BENCH: Where would I find that?

MS MELLIFONT: Well, it was sworn as 27th of March 2008, I don't know whether the appellant has actually filed it, now that your Honour asks.

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APPELLANT: It was filed.

MR DUONG: Your Honour, if I could be of some assistance?

BENCH: Yes please.

MR DUONG: The statutory declaration which Ms Mellifont refers is attached and marked as GR8 to the exhibits filed on the 28th of July and also to Ms Robertson's affidavit discussed earlier filed on the 28th of July.

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MS MELLIFONT: Oh I see.

BENCH: I've got a GR8. And what was the other reference, Mr Duong, that you gave me?

MR DUONG: 28th of July-----

BENCH: 28th of July?

MR DUONG: The certificate of exhibits is marked 28th of July and it's attached to the affidavit of the 28th of July.

BENCH: Oh. Annette Barrell. Yes, GR8.

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MS MELLIFONT: Thank you, your Honour.

BENCH: This is dated the 27th of March. The declaration's dated the 27th of March, that's the one I'm - I've got the right-----

MS MELLIFONT: That's the one. Yes, your Honour. Thank you. Could I start by saying and noting, of course, that your Honour is not bound by the rules of evidence in this case. The objections are nonetheless taken because some of the evidence sought to be adduced simply, in my submission, won't be of assistance to your Honour in coming to an accurate finding of facts in this particular matter.

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Can I just also note to your Honour that at an interlocutory application there was a statement of Mr Dougall who was to be a witness for the appellant who spoke to the general history of the way in which the appellant conducted her kennels. Because it was so general it was stuck out as being irrelevant. The first respondent's submission is that in so far as witnesses are able to attest to the way in which Mrs Robertson took care of her animals at times proximate to the forfeiture there is relevance. When the observations go back in time their relevance becomes less and then diminishes to nothing.

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BENCH: Yes.

MS MELLIFONT: Mrs Barrell's affidavit is in those general terms and I don't take the objection in the sense that I will be cross-examining her as - in terms of her observations relevant to the particular time because it's not clear on her affidavit precisely the time to which she's referring. Can I take your Honour to the specific objections in her affidavit please?

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BENCH: Yes.

MS MELLIFONT: You'll see at paragraph 8 she says that she was requested by the appellant to view and give her opinion on the contents of a video taken by officers of the RSPCA during the raid on the kennels. That video will be in evidence but the submission - and I'll take you to the particular paragraphs, is that Ms Barrell's opinion as to what is disclosed on the video is inadmissible and, quite frankly, irrelevant. Can I refer your Honour to the High Court authority of Smith v Queen in which police sought to give evidence that the person depicted on a security surveillance video was the accused.

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That, of course, was simply the expression of their opinion and inadmissible because it was not something which called for expertise. So-----

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BENCH: But was that - that was decided though on the basis that they didn't know the defendant prior to coming in contact with him during the course of their operations, wasn't it?

MS MELLIFONT: Oh yes. Yes. And, I'll just take your Honour perhaps to the first particular objection and you'll see the point that I'm making. At paragraph 14 she says, "Viewing the video taken of the courtyard and the passageway at the side of the house I noticed it was more like mud and leaves and twigs that are in the concrete floor." Those 2 paragraphs, 14 and 15, are simply recounting what she sees as being on the video which is really your function.

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BENCH: Mmm.

MS MELLIFONT: So there's objection to her expression of opinion in that respect. At paragraphs 25 and 26 there's evidence of - in the same vein. She expresses opinion as to what the mess shown in the video was and as to what the piles - how the piles came to be there. So it's just like getting Joe Blow off the street to watch a video and say, "This is what it looks like to me." That's your function.

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BENCH: Are you saying that she was not there at the time the video was taken?

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MS MELLIFONT: As I understand the position, that's correct.

BENCH: And did not see the leaves or whatever it might be in situ?

MS MELLIFONT: Correct.

BENCH: This is through the course of an observation by viewing what may or may not be depicted on a DVD or a video or whatever it was and saying, "In my view this is what that is."

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MS MELLIFONT: Yes, that's right. So it's a different position if she's there. So, for example, the inspector will be able to say, with respect to the video, "Right, this is where we were walking through the living room and this is what we saw." But this is just somebody who's watched a television show, as it were, after the event. It would also be a different position if she had some particular expertise which made her opinion about what was on the video admissible.

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BENCH: Mmm.

MS MELLIFONT: This does not fall within that category.

BENCH: Well, I was going to - and perhaps it will be become clearer when she gives evidence-----

MS MELLIFONT: Yes.

BENCH: -----as to what her expertise is.

MS MELLIFONT: Yes.

BENCH: Because just reading the statutory declaration doesn't seem to reveal what that might be.

MS MELLIFONT: Yes, your Honour. That's a difficulty I have as well.

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BENCH: All right. Yes?

MS MELLIFONT: Paragraph 31 is merely a restatement of hearsay, in the sense that she says what the appellant said to her and her expressing an opinion that rain et cetera, they make the pens dirtier. Simply irrelevant and no assistance to your Honour.

BENCH: Mmm.

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MS MELLIFONT: Now, paragraph 36, which is really the first hint we have of the extent of her experience she states she's owned poodles for 36 years. Now, this part of the affidavit relates to a video she's been shown by Mrs Robertson. I'm not sure precisely what part of the video she's been shown but I can say that there is video evidence of the poodles once they get to the RSPCA shelter being - their coats being clipped and being clipped to bareness, as it were.

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Now, what Mrs - or Ms Barrell purports to do in paragraphs 36 through to 51 is to give expert opinion evidence as to the correctness of the way in which RSPCA clip dogs. Now, the first issue with that is it's simply not relevant because what is relevant is the states of health of the animals when they were seized, her - rather than the fact that they were - sorry, I should - sorry reformulate this. Although it's relevant for there to be evidence before your Honour as to what happened to these animals when they were seized in the sense that they were taken to the RSPCA, they received veterinary treatment and they received clipping, what's not relevant or admissible, in my respectful submission, is Miss Barrell's opinion that the way in which the clipping was done was not appropriate. It doesn't go to any issue at all for consideration by your Honour.

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BENCH: I follow that, yes. All right.

APPELLANT: Your Honour, poodle clipping - people who breed poodles know more about poodles and clipping them. It is my opinion, and I've owned poodles for 48 years, that the way the RSPCA clipped those poodles, as they alleged for their own health reasons, was merely to dress them up to look miserable and, in fact, it was cruel. It actual killed at least one of them. They are a dog - they don't have fur, they have pure wool coats and they need that insulation - wool is actually against the cold and against the heat. It's for cooling as well. And a certain amount of it and because they were shaved

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so finely, the dog that was shown on television allegedly skinny, he actually was sleeping in their kennels on a the blare floor, they didn't even have beds on the kennels. And he subsequently got pneumonia and died. Which I knew would happen when I saw the video.

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Now, the fact that there - other - lots of footage that I have from the newspapers from the dogs that were seized and the clipping that RSPCA has done, I personally believe they were done so hideously and so unprofessionally that it actually accentuates - poodles are like greyhounds. With the woolly coat they look glamorous and they're beautiful. And if you groom them they look perfect. With the rain, wet and the dirt and the dust and everything else that accumulated over that period of time and the shearing of them off and I saw the video myself and, in fact, the video is available for evidence. Was the same one for RSPCA. Instead of just - it floats on the coat. Instead of floating it, they wet the dog and they can therefore get a closer shave to the skin-----

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BENCH: I think what the submission that I'm receiving though is it's about - not about whether the dogs were shaved correctly or incorrectly, but it's - the issue is what was the condition of the dogs at the time that they were seized.

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That's the issue about the relevance of this - have I got - 1
have I summarised your submission reasonably accurately?

APPELLANT: Yes, your Honour.

BENCH: Yes, it's not about - the submission is not about the
correct way or the incorrect way. That to me is not a
relevant issue for my determination. My determination is at
the time of seizure of the dogs what was their condition, if I
could put it that way. 10

APPELLANT: The dogs were all in good condition because we
have a couple of vets. We had one regular full-time vet.

BENCH: Well, the evidence will disclose-----

APPELLANT: Mmm.

BENCH: -----that one way or the other but this submission
comes down - this is about what this statutory
declaration----- 20

APPELLANT: Yes.

BENCH: -----speaks about and it's - the submission is that -
which I don't have any difficulty with but I'll certainly hear
you and Mr Duong on that point. It's - the way in which
they're shaved is immaterial to what condition they were in as
at the 9th of January and the 22nd of----- 30

APPELLANT: Yes, the-----

BENCH: The 23rd of February.

APPELLANT: Yes, I think the subject was because that was
testifying to basically her experience with poodles and the
management and the upkeep and the - you know of poodles
generally and she - we - the lawyers were - at that time I had
a firm of lawyers and they were given this tape----- 40

BENCH: Mmm.

