

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN :

JEFFREY BOGAERTS

Applicant
(Responding Party on the Motion)

-and-

THE ATTORNEY GENERAL OF ONTARIO

Respondent
(Moving Party)

Notice of Motion

Take Notice That the Moving Party, the Respondent, the Attorney General of Ontario, will make a motion to a Judge on October 29, 2015 at 10:00 a.m. or soon after that time as the motion can be heard at the Court House, 43 Drummond Street East, Perth, Ontario, K7H 1G1.

Proposed Method of Hearing: The motion is to be heard orally.

The Motion is for:

1. An Order striking out the Notice of Application.
2. In the alternative, an Order striking out the affidavits of: Jeffrey Bogaerts, sworn July 31, 2014 and February 18, 2015; Jessica Johnson, sworn August 6, 2014; Menno Streicher, sworn August 13, 2014; Anne Probst, sworn August 13, 2014; Dr. Lawrence Gray, sworn August 6, 2014; Carl R. Noble, sworn August 13, 2014; and Mark Killman, sworn February 18, 2015.

3. Should the Order in paragraph 2 be granted, an Order setting the application down for a hearing of less than one day's duration.

4. In the further alternative, an Order striking out certain portions of these affidavits, as set out in detail in the Chart at page 4 below.

5. In the further, further, alternative, should the affidavits identified in paragraph 2 not be struck out in their entirety then the Respondent seeks Orders:

(a) converting the application in to a trial of an issue to permit the cross-examination of the Applicant's affiants before the hearing judge; and

(b) setting aside three weeks of trial time for the hearing of the trial.

6. Such further and other relief as counsel may advise and this Honourable Court may see fit to grant.

The Grounds for the Motion are:

Striking out the Application

1. The Applicant, Jeffrey Bogaerts, does not have either public interest or individual standing to challenge the constitutional validity of the impugned provisions of the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36 in this civil proceeding. The Application should be struck out on this basis.

2. Section 106 of the *Courts of Justice Act*, RSO 1990, c C.43, Rules 14.09 and 21.01(1)(b) of the *Rules of Civil Procedure* and the inherent jurisdiction of the Superior Court of Justice.

Alternatively, Striking the Affidavits in Their Entirety

3. In the alternative, all of the Applicant's Affidavits should be struck as they contain information and material that is irrelevant to the validity of the impugned legislation and the questions of law that are in issue before this Honourable Court and are scandalous, vexatious, and will prejudice or delay the fair trial of this application.

4. These Affidavits contain, *inter alia*, allegations that inspectors, officials, employees and agents of the Ontario Society for the Prevention of Cruelty to Animals have engaged in *conduct* that allegedly infringes or denies the *Charter* rights of non-parties. This alleged misconduct, however, is in no way germane or relevant to the question of whether the *law* that is being challenged is unconstitutional. While the particular exercise of a discretion under a statute may be inappropriate the law itself neither mandates nor compels that result. Nor is the alleged interference with *Charter* rights a necessary effect or outcome of the operation of *Ontario Society for the Prevention of Cruelty to Animals Act*.

4. Should these affidavits be struck out in their entirety an Order imposing a schedule for the exchange of materials, factums, and setting the application down for hearing of one half day to deal with the *Charter* and division of powers issues.

5. Rules 38.12, 39.01(5) and 25.11 of the *Rules of Civil Procedure*.

6. Rules 38.10(1)(b) and 21.01(1)(a) of the *Rules of Civil Procedure*.

7. The inherent jurisdiction of the Superior Court of Justice to control its own process.

Further Alternative Relief

8. In the further, further alternative, should the Affidavits not be struck in their entirety then portions should be struck on the basis that they are scandalous, contain improper opinion evidence, hearsay, constitute a collateral attack on completed proceedings, constitute an abuse of process or are otherwise inadmissible under the rules of evidence.

9. Specifically, this material should be struck as set out below:

Affidavit of Jeffrey Bogaerts sworn July 31, 2014

Item	Paragraph(s)	Impermissible Aspect
1	3	Contains hearsay, expresses a legal opinion (“I have read about various incidents... OSPCA Act must be unconstitutional”)
2	5	Expresses an opinion (“While such a mission and goals may be noble in nature, I also believe that it demonstrates ideological activism on behalf of the OSPCA”)
3	6	Is scandalous and contains hearsay, expresses an opinion, contains legal argument (“Such goals have been determined privately and internally”, “I believe that such goals are extreme and indicative of an activist agenda of the OSPCA”, Such goals are similar to those of other activist groups... [PETA]”)
4	7	Contains hearsay, expresses an opinion, contains legal argument (“In addition to privately and internally setting... with respect to such organizations’ members”, “Such MOUs effectively result... treated differently under the law by the OSPCA”)
5	8	Expresses an opinion, contains legal argument (“The registry itself is not legally prescribed... treated differently under the law”, ‘Such policies are especially concerning... not prohibited under the law”)
6	9	Contains hearsay, expresses an opinion, contains legal argument (“Unlike every other agency in Ontario with police powers, the OSPCA is a private organization with no government oversight”, “the bylaws set out provisions which give more power to members... that raise greater revenues”, “Such revenues include proceeds from seized animals... laid against people”)
7	10	Entire paragraph is legal argument
8	12	Expresses an opinion, contains legal argument (“I believe that... may be prone to financial influence”)
9	13	Entire paragraph contains hearsay, expresses opinion, contains legal argument
10	14	Expresses an opinion, contains legal argument (“The OSPCA also sells animals... may be influenced by financial interests of the OSPCA”)

