

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

APPLICATION RECORD

Dated: August 18, 2014

GREEN & ASSOCIATES

Barristers & Solicitors
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Ottawa, Ontario, K1P 5V5

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TAB 1

Court File No.

749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

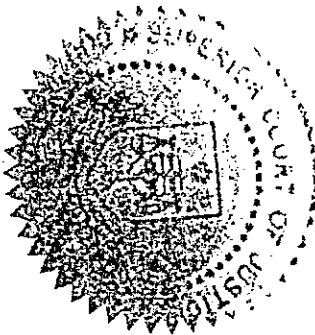
JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent



NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come for a hearing on a date and at a time to be set by the Registrar of the Superior Court of Justice at Perth Courthouse, 43 Drummond Street east, Perth, Ontario, K7H 1G1.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Oct 18. 2013

Issued by: *A. Robertson*
Local Registrar

Address of court office:
Perth Courthouse
43 Drummond Street East
Perth, Ontario, K7H 1G1

TO: The Attorney General of Ontario
Public Law Division
Constitutional Law Branch
7th Floor, 720 Bay Street
Toronto, Ontario, M5G 2K1

APPLICATION

1. The applicant makes application for:
 - a. A declaration pursuant to sections 97 and 109 of the *Courts of Justice Act*, section 52(1) of the *Constitution Act, 1982*, and section 24(1) of the *Canadian Charter of Rights and Freedoms* [the "*Charter*"] that sections 1, 11, 11.2(1), 11.2(2), 12, 12.1, 13 and 14 of the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36 [the "*OSPCA Act*"], as amended, violate section 7 of the *Charter* and therefore are of no force or effect;
 - b. A declaration pursuant to sections 97 and 109 of the *Courts of Justice Act*, section 52(1) of the *Constitution Act, 1982*, and section 24(1) of the *Charter* that sections 11.4, 12, 13 and 14 of the *OSPCA Act*, as amended, violate section 7 and 8 of the *Charter* and therefore are of no force or effect;
 - c. A declaration pursuant to sections 97 and 109 of the *Courts of Justice Act*, and section 52(1) of the *Constitution Act, 1982*, that the *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, as amended, violate sections 91 and 92 of the *Constitution Act, 1982*, and therefore are of no force or effect; and
 - d. Such further and other relief as counsel may advise and this Honourable Court may permit
2. The grounds for the application are:
 - a. Section 18.1 of the *OSPCA Act*, by providing for a term of imprisonment following a conviction for an offence under the *Act*, restricts the liberty of people, animal owners and animal custodians in the province of Ontario, as defined under section 7 of the *Charter*;
 - b. The provisions of the *OSPCA Act* which restrict the liberty of people, animal owners and animal custodians in Ontario do not accord with the principles of fundamental justice and, therefore, breach section 7 of the *Charter*;
 - c. The definition of "distress" in section 1 of the *OSPCA Act* is unconstitutionally vague in that it does not provide sufficient guidance for legal debate;

- d. The definition of "distress" in section 1 of the *OSCPA Act* does not provide fair notice to the residents of Ontario respecting minimally acceptable care and treatment of animals in Ontario.
- e. The definition of "distress" in section 1 of the *OSPCA Act* does not provide sufficient direction to those enforcing the law to prevent arbitrary exercise of their discretion;
- f. The definition of "distress" in section 1 of the *OSPCA Act* does not provide sufficient direction to those issuing warrants or orders, as authorized by to the *Act*, to prevent arbitrary exercise of their discretion;
- g. The definition of "distress" in section 1 of the *OSPCA Act* is unconstitutionally overbroad in that it may capture acceptable and /or normal care and treatment of animals in Ontario;
- h. The definition of "distress" in section 1 of the *OSPCA Act* violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation and does not impair the rights of Ontario residents as little as possible;
- i. To the extent that sections 1, 11.2(1), 11.2(2), 12, 12.1, 13 and 14 of the *OSPCA Act* rely on and incorporate the definition of "distress" from section 1 of the *Act*, these sections are unconstitutionally vague and overbroad and cannot be saved by section 1 of the *Charter*;
- j. To the extent that section 12 the *OSPCA Act* relies on and incorporates the definition of "distress" from section 1 of the *Act*, it is unconstitutionally vague and overbroad and, in turn, violates sections 7 and 8 of the *Charter* because it fails to adequately specify an appropriate standard for the issuance of warrants.
- k. To the extent that section 12 the *OSPCA Act* relies on and incorporates the definition of "distress" from section 1 of the *Act*, it cannot be saved by section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation, the means chosen are not proportional to the limits put on peoples' rights, and it does not impair the rights of Ontario residents as little as possible;