APPELLANT: -----because we looked - we were looking for what
conditions the - the feature was based on.

BENCH: But just because lawyers were coming together that
wouldn't prevent a proper objection being made to material
that's been drafted or collated or put together or prepared by
a lawyer----- 50

APPELLANT: It was just a view-----

BENCH: -----from being objected to by another lawyer.

APPELLANT: It was just her view on that-----

BENCH: Mmm.

APPELLANT: -----that the lawyer took. I mean she's going to be asked the same question viewing the video again but - yes. 1

BENCH: Well, depending on what I rule she might not be.

APPELLANT: Okay.

MS MELLIFONT: In so far as the appellant's suggestion that this goes to a health issue post-clipping, that is a matter that the appellant can cross-examine that that's on and it's not something Ms Barrell speaks to in any event. 10

BENCH: Mmm.

MS MELLIFONT: The other objections, your Honour, are paragraph are 53 through to 57, which purport to give-----

BENCH: Sorry, just before-----

MS MELLIFONT: I'm sorry. 20

BENCH: -----you go there, Ms Mellifont, I'm sorry, paragraph 31 on its own and then from 36 - your objection is 36 to where?

MS MELLIFONT: 51.

BENCH: To 51.

MS MELLIFONT: Yes. 30

BENCH: Right. Yes.

MS MELLIFONT: I'm sorry, I should say - to 50.

BENCH: To 50?

MS MELLIFONT: Yes.

BENCH: Right. I'm sorry I interrupted you. You were starting up to 53. 40

MS MELLIFONT: No, no, that's all right. I should say - state the basis of the objection to paragraph 51, which I haven't done and again this will come down to the expertise, if any, of Ms Barrell. She purports to give an expert opinion as to whether the dog appeared to be underweight.

Now, in the absence of her having some expertise, in my respectful submission, that should not be admitted through her. 50

BENCH: Perhaps it's 36 years of experience.

MS MELLIFONT: Perhaps.

BENCH: Mmm.

MS MELLIFONT: Yes, your Honour, it may be something that your Honour will care to draw on once her expertise or otherwise is established. But, yes, certainly as a layperson with years of experience of a poodle she might be able to give an impression of what she saw in a video but that's as far as it goes.

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Paragraph 53 through to 57. This is Ms Barrell saying what she saw on a video of the RSPCA facilities and seeking to say-----

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BENCH: Well, it's the same - the same basis for the objection. I'm sorry to interrupt you-----

MS MELLIFONT: No.

BENCH: -----but it's the same basis for the objection for what was supposedly depicted on the video at the place where they were seized from.

MS MELLIFONT: Yes, together with the irrelevance of the RSPCA shelter's condition. Paragraph 59 is a general conclusion based on unstated facts, as it were, but again this may be something your Honour would need to deal with once the basis of her views are expressed.

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Sub-paragraph 62, again, goes to her expertise or not and that will be a matter perhaps better determined once we have a better idea as to those things. Subparagraph 63 again speaks to the RSPCA video and is irrelevant on the same basis as articulated before, that is the clipping of the RSPCA is irrelevant.

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Paragraph 66 is simply an opinion. It seems to be some sort of general observation of the video. Simply of no assistance at all to the Court. There is a second document that I understand the appellant seeks to rely on from Ms Barrell but I don't know whether she's filed it and we received it yesterday by email through the second respondent.

It's a one page statement from Ms Barrell where she says that two of her pedigree toy poodles were boarded at the time of the seizure.

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BENCH: Do I have that?

MS MELLIFONT: Sorry?

BENCH: Do I have the-----

MS MELLIFONT: I don't know. Well, unless the appellant has, in fact, filed it.

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BENCH: Ms Robertson, is that affidavit-----

APPELLANT: This-----

BENCH: That statement been filed?

APPELLANT: I met the filing clerk this morning. She said she had a couple of documents to be delivered. That was this morning, your Honour. 1

MS MELLIFONT: I can hand up a copy - got the attachments?

BENCH: I'm just checking-----

MS MELLIFONT: Yours is cut off. 10

BENCH: Well, do you have a copy on your file?

MS MELLIFONT: I need borrow it for the Court and you can have mine.

BENCH: It appear as if it's made its way to the file.

MS MELLIFONT: Very good, thank you.

BENCH: Have you got a copy for yourself? 20

MS MELLIFONT: There's two aspects to this statement. One is a general observation that she's been visiting the kennel for 10 years and regards the conditions as being satisfactory and the relevance of that is a question of proximity. And then it simply appears to be a statement of ownership with respect to 2 dogs that were there at the premises upon seizure.

So, in so far as it's a statement of ownership it's not relevant. I don't know whether there is any intention to elaborate on this material. I just have some difficulty in ascertaining its relevance. That's the - the objection really is that on its face the statement that two of the dogs were there and were owned by her aren't relevant to your Honour's decision, it wouldn't seem. 30

BENCH: I'm not sure of what I'd like to make of that.

MS MELLIFONT: I can't take the matter any further in the sense that it's just simply not apparent to me the purpose for which this is being - sought to being tendered. 40

BENCH: Perhaps it's - it might be relevant to another matter if there had been some claim for ownership.

MS MELLIFONT: Yes, some other matter outside this particular appeal perhaps, yes. Your Honour, they're the objections on Ms Barrell's material.

BENCH: Yes. 50

MS MELLIFONT: Would it be convenient for the other parties to respond?

BENCH: Yes, yes.

MS MELLIFONT: Thank you.

MR DUONG: I have nothing further, your Honour.

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BENCH: Mrs Robertson.

APPELLANT: Yes, I'm of the opinion that - well, Ms Annette Barrell is quite stressed about the two dogs. I actually had forgotten about it when I was listing the dogs. I mean the shock of having all your dogs taken. They're here one morning and they're gone - you know - well, took them from 9.45 - quarter past 9 when they arrived and they left at 4.40 p.m. that day and anyway I made a list of all the poodles that I owned and the ones that belonged to third parties that I could remember and I faxed those copies to the RSPCA that day and a subsequent couple of days but it would not allow - like I said earlier on to go with a vet to identify and actually microchip the dogs at my own expense and that was what it was so she has been sort of - Ms Annette Barrell has been helping me for years.

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She went on holidays I think on and off - she went to two weddings, her daughter's and somebody else's, her cousin's overseas, and those girls came into season and she wanted - didn't want them to be mated so that's the only reason why they were left with me to board because of the facilities I had. They could be isolated and she has helped me over the years like with cleaning and - quite a few breeders come down to see me with the dogs and they help me with the chores because they help me with the chores because the only way to talk to me is to join me in the chores.

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That's, I think, the major - her concern is for her own dogs I believe that she was more interested and she does know a lot about poodles. She has owned them and bred them for 36 years, which is a long time, and she was hoping that - she can prove the ownership of her dogs. She owned the pedigrees.

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BENCH: The difficulty that I see in my short excursion into this Act is that the person in charge owes a duty of care and if there is an allegation of a breach of duty consequences follow-----

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APPELLANT: Yes.

BENCH: -----so if the poodles were owned by someone else-----

APPELLANT: Yes.

BENCH: -----but as a result of a suspicion seized by the RSPCA-----

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APPELLANT: Mmm.

BENCH: -----the issue of ownership I so far as seizure is concerned is a separate matter the way the Act - my interpretation of the Act.

APPELLANT: Well, how - I mean how could the legal owner - I mean, yes, I agree with you on the interpretation of the Act. That's how I felt it was too but-----

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BENCH: Mmm.

APPELLANT: -----how on earth are we going to account for them. I mean that is-----

BENCH: But that's the legislation, Ms Robertson. It says a person in charge of an animal and a person in charge of an animal would be someone, I would think, it would reasonable to say that if they were boarded there due to the fact that a person was going away and wanted them protected from any unwanted matings at that particular time-----

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APPELLANT: Yes.

BENCH: -----would probably place-----

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APPELLANT: Be taken care of.

BENCH: The person in charge of the kennels, the person in charge, as is provided for in the Animal Care and Protection Act.

APPELLANT: Yes, but - yes, I suppose, yes.

BENCH: All right. Well, I don't - now as to the - the - where do you want - I think I've probably indicated to you what I'm thinking about with respect to ownership. What do you say about the other submissions about the other sections of the earlier statutory declaration by Mrs Barrell that Ms Mellifont and Mr Duong have - Mr Duong - that Ms Mellifont has spoken to me about. First of all, paragraph 14 and 15 of the affidavit.

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We had some little discussion about that and what I recall -w well I think I said to Ms Mellifont at the time was that when she raised the case of Smith v. the Queen was that unless the - unless Ms Barrell was there at the time that the video was taken it's very difficult for me to accept-----

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APPELLANT: Your Honour, the only-----

BENCH: Remember the rules?

APPELLANT: Yes.