11	15	Expresses an opinion, contains legal argument (“The amendments included... the stigma of a criminal offence”)
12	Exhibit “C”	Position of the People for the Ethical Treatment of Animals on Dairy Cows irrelevant and improper

Affidavit of Jeffrey Bogaerts sworn February 18, 2015

Item	Paragraph(s)	Impermissible Aspect
1	4 Exhibit “C”	Statement of information and belief with respect to a contentious matter, hearsay (Exhibit “C” not admissible for the truth of its contents)

Affidavit of Jessica Johnson sworn August 6, 2014

Item	Paragraph(s)	Impermissible Aspect
1	15-17 Exhibits “D”, “E”	scandalous, collateral attack on completed proceedings, abuse of process
2	20-12 Exhibits “I”, “K”	Collateral attack on completed proceedings, abuse of process
3	23	Contains legal argument (“I also feel especially vulnerable to being subject to unaccountable abuse and violations of my rights”)
4	24	Entire paragraph contains legal opinion, argument

Affidavit of Menno Streicher sworn August 13, 2014

Item	Paragraph(s)	Impermissible aspect
1	4-6	Improper expert opinion for which affiant has not been qualified and scandalous (including Exhibit "A")
2	13	Expresses an opinion “None of the orders served any purpose... adequate care to all our dogs”
3	14 Exhibits “D”, “E”	Collateral attack on completed proceedings, abuse of process
4	15-17 Exhibit “F”	Collateral attack on completed proceedings, abuse of process
5	18	Expresses an opinion, contains legal argument (“ Inspector Vanderheide... in order to set an example to others within the Old Order Amish Community”)

Affidavit of Anne Probst sworn August 13, 2014

Item	Paragraph(s)	Impermissible Aspect
1	3, Exhibit "A"	The attached notes are hearsay, and do not fit into one of the established exceptions to the rule
2	23-25 Exhibit "E"	Collateral attack on completed proceedings, abuse of process
3	26	Contains legal argument ("Instead of taking any action to address the conduct of Inspector Tanti... the Ontario College of Veterinarians")

Affidavit of Dr. Lawrence E. Gray sworn August 6, 2014

Item	Paragraph(s)	Impermissible Aspect
1	5	Expresses an opinion ("However, the OSPCA inspectors from Toronto were too impatient... cancelled the request for my involvement")
2	7	Entire paragraph contains improper expert opinion for which affiant has not been qualified
3	8-11	Entire paragraphs contains improper expert opinion for which affiant has not been qualified
4	13, 14	Entire paragraph contains improper expert opinion for which affiant has not been qualified
5	15	Expresses an opinion, contains legal argument ("Sometimes... people of limited financial means")
6	16	Improper expert opinion for which affiant has not been qualified, contains legal argument ("Often the orders involve... grooming, and housing", "after unsubstantiated accusations... within a week")
7	17	Expresses an opinion, contains legal argument ("I have also witnessed a practice by the OSPCA... inspections, and seizures", "Such conduct would qualify as harassment in my opinion... owning animals")
8	18	Contains hearsay, improper expert opinion for which affiant has not been qualified ("A notable case... substantial sum for their return", "I never understood... a few days later")
9	19	Entire paragraph expresses an opinion, contains legal argument, improper expert opinion for which affiant has not been qualified

Affidavit of Carl R. Noble sworn August 13, 2014

Item	Paragraph(s)	Impermissible Aspect
1	8	Expresses an opinion ("The philosophy of the GBHS... cared for adequately", "The GBHS seized animals only as a last resort... no other option")
2	14	Expresses an opinion ("Inspector Bluhm and Agent Roberts... seizing animals and laying charges")

3	15	Entire paragraph expresses an opinion, contains legal argument
4	17	Entire paragraph expresses an opinion
5	19	Entire paragraph expresses an opinion and contains hearsay, legal argument
6	23	Entire paragraph expresses an opinion
7	26	Contains hearsay, expresses an opinion (“Since then, I have discovered that at least part... of the copy given to me”, “This section... activist-type agenda secret from its own board members”)
8	27	Expresses an opinion (“We all represented moderate voices... ultimately replaced by similar activist types”)

10. Further, in light of the content of the affidavits filed by the Applicant, involving a number of instances of alleged misconduct by the Ontario Society for the Prevention of Cruelty to Animals, members of the Animal Care Review Board, and a number of other individuals, spanning a period of many years, it will be necessary for this Honourable Court to assess the credibility of the deponents and of the witnesses in response from the Respondent and from the Ontario Society for the Prevention of Cruelty to Animals. Accordingly, a trial of an issue is warranted.

11. Rule 38.10(1)(b) of the *Rules of Civil Procedure*.

12. Finally, in light of the volume of material and the scope of the allegations contained in the Applicant's materials, the Moving Party seeks an Order that up to three weeks of civil trial time be set aside for the hearing of the evidence in this matter, should that material not be entirely or substantially struck on this motion.

13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

The Following Documentary Evidence Will be Used at the Hearing of the Motion:

1. The Notice of Application dated dated October 18, 2013.
2. The Notice of Constitutional Question dated October 21, 2013.
3. The affidavits filed by the Applicant.

4. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Toronto this 10th day of June, 2015.

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Applicant/Responding Party on the Motion

THE ATTORNEY GENERAL OF ONTARIO
Respondent /Moving Party

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Perth, Ontario

NOTICE OF MOTION

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