- l. Sections 11.4, 13 and 14 of the *OSPCA Act* grant powers of search and seizure which are unreasonable in their extent and contravene the constitutional standard of reasonableness prescribed by section 8 of the *Charter*;
- m. To the extent that section 11.4 of the *OSPCA Act* confers upon OSPCA Officers the power to search private property at the complete discretion of the Officer, including property where a dwelling unit may be located, either alone or accompanied by any number of other persons as he or she considers advisable, and irrespective of any situation of urgency which makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;
- n. To the extent that section 13(6) of the *OSPCA Act* confers upon OSPCA Officers the power to enter private property at the complete discretion of the Officer, including a dwelling unit, at any hour of the day or night into the future forever, either alone or accompanied by any number of other persons as he or she considers advisable, at any time and irrespective of any situation of urgency, it is not reasonable and violates section 8 of the *Charter*;
- o. To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, subject only to an initial "reasonable grounds for believing that an animal is in distress" on the part of an OSPCA officer, and irrespective of taking any reasonable steps to confirm with a veterinarian that an animal is in distress, and irrespective of whether there is any situation of urgency which makes the obtaining of a search warrant impracticable, it is not reasonable and violates section 8 of the *Charter*;
- p. To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, and an appeal of an Order issued under section 13(1) expires after only 5 business days, and while the entry powers prescribed under 13(6) go on forever, it is not reasonable and violates section 8 of the *Charter*;
- q. To the extent that section 14 of the *OSPCA Act* confers upon an OSPCA Officer the power to seize private property, irrespective of any situation of urgency which

makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;

- r. Warrantless search and seizure powers provided by sections 11.4, 13 and 14 of the *OSPCA Act* cannot be saved by section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;
- s. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, with no public oversight, accountability or transparency, it does not accord with principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
- t. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, without statutorily prescribed restraints afforded to police officers in Ontario, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
- u. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, and the OSPCA and /or its Officers are not subject to:
 - i. *Police Services Act*, R.S.O. 1990, c. P.15 and regulations passed thereunder;
 - ii. *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 and regulations passed thereunder;
 - iii. *Ombudsman Act*, R.S.O. 1990, c. O.6 and regulations passed thereunder;it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
- v. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, an organization which is also trusted to raise its own revenues to fund its investigations and salaries of the same Officers, and which raises said revenues by selling seized animals and other products of its investigations, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

- w. Conferral of police powers upon Officers of a private organization, as prescribed by section 11 of the *OSPCA Act*, violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;
 - x. The pith and substance of the *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, is of a moral issue related to criminal law, and constitutes an attempt by the province of Ontario to legislate in the area of criminal law;
 - y. To the extent that the *OSPCA Act* intrudes into criminal law, an area which is the exclusive jurisdiction of the Parliament of Canada, the *Act* is *ultra vires* the Province of Ontario for violating sections 91 and 92 of the *Constitution Act, 1982*;
 - z. The *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, exposes Ontario residents to criminal prosecution while bypassing the protection provided by criminal law and procedure;
 - aa. Sections 11.1, 11.2 and 18.1 of the *OSPCA Act* effectively duplicates the "Cruelty to Animals" section of the *Criminal Code*, namely sections 445.1 to 447.1, and said overlap supports an inference that the *OSPCA Act* serves a criminal law purpose;
 - bb. The severity of penalties prescribed by section 18.1 of the *OSPCA Act* further characterizes the *Act* as criminal law; and
 - cc. Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- a. Affidavit of the Applicant, Jeffrey Bogaerts, to be sworn, and the exhibits annexed thereto;
 - b. The Affidavit of Dr. Lawrence Gray, to be sworn, and the exhibits annexed thereto;
 - c. The Affidavit of Carl Noble, to be sworn, and the exhibits annexed thereto;

- d. The Affidavit of Viola Streicher, to be sworn, and the exhibits annexed thereto;
- e. The Affidavit of Jessica Johnson, to be sworn, and the exhibits annexed thereto;
- f. The Affidavit of Anne Probst, to be sworn, and the exhibits annexed thereto;
- g. The Affidavit of Cynthia Lajoie, to be sworn, and the exhibits annexed thereto;
and
- h. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

DATED: October 18, 2013

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Lawyers for the Applicant

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No.

749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

NOTICE OF APPLICATION

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Lawyers for the Applicant

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant intends to question the constitutional validity of sections 1, 11, 11.1, 11.2, 11.4, 12, 12.1, 13, 14 and 18.1 of the *Ontario Society for the Prevention of Cruelty to Animals Act*, RSO 1990, c O.36, and claim a remedy regarding same under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* and section 52(1) of the *Constitution Act, 1982*.

The question is to be argued on a date and at a time to be set by the Registrar of the Superior Court of Justice at the Perth Courthouse, 43 Drummond Street east, Perth, Ontario, K7H 1G1.

The following are the material facts giving rise to the constitutional question:

1. A copy of the Notice of Application dated October 18, 2013 is attached and sets out the relevant facts and evidentiary basis of the Application.