BENCH: For me to accept that these observations in paragraph 14 and 15 are relevant for the purposes of the appeal.

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APPELLANT: Your Honour, the video shows quite clearly what it was, a lot of debris. The RSPCA inspectors, what they allege and what they saw was two different things. It's up to me to prove it, right. They-----

BENCH: Mmm.

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APPELLANT: I mean they made a lot of allegations about the neglect of the dogs, how unhealthy they were and how sick they were-----

BENCH: Mmm.

APPELLANT: -----but it's amazing that the - the dogs were not sick when I examined most of them. It was only 4.

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BENCH: Let's-----

APPELLANT: Yes.

BENCH: Let us keep focus on what we're talking about. If we just turn our mind to paragraph 14 and 15.

APPELLANT: 14 and 15-----

BENCH: Mmm.

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APPELLANT: -----is - is the conclusion she came from knowing the property and knowing the area and what the picture seems - seems to appear to be like. Those videos are available for - they were supplied by RSPCA and we can all see them.

BENCH: All right. So, that's - okay.

APPELLANT: Just because somebody - your Honour if I said this is coffee and it's really water and I insist on saying it's coffee I mean what you see as water and what I see really is water. It's got to be water.

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BENCH: The difference is that I'm here present with you-----

APPELLANT: Yes.

BENCH: -----and I can see the actual glass.

APPELLANT: Mmm.

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BENCH: Whereas what we're talking about here is-----

APPELLANT: On film.

BENCH: On film that someone's looking at perhaps a month later.

APPELLANT: Yes, 2 months later actually.

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BENCH: 2 months later.

APPELLANT: Yes, but she knows my property really well and she knows how the dogs are kept and where they're kept. There are certain rules because we have a massive amount of fencing and isolation and everything is double security. We have to have it that way because dogs and puppies they're like little children. They can't be trusted. You can't leave them alone

and leave them just run loose. You know, they've got to be under supervision. They've got to be allowed to do things. They - all the poodles are like young children, like 9 year old children mentality. They know - we train them - we teach them the boundaries and they're quite content with it, you see, so the - it was just not possible to - and also Ms Barrell know my routine really well and she knows that I'm quite - I'm very particular about certain things and I've been doing it like that for years. I've been on the property for 16 years, your Honour-----

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BENCH: Mmm.

APPELLANT: -----and my sister was always the same and anyone that bought a dog from me will know I'm neurotic about worms. I'm neurotic about disinfectant and about - about disinfecting the properties and, you know, for the kennels. Every day it must be done but there are some days where you can't. It was most flooding - half of Beaudesert Shire was under water during that period.

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The two rivers close to me, one 2 minutes by car and the other 5 minutes by car. They went over 30 something feet to the motorway. Yes, the river rose, the water, and you know, the - it was just impossible to disinfect and clean property so most of it was mud and debris that had actually been shifted on to the property-----

BENCH: Yes, well I'm having-----

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APPELLANT: -----and the RSPCA took it as they were opportunists and they took the opportunity to say whatever they wanted.

BENCH: I'm having some little difficulty with what you say about how she knows so much about your property because she says she's only been - she goes there 2 or 3 times a year for a couple-----

APPELLANT: Well, more than that. Some-----

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BENCH: Well-----

APPELLANT: I mean at the minimum. About say-----

BENCH: Sorry.

APPELLANT: Say - all right.

BENCH: You go back to paragraph 2 of the statutory declaration-----

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APPELLANT: Yes, she doesn't come as often as - as that much more times but like I said maybe 3 times. Mostly to help me with the dogs but if she comes down unexpectedly it may be another trip - you know, it could be 4 times, it could be 5 times at the most I would say, you know. She doesn't spend a lot of time with me because she's got her own property to look

after. I do agree - I mean I jumped too soon. But she does know the property for a long period of time and she does - we all have certain things that we must do with animal husbandry.

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BENCH: Right. I understand what you're saying about paragraph 14 - paragraphs 14 and 15. 25 and 26.

APPELLANT: Thank you. She was probably - she is correct about 25 and 26 because those two look-----

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BENCH: She isn't? Isn't or is?

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APPELLANT: Is.

BENCH: Is. Sorry.

APPELLANT: Because those 2 locations are totally different. 25 - paragraph 25, most of the mess shown in the video were - was not faeces but dirt and leaves and twigs. You could see it. You and I can clearly identify it on the video. Right?

10

BENCH: Well, I'll - no doubt I'll get to see the video.

APPELLANT: And then the slope - the - this is at the - what I call the quarantine block. It can be totally isolated. Separate electricity, water, power, everything and separate fencing and the kennels are actually built a bit higher but the ground is unlevel, so some of the ground comes in and the drains - actually the kennels - the runs outside drain down to a drain that goes underground - part underground through - through the grease trap and then into the sulage tank filtered and then it gets recycled up onto the acreage.

20

We are on tank water and sewerage - septic and the inside of the kennel - actually both the inside - the 2 rows of kennels - it's a proper brick building like a house, actually drain into a centre drain. It is graded. The property is all graded and they actually drain and the same principle applies, the water is again pumped - or drained down into the grease - another grease trap and they join up all the underground pipes. Some of it goes to gravel pits after that and some of it gets recycled up to the sullage tanks.

30

The - the - that - that would apply to 25. 26 is a different area. That is-----

BENCH: Well, that's - that's her opinion, isn't it? Yes.

APPELLANT: It's not opinion. That's actually what would happen if you've got excess water. The - the faeces, twigs and leaves, that's visual.

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BENCH: We're talking about-----

APPELLANT: You and I-----

BENCH: -----what Ms Barrell's view is, not yours at the moment, Mrs Robertson, so-----

APPELLANT: No, but that's her opinion.

50

BENCH: Yes. That's right.

APPELLANT: Yes. But because she's familiar with it and over the period of years, you know - not that we get that much rain but-----

BENCH: Yes. I follow what you're saying there.

APPELLANT: Yep.

BENCH: What do you say about paragraph 31?

APPELLANT: Well, yes, it was a great topic of conversation, you know, with the massive flooding. So we did talk about the rain and all that. That was - there was something we disputed about. She said - I said to her that sometimes, you know, when it's pouring so heavy they wouldn't want to go out, but mostly the dogs go out and play in the rain and we sort of had a dispute about it and I don't really understand why she decided to put it in there.

10

I know we had a - quite a bit of dispute about that. There were 3 of us watching the video and all 3 breeders so-----

BENCH: I've a bit of a problem with that because she's relying on something that you've told her rather than what-----

20

APPELLANT: No, I-----

BENCH: -----her own opinion.

APPELLANT: She doesn't have to rely on me. She can make up her own mind, your Honour. She can see it again and we can strike it out and she can make her own comments.

BENCH: All right.

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APPELLANT: Yep.

BENCH: 36 through to 50, what do you say about those?

APPELLANT: 36 - that's her voicing an opinion. She should qualify that opinion I think, your Honour.

BENCH: Yes. All right. Well - and paragraph 51? What do you say about that? The opinion expressed about the-----

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APPELLANT: Yes. That's quite common knowledge, your Honour. I mean, when a dog is [indistinct] down the - they've got the construction of a greyhound. You know, a racing greyhound, your Honour.

BENCH: All right.

APPELLANT: And they look skinnier and they are really - they don't carry body fat, unlike a German Sheppard or a Doberman or of course a Rottweiler. You know, a total different construction and the metabolic - what do you call it, the burning - metabolic. Metabolism will be quite different.

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BENCH: I struggle with the word sometimes too. Paragraphs 53 to 57?

APPELLANT: Well, she was commenting on the video and that - that hydro bath is definitely belong on - on - because - it was quite confusing because the RSPCA grounds where some of the footage was taken was messier than mine and it had a lot more debris. Well, it looked like debris anyway. I - I'm not - not familiar with RSPCA grounds.

1

BENCH: That's all right. I don't think from what is in the declaration that Ms Barrell is either.

10

APPELLANT: Yes.

BENCH: Right. 59?

APPELLANT: Well, it was quite obvious it was a picture of some of puppies that looked like my dogs in - in - because this was seen 2 months after they were taken. It was the first time I've seen the - the video or any photos of them. Actually 3 months and they looked like the dogs that belonged to Benji Kennels. That was a consignment job I had and the dogs were taken and the RSPCA of course - at first they - they agreed to release the dogs back to the owners in Singapore and then they changed their mind. They wouldn't let me identify them and they were quite prepared to fly them to Singapore without me identifying them which I would not accept.

20

BENCH: Sorry. Paragraph 59 is about the way food's on the ground. I don't-----

APPELLANT: Well, the food was quite obvious. You know, it was dog pellets. You know, dry food, just from like that - you know, like feeding chooks. It was disgusting.

30

BENCH: 62?

APPELLANT: On the floor, no bowls, nothing.

BENCH: Okay. 62?

APPELLANT: 62.

40

BENCH: Small number of dogs depicted in the video being clipped.

APPELLANT: Yes, there was - I think most of the video we had - just random bits put together. They go back and forth from different dogs to the same dogs and they keep showing the same dog. There was only about 3 - 3 dogs that was all the time being shown. I think there was 3 looking specimens and the small amount of dogs. What she meant, I think, is just - I think it was 3 dogs. 3 standards we saw in the video.

50

BENCH: 63?

APPELLANT: 63? She was just shocked at the - the dogs in the video. The photos of the dogs in the video which always look bad because they were a bit wet, I guess.

BENCH: And that-----

1

APPELLANT: You know, and-----

BENCH: -----would be similarly - similarly for 67?

APPELLANT: Quite a contrast.

BENCH: You'd say the same thing for 67?

10

APPELLANT: Yes. And that's it. She's never seen them and I do agree with her, your Honour, because it - the weather was quite horrible and everything was really quite [indistinct]. Appear to be.

BENCH: All right. All right. In respect of the contents of Ms Barrell's declaration of the 27th of March I do take into account the objections that have been made. I also take into account the fact that Mrs Robertson - Ms Robertson is here unrepresented and I will through the course of the next few days provide her with a liberty that she would not otherwise receive if she'd been represented.

20

But there are a number of parts of this declaration which clearly, I think, are objectionable and paragraphs 36 to 50 and 53 to 57 are inadmissible. The others - it's quite arguable, but I'm going to be liberal, I suppose, and I say liberal with a small L by the way too.

MS MELLIFONT: Thank you, your Honour. Thank you. Your Honour, given Ms Robertson's indication she'd like to call those 2 witnesses-----

30

BENCH: Yes.

MS MELLIFONT: -----this afternoon, might we start with their evidence-----

BENCH: Yes.

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MS MELLIFONT: -----and I take up the objections in respect of Mrs Robertson's affidavit tomorrow?

BENCH: Yes. Yes, I think that would be a wise move.

MS MELLIFONT: Thank you.

BENCH: Mrs Robertson, would you be able to call your first witness now? I know you want - they - you said they've come from quite some - you've got something else you want to say?

50

APPELLANT: Yes.

MR DUONG: I didn't get a chance to mark the paragraphs.

BENCH: 53 - sorry, 36 to 50.

MR DUONG: Yes.

BENCH: And 53 to 57. Please come over to the witness box.
Over there, so I can-----

MARGARET HELEN WATT, SWORN AND EXAMINED:

BENCH: Thank you very much. Please be seated. Take your
time Mrs Robertson. Now, you should introduce your
witness-----

APPELLANT: Yes.

BENCH: -----by her name and address, her occupation - no, no,
you can sit down, thank you. You're right. And then ask her
evidence which is relevant to what we are about here today.
All right.

APPELLANT: Yes.

BENCH: Now, try and only ask 1 question at a time. Allow the
witness to answer each of your questions. Now, I'm making an
assumption there may be objections to some of the questions
and there may be an objection to some of the answers. The
etiquette is, if there is an objection that we stop talking,
listen to the objection. I may - I'll make a ruling about the
objection and then we'll continue on. Okay?

APPELLANT: Thank you. What is your name?-- My name is
Margaret Helen Watt.

Where - what's-----

BENCH: I'll just - well, where do you currently reside, Mrs
Watt?-- I live at 13 Bellevue Street, Bli Bli.

And what's your occupation?-- I'm retired.

You're retired. And do you know Mrs Robertson?-- I met her on
the 7th of October last year. Before that I had not known the
woman at all.

All right. Do you have any experience in the breeding of
poodles?-- For what?

Breeding of poodles? Dogs?-- Yes. I've got poodles.

You've got poodles?-- Yes. I've had poodles.

You're - sorry. You've got in that - do you currently own
poodles?-- Yes, I've got one at the moment.

You've got one?-- Yes.

And you've - you've owned poodles on a - previously, have you?-- Yes, I have. 1

A number?-- Yes, I've had up to four.

Up to four?-- Yes.

At any one time or over a period of time?-- At one time, not very long ago, and I had to find homes for all but the one puppy I had because the Council said that legally I could not have any more than two. 10

I see. It's one of those regulations about number of dogs-----?-- Yes.

-----per person?-- Yes.

All right?-- See, we lived - down south we lived in Wollongong and you - you were allowed to have pure bred dogs - you registered - registered them with the Council. It was once over and then you didn't have to register them again, but----- 20

It's a different story in Queensland?-- Yes.

Yes. All right. All right?-- See, and that's where I didn't realise.

All right. All right, Mrs Robertson, do you want to - would you like to continue? 30

APPELLANT: Yes. When you were - when you came to my place in November and December before you went away, do you remember when in December, Margaret? The last time you were there?-- I first went to Mrs Robertson's on the 7th of October because I was going to buy a dog for my daughter and she brought out this little tiny red male and I just said to her, "No, I don't like that." So she brought out a brown one. Very, very dark brown. He almost looked black and I said to her, "Oh, can I buy this puppy," and she said, "Yes," and that was the first time I saw that lady. On a fortnightly basis I went down there on a Thursday and I continued to keep up with the progress of the puppy and then she asked me would I like to buy another one and I said, "Yes, I would buy one for my daughter-in-law," and that was the little black girl. When the RSPCA took those dogs from her - Mrs Robertson's property my puppies were amongst them. I rang them on the 11th of January, the 14th of January and the 21st of January stating that they had my puppies and I would like them back. In the end, I had to get my lawyer to write a letter to the DPI and ask them could we have the dogs back. I have not had any contact with them since until I wrote to Mark Townsend----- 40 50

MS MELLIFONT: Your Honour, can I just object. This answer is irrelevant, in my respectful submission.

BENCH: Mrs Robertson and Mrs Watt, what we need to do is focus on January. If Mrs Watt was present at your property around January, which she may have been. She's told the Court

that she went down there fortnightly, so we need to focus on January and also again in February about your property. The question of ownership, Mrs Watt, is an issue which is not - it would be very relevant to you, but it's not relevant to these proceedings?-- Well, the RSPCA taken my dogs and I would - would like them back.

1

Well, you're not the subject of the seizure order. Mrs Robertson is because the Act imposes obligations on people who are in charge of dogs. Right?-- Mmm.

10

Right. And that's the issue?-- Well, when I went to see Mrs Robertson, she would bring the puppies out to me to have a look at. They were always healthy and quite fat and they had a lovely mannerism about them and that's why I liked those particular dogs.

APPELLANT: When was the last time you saw - was it in January or-----?-- It - no, the 21st of December I was down there and I didn't come down again till about the 20th of January I think it was.

20

Your Honour, can I - I suppose I can't ask her anything more about-----

BENCH: Well, you could ask her questions about the state of any other dogs that she may have seen, the state of your kennels when she went down.

APPELLANT: Yes.

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BENCH: The - you can ask her questions along those lines?-- Yes, I saw-----

Wait for Mrs Robertson to ask a question.

APPELLANT: Margaret, did you - did you, when you were down - when you came down to see me, you were at the reception door?-- Yes.

40

Yes. At the reception door. Now, did you smell any strong smell of urine or faeces or whatever?-- No. I did not.

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On all the occasions was it wet on any occasion, like after the rain, a shower, a little bit of shower in December? Because I remembered one day----- 1

BENCH: Just let her answer the question.

WITNESS: It had rained on a couple of days I had been going down and this is why in January I did not come down to pick the dogs up from Mrs Robertson because I had heard that the river was in flood and you have to go over low-lying areas at the time. And one day I went there and the - there was a little tiny red girl----- 10

BENCH: Dog?-- Yes. And there was also a cream or - cream dog and there was a couple of standards and they all looked healthy to me because if they weren't healthy I wouldn't have bought the dogs in the first place.

APPELLANT: Did - what did - were they sort of - did they have long coats on, you know, like over-coated or small?-- No, there weren't----- 20

Or just-----?-- No.

I think - were they friendly dogs, Margaret?-- Very friendly. They have beautiful natures.

Did you touch them?-- Yes, I did.

I think that's - thank you, Margaret. 30

BENCH: Mrs Watt, now Ms Mellifont acts for the Department of Primary Industries, she may have some questions for you and Mr Duong acts for the RSPCA, he may also ask you some questions as well?-- Mmm-hmm.

All right.

CROSS-EXAMINATION: 40

MS MELLIFONT: Ms Watt, you said that you went there for the - went to Ms Robertson's property for the very first time on the 7th of October 2007?-- Yes.

Is that correct?-- Yes. 50

And did you go there for the purpose of looking for a dog to buy?-- Yes.

And when you sent there did you simply go to the reception area?-- Yes, but Mrs Robertson was not there when I first went there on that day. So I went down to my son who lives at Woodford, at the time, and his wife came back with me later and we went and saw the puppies then.

1

Okay. So-----?-- The puppy was - just had been born. It had its cord still on it and it was wet.

Okay. Now, was this all on the same day, all on the 7th of October 2007?-- Yes, on the 7th of October.
So when you came back to the property with the people you've just mentioned did you go just to the reception area of-----?-- Yes.

10

-----Mrs Robertson's kennel?-- Yes.

You did not conduct an examination of her property at all did you?-- No.

And you told her-----?-- I could see the dogs through the doorway when Mrs Robertson brought the dogs out to me.

All right. So you're describing being able to see some dogs-----?-- Yes.

20

-----through a doorway?-- Yes.

Were those dogs in cages?-- No.

How many dogs did you see?-- I saw about maybe 4 or 5.

And apart from simply seeing them you had no other contact with the, is that correct, on that day?-- No.

30

So when you spoke with Mrs Robertson at the reception did she bring to you the puppy?-- Yes, she did.

One puppy?-- No, she brought more than 1. She brought a little reddish coloured boy and also there was a couple of girls.

Now, in respect of the dog that you said you purchased, was that dog merely a puppy?-- They were all puppies, yes.

40

Okay. So are you talking puppies that were simply hours or just a few days old?-- One of the males was round about a month old.

And the others? Brand new born, I take it-----?-- Yes.

-----because they were still there?-- Yes.

How much did you agree to pay Mrs Robertson for the puppy you decided to purchase?-- I gave her a deposit of \$800, no \$600.

50

And what-----?-- And then later on I came back and I paid some more money on it and I still owed more after the second time I paid for the dog, so I put money in the bank to her and then she rang me and asked me did I want the wee girl.

Want the?-- A wee girl.

BENCH: The second dog she purchased for-----

1

WITNESS: A second dog.

BENCH: -----her sister-in-law - daughter-in-law.

MS MELLIFONT: Okay, thank you. Now, so what I want to ask you about is how much did you agree to pay in total for the first puppy? You've spoken about paying a deposit, what was the total price you were to pay?-- Thirteen hundred and then she cut the price back.

10

To?-- Eleven.

Because? She give you a reason?-- No.

APPELLANT: Because she bought 2-----

MS MELLIFONT: Excuse me, Mrs Robertson. All right. So, Mrs Robertson rang you and asked you if you wanted a second dog-----?-- Yes.

20

-----and did you agree to that?-- Yes.

And how much were you going to pay for the second dog?-- With the papers for the first one was 1100, with the second one it was 1500.

So all together \$2,600.00 for the 2 dogs, correct?-- Yes, yes.

30

Now, between your first visit on the 7th of October 2007 and the day on which you agreed to buy the second dog how long in time had passed?-- I went each fortnight.

Yes?-- And I saw some black puppies, very small black puppies, very, very tiny.

No, Mrs Watt, what I'm asking you is you went there on the 7th of October 2007, sometime later you agreed to buy the second puppy. Can you tell me what the date was of the second purchase?-- In November.

40

Early or late November?-- Eighteenth.

And was the 18th of November the last date on which you visited the property?-- No, I went again on the 21st of December. I went a couple of time after that and the last date was the 21st of December.

All right. Now, on each occasion you visited the property did you go to the same area, that is just to the reception area?-- Yes, I went to the reception area and I could see the puppies playing in the courtyard.

50

All right. So, when you said in your evidence that you thought the dogs were very friendly, you're referring simply to your observations through a doorway-----?-- No, I went and I put my hand down to the dogs and Mrs Robertson said,

"Please, do not touch the dogs because I do not want them to get - pick up any infections."

1

Where were you when you had - where were you when this occurred?-- At the doorway.

In the reception area?-- Yes.

All right. So it's fair to say, Mrs Watt, that your observations in respect of Mrs Robertson's property are limited to what you could see in the reception area and beyond it while being in the reception area?-- Yes.

10

What was - in your estimate what was the highest number of dogs you saw at the property at any of your visits?-- About half a dozen.

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Can I just clarify this. Is it the case that your last visit to the Robertson property was 21 December 2007?-- No it wasn't. I have been down there on a number of occasions this year to help Mrs Robertson with cleaning up her property and mowing the lawn for her, because she did not have a mower, and my husband and I took the mower down and we mowed the lawns for her. We mended sliding doors and replaced doors that had been kicked in.

1

So these visits that you speak of this year where you're attending at the property to assist Mrs Robertson did they all occur after the time the RSPCA seized the dogs from Mrs Robertson?-- After, yes.

10

After?-- Yes. I was down there on 22 February when the RSPCA came in on the property.

Why were you there on that day?-- I went down to help Mrs Robertson put some beds together.

20

On that occasion is it correct that you observed RSPCA officers taking some documents?-- A lot of documents.

From the premises of Mrs Robertson?-- Yes, a lot of documents.

In that respect can you tell the Court what it is that you observed?-- I saw paperwork being taken out of filing cabinets, things being taken out - the books being taken out of the book cases. There was a big pile like that ... of pedigree papers, and inoculation papers were on one of the cupboards, when I came back they were gone. We looked for them later on-----

30

Just stop there. Rather than talking about looking for them later on; when you say there was a bundle of pedigree and inoculation papers, did you yourself examine each of the documents in that bundle before they seized?-- No I did not but I know what a pedigree paper looks like, because I've had them for dogs that I have bred myself.

40

Did you look at the documents to see whether they were pedigree papers?-- They were pedigree papers. I could see the big "Q" on them, which is on Queensland papers.

If they were in a pile you would have seen what the document was on the top. Do you accept that?-- Some of them were spread open.

Ms Watt what do you say the dimension of this spread was?-- That is one side ... that there is another ... and that's how they were spread out, like that.

50

So approximately the size of an A4 paper?-- Yes.

Do you accept Ms Watt if that's what you saw all you would have seen is what appeared on the top document and perhaps a couple of others; do you accept that?-- Yes I do.

Do you accept Ms Watt that what was taken in terms of quantity from Mrs Robertson's property, a quantity of documents from Mrs Robertson's property, was something in the vicinity of about six boxes?-- No. 1

How much do you say was there?-- Well Mr Towers-Hammond in the back of his truck I saw approximately six boxes, a tool box, a black and a brown attaché case, and also in the truck in front of that I saw a row, a box, a row of boxes with paperwork to the top of the boxes and the boxes were ye-high ... right. 10

Sorry, just so you're talking for the Court record. Is that about six inches, I couldn't quite see.

BENCH: 100 to 125 millimetres?-- Some of the boxes were that high ...

About 125 millimetres?-- And they were so long ...

MS MELLIFONT: Thank you, about 35/40 centimetres wide, long?-- About that, yes. 20

Mrs Watt is it fair to say this; you saw in the back of some of the vehicles that belonged to the RSPCA boxes which had papers in them, correct?-- Yes.

You saw the RSPCA take some papers from Mrs Robertson's premises, correct?-- Yes.

You did not observe the actual process by which these papers were taken to the various vehicles, correct?-- No I did not. They were taken from the house out to Mr Towers-Hammond who was going through them and then the next time I saw them they were in boxes on the back of the three trucks. 30

To be correct Mrs Watt the next thing you saw were boxes with papers in the back of trucks, correct?-- Yes.

You don't know what was in the boxes. Do you agree with me?-- No I don't agree with you. Because there was that much stuff being taken out of that property it would be reasonable to say that they came from that place. 40

You're making an assumption that what you saw in the back of the trucks was property taken from Mrs Robertson?-- Well that's what you want to say.

No, I'm asking you?-- And I'm not.

It's an assumption isn't it that what you saw in the back of the truck-----?-- No it wasn't an assumption. 50

You did not stand and watch every piece of paper that was taken by the RSPCA taken out of the property and delivered to a particular box in a vehicle; correct?-- That's right.

Nothing further, your Honour.

BENCH: Do you have any questions?

1

MR DUONG: Your Honour, I just have a couple of questions.

CROSS-EXAMINATION:

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MR DUONG: Mrs Watt you said that you saw in the number of visits that you visited Mrs Robertson you saw about a dozen dogs. Is that right?-- No. I said I saw about six.

About half a dozen?-- Yes.

Of course this matter concerns many, many more as you know. Did you ever have any contact with any assistants who were assisting Mrs Robertson, in the care of those dogs?-- Why would I?

20

So you haven't?-- No.

Did you ever witness the food stocks that was kept by Mrs Robertson?-- Yes I did. There were bags, big bags like that ... like that high ... and there was at least six of them in the lounge room.

What did they contain?-- They contained doggie biscuits.

30

When did you see them?-- When did I see them? I saw them in February and the actual bags were half empty.

This is in February?-- Yes, in February.

This is after the day of the seizure?-- Yes.

Did you see any medical stocks for the care of those dogs?-- Well I don't know whether they were medical things or not but Mrs Robertson had a clapped out refrigerator in the kitchen where she had a lot of medicine bottles.

40

So you can't say positively that-----?-- I don't know whether they were actually for the dogs, but I did see on a China cabinet inoculation bottles. There was a whole heap of empty ones.

What was Mrs Robertson's feeding regimen for all of her dogs?-- How would I know.

50

What were her grooming procedures for all of those dogs?-- How would I know what her grooming procedures were? I wasn't there when she groomed her dogs.

Thank you Mrs Watt?-- She showed me how to groom dogs, and she also told me how to feed dogs.

But you didn't know the regimen that she had in relation to all of her dogs, no?-- No. 1

Thank you Mrs Watt, that's all I have.

BENCH: Yes Mrs Robertson.

RE-EXAMINATION: 10

APPELLANT: Margaret do you remember, or could you tell us, when were you inside my house, the first time you came into the house, I invited you in; when did you come in, where you saw all the bags of food and the medicine bottles.

MS MELLIFONT: Your Honour, perhaps no leading. If I might just state the basis of the objection. When a person calls their witness it's very important in the process of questioning not to suggest what the evidence is. 20

BENCH: Ms Mellifont that's a legitimate objection. However, I repeat what I said earlier. Try not to ask questions which indicate what the answer is. So ask her if she remembers the first occasion-----

APPELLANT: The first time?-- Well before Christmas I was taking Mrs Robertson to do some shopping because her car was playing up, and she was buying big boxes of meat. Lamb off-cuts she would buy and she was also buying mince in the bulk packs, and she also got some chicken, that I can recall. 30

BENCH: Where was that?-- It was at Beenleigh at Woolworths.

A bulk tray of-----?-- Bulk trays.

Of one of two kilograms of mince or something like that was it?-- No, they were about five kilos. 40

Anything else Mrs Robertson?

APPELLANT: No I think-----

BENCH: I've just got two things. When you were describing the packets of dog biscuits, we don't have the facility to record only through the microphones. You need to describe the dog biscuit bags. About 400 centimetres wide, would that be right?-- They were about this size ... 50

My guess is that's about 400 centimetres and looks like about a metre high?-- Yes.

About three foot, three foot six?-- They were the biggest bags you could buy. And there was about-----

40 centimetres I think I said. Do you understand the Imperial or metric, or both; three foot six?-- Yes. 1

The second thing is when you saw six puppies; do you remember saying you saw half a dozen puppies?-- Yes.

They were the only dogs that you saw, the six puppies in and around the reception area was it?-- The puppies were brought out to me in little puppy beds, and when Mrs Robertson brought them out I looked over her shoulder and saw the other dogs. 10

They were quite young, though, were they?-- The puppies?

Yes?-- The puppy that I picked out the first day had been born that day.

So they were quite young, and I think you said-----?-- No, she also showed me some others that were only about six or seven weeks old. But they were very small, and she told me that they would not grow, that they would be small toys. 20

But that's all the dogs that you saw-----?-- And the ones I saw in the foyer.

The pups in the foyer?-- Dogs.

Dogs, and how many were in the - dogs were in the foyer?-- There was about six.

APPELLANT: Your Honour, I would like to ask Margaret one more question please. 30

BENCH: I'll let you ask one more question.

APPELLANT: Margaret can you tell us when I showed you the newborn brown little boy, what did I tell you when I came out of the house with the puppy, that it was so young; did I say anything more?

MS MELLIFONT: Sorry, this is of course hearsay, and I appreciate the difficulty in the sense we have an unrepresented litigant. But if I could place my objections on the record at least. 40

BENCH: Yes.

APPELLANT: Your Honour, I wish to ask her whether she could recall - I mean everyone seems to - I mean I'm concerned about this little pup. I usually show a little pup on conditions, right, because it's newborn. My mortality rate although is very low I'm not God. 50

BENCH: I think Mrs Watt said you said to her not to touch because you had a concern about infection.

APPELLANT: Yes, but there was something else that is pretty standard in all my contracts of sale, that I tell everybody. She would remember I hope.

1

BENCH: Ask the question again.

APPELLANT: Margaret when I showed you a little puppy that's very newly born what do I - do I say something or don't I say something?-- You told me not to touch them, and also that the mothers were well fed with special drops that you gave them, that they - that you don't usually let people see your dogs that small.

10

If you can't remember it doesn't matter?-- That's okay.

BENCH: Nothing else?

APPELLANT: I think that is fine, thank you.

BENCH: Mrs Watt thanks very much for coming today, you can leave?-- Okay, and, your Honour, what do I do about getting my dogs back?

20

That's a matter that you'll need to take up with the Department of Primary Industries and the RSPCA?-- Well my solicitor has written letters-----

Hang on?-- -----and they don't even reply.

I'm sorry. These proceedings, as I said to you at the very outset, are not about your claim for any ownership. These proceedings are about a review of the decision to forfeit the dogs because of the particular provisions in the Act, about dogs being in the care of people, and they were in - at the time it's alleged that they were in the care of Mrs Robertson. Now, it may be that the outcome of these proceedings might have a bearing on your dog. It may be, I'm not saying it will be. I don't - I'm not saying that, but it's a matter that you'll need to take up on another occasion with the DPI and the RSPCA?-- But they won't listen to you.

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I'm not here to resolve a dispute about ownership?-- Okay, thank you.

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WITNESS EXCUSED

BENCH: Mrs Robertson got your next witness?

APPELLANT: Yes, thank you.

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ANNETTE KATHERINE BARRELL, SWORN AND EXAMINED:

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BENCH: Yes, Mrs Robertson, when you're ready.

APPELLANT: Yes, Annette, you've written a stat dec-----

BENCH: First of all-----

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APPELLANT: Yes, sorry.

BENCH: Could you - you need to introduce your witness, all right. Could you state your full name, please?-- Annette Katherine Barrell.

And your address?-- 215 Old Bay Road, Deception Bay.

And are you employed?-- Sorry?

20

Are you employed? You have a job?-- No.

All right. And you know Mrs Robertson?-- Yes, I know Mrs Robertson.

Do you have some background in the breeding of poodles?-- Yes, I do.

Do you own poodles yourself?-- Yes, I do.

30

How many?-- Probably in excess of 20.

You currently have 20 poodles at the moment?-- At the moment, yes.

All right. Thank you. Yes, thanks, Mrs Robertson.

APPELLANT: You have done stat dec for me?-- Yes.

How did we know each other - how long have we known each other?-- About 10 years. I don't know exactly what date but around about 10 years ago you came to my place to buy a couple of dogs.

40

Yes. And - poodles. We were asked - I think you were asked to view a video?-- Yes.

Yes.

BENCH: Just before you continue on; Mrs Robertson, keep in mind that I have ruled some of the contents of the declaration-----

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APPELLANT: Yes.

BENCH: -----about some of these things, is not to be admissible. So just keep that in mind when you're asking your questions.

APPELLANT: Yes.

BENCH: Okay.

APPELLANT: Okay.

BENCH: It'll save Ms Mellifont - Ms Mellifont and Mr Duong standing up.

10

APPELLANT: Yes. How often did you come to me - a year say, to help me with the clipping?-- I would say, at least, twice a year. Some years it would have been more often because I had dogs boarded with you or I came to use your [indistinct] so it would have been, at least, two - twice a year most years but there would have been the odd year that there would have been even more than three.

Right. Now the when was the last time you went to see me - to help me clip the dogs?-- Well, the last time I was at your place or the last time we actually clipped dogs? I was at your place at the end of October last year.

20

And when were you due to come back?-- Well, I was-----

When did I ask you to come back?-- We were going to - I went overseas in November and I was going to come and collect my dogs early December and help you do some clipping which was going to help towards the payment of boarding my dogs and then it rained so I didn't get to come because there was no point in doing anything as major as that in bad weather plus then there was Christmas. I remember I was held up because of family - family commitments at Christmas.

30

When you - when I told you that your - all the dogs have gone when you contacted me and I told you all the dogs have gone, I think I asked you whether you could help me out by having a look at a video that was-----?-- Yes.

Yes, at the solicitor's office?-- That was at the solicitor's office at Springwood.

40

And I would like to show you a video?-- Yes.

BENCH: Mrs Barrell, what will happen, you'll be able to see the video in front of you-----?-- Yes.

-----on that screen. You don't have to touch it all. It should also appear on the screen behind us. Have you got the right one? Did you want-----

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APPELLANT: I'm not sure. I'm not used to all these high tech things, you know.

BENCH: Oh, no, I'm not - don't ask - to press the buttons but have you got the right one you want my clerk to put into the player? Is this the video that Ms Barrell look at?

APPELLANT: Yes.

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BENCH: This is it?

APPELLANT: Yes, I think so.

BENCH: All right. Now you want that-----

APPELLANT: A VHS tape?

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BENCH: No, no, the DVD is fine.

APPELLANT: The DVD is fine. This is numbered.

BENCH: If that is the DVD, copy or whatever it might be, that you want that - sorry, that you asked Ms Barrell to look at and make some comment about?

APPELLANT: Do I get to see-----

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MR DUONG: Your Honour, we got three DVDs, two of them have got the video on it. One might not have and we - when we got - we got this copy to these but we don't know-----

BENCH: Just not sure which one?

MR DUONG: Just not sure.

BENCH: That's all right. Well-----

30

APPELLANT: We haven't got the equipment either.

BENCH: My clerk's very dexterous. He will be able to work out for us.

MR DUONG: There's two more just in case.

MS MELLIFONT: Your Honour, I understand that what Mrs Robertson wants to play to this witness-----

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BENCH: Mmm-hmm.

MS MELLIFONT: -----is some footage taken by the RSPCA on the 9th of January.

BENCH: That was my understanding as well.

MS MELLIFONT: Now the CD that I have in my hand does come up with a menu which apparently this CD doesn't and it might assist if I give your Honour's clerk this CD that I have in my hand and I will be able to assist in identifying the relevant track.

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BENCH: Right. So that's - but that copy that you have has been provided to Mrs Robertson-----

MS MELLIFONT: Oh, yes.

BENCH: -----and from there copies have been made from that. 1

APPELLANT: Well, your Honour, this copy that we have was provided by - we didn't make copies out of the copy that Ms Mellifont has offered because we have a copy. This copy was made from the ones that were supplied to us on [indistinct]. It could be same I don't know. I think that's similar except this seems to have a few more things in it as far as I know. I'm not sure. 10

BENCH: Well-----

APPELLANT: I've only seen it once.

BENCH: Well, I think what we should do-----

APPELLANT: About six months ago.

BENCH: -----is we should all be singing from the same sheet of music so we'll go to the original or copy of the original which was taken on the 9th and if it's the same - that's the video, I'm talking about the DVD. If it's the same that was provided to Ms Barrell to look at, that's fine. 20

APPELLANT: Yes.

BENCH: All right.

APPELLANT: It's the same one and provided to us by DPI. 30

BENCH: It's not coming up - doesn't want to play on our system for the moment so - can we have - could you ask your solicitor to give to that to my clerk, please. Now, is this what you are wanting to refer to Mrs Robertson? 40

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MS MELLIFONT: No, your Honour. Segment 1 is [indistinct]. 3 minutes 33 of video footage at Ms Robertson's house. Segment 2 has two chapters together constituting 7 minutes of video footage at Ms Robertson's house. Segment 3 is at the RSPCA shelter. So I would suspect that what this witness has seen is either segment 1 and/or segment 2.

1

BENCH: And perhaps 3 because there was some discussion about what was seen at the shelter as well, about the clipping was it?

10

MS MELLIFONT: They are separate videos. Sorry, well separate clips as it were. So if what Ms Robertson wishes to show Ms [indistinct] is footage taken by the RSPCA at her premises, that is segment 1 and segment 2.

BENCH: Now you watch this closely and tell us whether this is the footage that you have looked at please? I think we will need to get one of the technicians up to try and sort out the system so we'll have a short adjournment.

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THE COURT ADJOURNED

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THE COURT RESUMED

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ANNETTE KATHERINE BARRELL, CONTINUING EXAMINATION-IN-CHIEF:

BENCH: Have the technical issues been resolved? The monitors at the back row, are they working?

10

MS MELLIFONT: Yes, they're just up a little closer.

BENCH: Would you like the video or the DVD to be played, Mrs Robertson?

APPELLANT: I think that we might as well ask about the dogs first and then we'll watch the video.

BENCH: All right.

20

APPELLANT: Please. Annette, could you tell us about your dogs and how you sort of came to know me and what you know about-----?-- Well, originally you bought two dogs off me and then afterwards I used a couple of your studs. I also gave you one of my bitches. And this was all in return for boarding that I'd done with you.

What do you do when you come to pick up the dogs sometimes or when you've got a bit of time to drop off a stud dog?-- Look at all your babies and look at your poodles. I was always keen to - to see your dogs, especially your new puppies.

30

Did you help me to clean any of the kennels or-----?-- Yes, I did, quite often, especially at the time when my dogs were being boarded by you and that was for a period of about 10 months. So in that particular year I probably came down once a month.

What were the things that we were doing were different, because your kennel set-up is different from mine?-- Oh, my kennels are outside - runs; I don't-----

40

What do I do?-- What do you do?

Mmm. Like in the afternoon, the afternoon run?-- You go and feed the - feed the dogs. In what way are you talking about?

What is my routine in the afternoon that you follow me down to the kennels for?-- Well, you-----

50

When you come sometimes, you know, in the afternoon?-- Yeah, in the afternoon, well, you'd go down and remove any food that wasn't eaten and if it was winter we'd shut them in for the night to keep them warm.

Don't I do anything about the water - or do I, or what?-- Well, yes. We would always change the water. I am

not sure whether we did it morning or afternoon but we certainly changed the water every day. The water-----

1

What did I used to tell you when you used to help me top up the water?-- I had to scrub the bowls out.

Every bowl?-- Not just empty them; they had to be emptied, rinsed out, scrubbed and filled again.

Every bowl or just the odd dirty one?-- No, every bowl.

10

And - I thought you would remember that; it was a matter of constant argument. And what do we do with the food bowl after that? We've got rid of the fresh meat that has gone off or whatever, in the heat?-- Remove the - the dirty bowls.

Yeah?-- And wash them.

Yeah. And - do we do anything else about that afterwards or-----?-- About the bowls? Sorry, I'm not sure-----

20

The dry food bowls. What do we do? The dry - well-----?-- Oh, what - you'd top up the dry food for the night.

Now with the clipping of the dogs that you helped me with?-- Yes.

I think we'd better talk about the two dogs you left with me?-- Yes.

30

Yes?-- I came down to-----

When did you leave them and what happened?-- Okay. I came down - I - it was either the end of August or early September that I brought two of my red poodle bitches down to you to care for, to board them for me because I had two weddings to go to and that meant leaving home for - overnight on one occasion, or the weekend, and then later on I had to go away for 10 days. So these were two of my most valuable bitches. I didn't want them to either come to harm or escape, but especially I didn't want them to be mated, and as I was leaving the rest of my animals in the care of a friend it was just something less that she had to worry about. So I left the two bitches with you. It was only going to be until I got back from overseas at the end of November but then things dragged on and I had no worries about leaving them. You said they were okay and I was perfectly happy to leave them with you until I came down which was supposed to be in early December, but as it turned out it wasn't, and then it rained heavily. It kept getting extended because it was raining so much.

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50

And are your dogs microchipped or-----?-- No, they're not.

Have you got the parents too?-- No, I don't.

One parent?-- I still have the father of most of them, yes - the red boy Bob. 1

So we can still identify them if we need to - DNA?-- Oh - oh yeah, plus I've got their sisters and half sisters; I've got relatives of the dogs, but I don't have those particular dogs' mothers because they'd been retired.

Have you done anything about it?-- No, I didn't because originally I honestly thought that your dogs would be returned and then we spoke to your solicitor and he suggested I not do anything plus to be honest I don't have the money to go and pay for the solicitor to write a letter. And then, by the time we realised they weren't going to come back, I'd heard about Margaret's----- 10

Could I-----?-- -----attempts.

Mmm. Your Honour, could I use and show her what she thinks of this because Annette does a lot of clipping, she knows about clipping poodles----- 20

BENCH: What are they photos of?

MS MELLIFONT: I can-----

APPELLANT: These-----

MS MELLIFONT: -----assist. Ms Robertson has in her hand some hard copy printouts of some photographs taken at the RSPCA shelter on the 12th of January 2008. They are photographs which I propose to tender in the course of our case. I don't have an objection obviously for any of our photographs to be shown but we're back to the same issue in terms of Ms Barrell's opinion about the clipping. 30

BENCH: Mmm.

APPELLANT: Your Honour, this - these - clipping a poodle, this is what we call completely - like a sheep. 40

BENCH: Mrs Robertson-----

APPELLANT: It is not traditional-----

BENCH: Mrs Robertson-----

APPELLANT: Yes.

BENCH: We've been down this track. We spent over half an hour after lunch on this point, and I made a ruling about that. Do you recall that? 50

APPELLANT: I beg your pardon?

BENCH: Do you recall me making a ruling?

APPELLANT: Yes, I recall that, but it is important. Poodles clipped like that----- 1

BENCH: No, no, no. I've made a ruling.

APPELLANT: Yes. I don't recall that - this is a clipper burn issue, your Honour. It's the way they have been clipped; it causes great stress to the dog, it causes itches, broken skin. It will scratch; it's only a dog. It causes irritation and I think - I've been accused of neglect and one of the reasons is - is the bad representation of the dog. They clipped them too short. There is virtually no - it's like a close shave and you have got a long beard. You haven't had a shave for a long time, your Honour, and if some - well, if you give yourself a close shave it's going to be very troublesome unless you put lotion on it or cream or ointment. I'm just assuming; I don't have a beard but - I mean it makes sense. You see, and it does happen; they scratch and then it becomes sores, it gets infected. You see, we never clip our poodles that long. I've had poodles 48 years, more than half my lifetime, your Honour. 10 20

BENCH: So you're now-----

APPELLANT: You just can't.

BENCH: You're now saying you want me to hear evidence about-----

APPELLANT: Neglect; that's what I'm accused of. 30

BENCH: Well, no, about the state of the dogs after they were seized, and that state is brought about not by your control but as a result of-----

APPELLANT: Yes.

BENCH: -----what might have happened to the dogs-----

APPELLANT: Yes. 40

BENCH: -----when they came into the custody of the RSPCA.

APPELLANT: Yes, because the RSPCA - the inspectors - there was about 20-odd of them that came down to me about - I think 20 cars and over 30 people, that morning at 9.45 descended on my property. And the incredible part is none of them knew they were pedigreed poodles, because they looked bedraggled and wet and dusty and - you know - you know, they looked like they have, drowned rats, and they said, "Poodle types, matted with urine and loaded with" - whatever. But they don't - they are dogs with high self-esteem. All these dogs have the intelligence of a 9-year old child, your Honour. They really, really do. They're more obedient than 9-year old children. I'm serious. 50

BENCH: All right.

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APPELLANT: They all know their names and they respond to their names.

BENCH: Do you have submissions about-----

APPELLANT: You see, most of these photos-----

BENCH: I'm just - I'm just deciding whether or not I'm going to allow questioning along these lines. Yes?

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BENCH: All right.

MS MELLIFONT: If Mrs Robertson wishes to suggest as part of her case that the evidence to be given by the vets in terms of the health of these animals wasn't somehow impacted by the method of clipping, she can do that by way of cross-examination. What she seems to be purporting to do is to get through this witness that the method of clipping somehow impacts on their health. Now, unless this witness has expertise in terms of pet health - not simply in the sense of-----

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BENCH: Being the owner, but-----

MS MELLIFONT: -----yes, but actual proper expertise in terms of veterinary science-----

BENCH: Mmm.

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MS MELLIFONT: -----she simply can't give any valid opinion on the topic. It doesn't preclude Mrs Robertson from cross-examining all of the vets about the issue in terms of health, but it's not relevant here for this purpose.

MR DUONG: I agree with my friend.

BENCH: All right.

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APPELLANT: I beg to differ, your Honour, simply because the lady has been a breeder, an owner, she breeds puppies, she raises them, she looks after them through good times and bad times and she must know all about it. Most people like us, we eat poodles, we sleep poodles, we dream poodles, but that's our whole life.

BENCH: Mmm.

APPELLANT: The dedication is to them. They are my family and Ms Barrell is the same.

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BENCH: Well-----

APPELLANT: She's a single person like me, she's retired-----

BENCH: Well, we haven't had evidence from her from that, but anyhow. Ms Barrell, do you have any qualifications in - in

animal health care, particularly poodles?-- Not official. But having owned many poodles for nearly 40 years, I've had a lot to do with a lot of poodles and I certainly have had a lot to do with grooming of poodles. I'm not a professional groomer, I've never professed to be, but I know what's right and what's wrong, as anybody does with the treating of an animal.

1

Do you take your poodles to someone to clip, do you?-- No, I don't, I clip them myself. Mostly I do them with scissors because I don't like them being clipped short.

10

Mmm?-- And I've never seen - to be honest, I've never seen-----

Well, hang on. No, no, no, no, don't go down there. I haven't said you can go there yet. I don't think that - notwithstanding almost 40 years of breeding - that makes this witness an expert.

APPELLANT: Your Honour, I can - if I may show you some pictures of the dogs that I have groomed myself - I am a groomer - and I'm accused of all my dogs being in a horrible way, these dogs are groomed by me and-----

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BENCH: No, we're focussing at the moment - what we're trying to do is focus on the question of whether or not Ms Barrell can be asked certain questions, and it comes down to a consideration of whether or not Ms Barrell is a - an expert-----

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APPELLANT: Yes, your Honour.

BENCH: -----in animal grooming.

APPELLANT: Yes.

BENCH: Now, her answers to my few questions were that she has been involved in-----

APPELLANT: Poodles only.

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BENCH: -----poodles for about 40 years-----

APPELLANT: Yes.

BENCH: -----but doesn't like the way that her animals are groomed and uses scissors. Now, I don't think that makes-----?-- Oh, I use clippers as well.

All right. Well, you did say scissors-----?-- Mostly scissors.

50

-----all right, you use clippers?-- But I do have 3 sets of clippers.

But that doesn't - that doesn't make you - that doesn't make Ms Barrell an expert-----

APPELLANT: Yes. 1

BENCH: -----in animal grooming.

APPELLANT: I agree, your Honour, but-----

BENCH: Or animal health care.

APPELLANT: These people that groom these dogs are certainly not an expert. 10

BENCH: Pardon?

APPELLANT: The people that has groomed these dogs and clipped them all was certainly not an expert, and they didn't do it for health reasons because if they did, they would have put a jacket on them, and these dogs could never be groomed like that. Have a look. I mean, it's just bad grooming. These are clipper burns. 20

BENCH: All right. That - that might be so, but they - they are issues to raise with the - the animal health care experts, Mrs Robertson.

APPELLANT: Yes. All right. That - that might be so, but they - they are issues to raise with the - the animal health care experts, Mrs Robertson.

APPELLANT: Yes. All right. That - that might be so, but they - they are issues to raise with the - the animal health care experts, Mrs Robertson. 30

APPELLANT: Yes.

BENCH: All right? They're - they're issues that you can, and I suggest you do, raise with the - the veterinary expert.

APPELLANT: Yes.

BENCH: All right? 40

APPELLANT: Okay. Let's watch the video. Annette-----

BENCH: Do you want to watch the video? Are you ready to watch the video now?

APPELLANT: Yes, please, your Honour.

MS MELLIFONT: I'll just identify for the record we're watching segment 1. 50

TAPE PLAYED

BENCH: This is a different matter.

1

MS MELLIFONT: Yes, your Honour, perhaps we should stop there.

BENCH: In view of the time, is there more of the video that you want to take Ms Barrell to?

APPELLANT: No, I think this part of the video is not ours, it's the one that [indistinct]. It didn't have----

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BENCH: Well, just a moment. Ms Barrell, is that the video that you saw when you provided-----?-- No, it isn't.

APPELLANT: It's the one - we've got a copy but apparently it didn't work and we thought it was the same but it isn't because we did it in a car, so, it wasn't like that.

BENCH: So, is that-----?

APPELLANT: That was the one that was given to us by DPI.

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BENCH: Right, well, we'll play that tomorrow morning and we'll get Ms Barrell to confirm whether or not that is the video that she's seen. Right?

APPELLANT: Thank you.

BENCH: Now-----

MS MELLIFONT: I was going to ask your Honour for the return of that CD that I bring it back tomorrow morning.

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BENCH: Yes.

MS MELLIFONT: Thank you.

BENCH: Yes and these two are the ones that I think you handed up, Mrs Robertson?

APPELLANT: Yes.

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BENCH: I'll have my clerk hand those back to you as well and is there anything else before we adjourn?

APPELLANT: No.

BENCH: We will start at 9 o'clock tomorrow morning, back in this Court. We - my clerk has confirmed that I'm available on Monday and Tuesday of next week.

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MS MELLIFONT: Thank you, your Honour.

BENCH: I can tell you that tomorrow afternoon at 2 o'clock, I have a sentence to do down in the criminal Courts in Court 1, probably half an hour, so, we may not be able to start till about 2.30 tomorrow afternoon, but we can - subject to your agreeance, we can extend that half hour on at the end of the day or - depending on how we're going.

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MS MELLIFONT: Your Honour, I should just tell you, I have one witness difficulty and that is that we'll be calling a vet, Dr Kennedy who actually leaves for overseas on Monday or Saturday.

BENCH: Mmm.

MS MELLIFONT: So, he will be the very first witness I'll call in my case. I may run into difficulties if the appellant is still in her case late tomorrow afternoon but I'll have to canvass that then.

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BENCH: Well, I have no issue - no problem with interposing him.

MS MELLIFONT: Interposing him.

BENCH: We've probably got a couple round the wrong way today but subject to everyone's concurrence.

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MS MELLIFONT: Yes, thank you, your Honour.

BENCH: We can do that then. Are you calling any witnesses at all?

MR DUONG: No, your Honour.

BENCH: Okay. Right, well, we'll adjourn then, thanks, 9 o'clock tomorrow.

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THE COURT ADJOURNED

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