The following is the legal basis for the constitutional question:

1. Section 18.1 of the *OSPCA Act*, by providing for a term of imprisonment following a conviction for an offence under the *Act*, restricts the liberty of people, animal owners and animal custodians in the province of Ontario, as defined under section 7 of the *Charter*;
2. The provisions of the *OSPCA Act* which restrict the liberty of people, animal owners and animal custodians in Ontario do not accord with the principles of fundamental justice and, therefore, breach section 7 of the *Charter*;

3. The definition of "distress" in section 1 of the *OSCPA Act* is unconstitutionally vague in that it does not provide sufficient guidance for legal debate;
4. The definition of "distress" in section 1 of the *OSCPA Act* does not provide fair notice to the residents of Ontario respecting minimally acceptable care and treatment of animals in Ontario.
5. The definition of "distress" in section 1 of the *OSPCA Act* does not provide sufficient direction to those enforcing the law to prevent arbitrary exercise of their discretion;
6. The definition of "distress" in section 1 of the *OSPCA Act* does not provide sufficient direction to those issuing warrants or orders, as authorized by to the *Act*, to prevent arbitrary exercise of their discretion;
7. The definition of "distress" in section 1 of the *OSPCA Act* is unconstitutionally overbroad in that it may capture acceptable and /or normal care and treatment of animals in Ontario;
8. The definition of "distress" in section 1 of the *OSPCA Act* violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation and does not impair the rights of Ontario residents as little as possible;
9. To the extent that sections 1, 11.2(1), 11.2(2), 12, 12.1, 13 and 14 of the *OSPCA Act* rely on and incorporate the definition of "distress" from section 1 of the *Act*, these sections are unconstitutionally vague and overbroad and cannot be saved by section 1 of the *Charter*;
10. To the extent that section 12 the *OSPCA Act* relies on and incorporates the definition of "distress" from section 1 of the *Act*, it is unconstitutionally vague and overbroad and, in turn, violates sections 7 and 8 of the *Charter* because it fails to adequately specify an appropriate standard for the issuance of warrants.
11. To the extent that section 12 the *OSPCA Act* relies on and incorporates the definition of "distress" from section 1 of the *Act*, it cannot be saved by section 1 of the *Charter* because it is not rationally connected to the purpose of the legislation, the means

chosen are not proportional to the limits put on peoples' rights, and it does not impair the rights of Ontario residents as little as possible;

12. Sections 11.4, 13 and 14 of the *OSPCA Act* grant powers of search and seizure which are unreasonable in their extent and contravene the constitutional standard of reasonableness prescribed by section 8 of the *Charter*;
13. To the extent that section 11.4 of the *OSPCA Act* confers upon OSPCA Officers the power to search private property at the complete discretion of the Officer, including property where a dwelling unit may be located, either alone or accompanied by any number of other persons as he or she considers advisable, and irrespective of any situation of urgency which makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;
14. To the extent that section 13(6) of the *OSPCA Act* confers upon OSPCA Officers the power to enter private property at the complete discretion of the Officer, including a dwelling unit, at any hour of the day or night into the future forever, either alone or accompanied by any number of other persons as he or she considers advisable, at any time and irrespective of any situation of urgency, it is not reasonable and violates section 8 of the *Charter*;
15. To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, subject only to an initial "reasonable grounds for believing that an animal is in distress" on the part of an OSPCA officer, and irrespective of taking any reasonable steps to confirm with a veterinarian that an animal is in distress, and irrespective of whether there is any situation of urgency which makes the obtaining of a search warrant impracticable, it is not reasonable and violates section 8 of the *Charter*;
16. To the extent that sections 13(1) and 13(6) of the *OSPCA Act* conjunctively confer upon OSPCA Officers warrantless entry powers, and an appeal of an Order issued under section 13(1) expires after only 5 business days, and while the entry powers prescribed under 13(6) go on forever, it is not reasonable and violates section 8 of the *Charter*;

17. To the extent that section 14 of the *OSPCA Act* confers upon an OSPCA Officer the power to seize private property, irrespective of any situation of urgency which makes judicial authorization impracticable, it is not reasonable and violates section 8 of the *Charter*;
18. Warrantless search and seizure powers provided by sections 11.4, 13 and 14 of the *OSPCA Act* cannot be saved by section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;
19. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, with no public oversight, accountability or transparency, it does not accord with principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
20. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, without statutorily prescribed restraints afforded to police officers in Ontario, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
21. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon OSPCA Officers, and the OSPCA and /or its Officers are not subject to:
 - a. *Police Services Act*, R.S.O. 1990, c. P.15 and regulations passed thereunder;
 - b. *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 and regulations passed thereunder;
 - c. *Ombudsman Act*, R.S.O. 1990, c. O.6 and regulations passed thereunder;it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;
22. To the extent that section 11 of the *OSPCA Act* confers "the powers of a police officer" upon Officers of a private organization, an organization which is also trusted to raise its own revenues to fund its investigations and salaries of the same Officers, and which raises said revenues by selling seized animals and other products of its investigations, it does not accord with the principles of fundamental justice and, therefore, breaches section 7 of the *Charter*;

23. Conferral of police powers upon Officers of a private organization, as prescribed by section 11 of the *OSPCA Act*, violates section 7 of the *Charter* and cannot be saved under section 1 of the *Charter* because the means chosen are not proportional to the limits put on peoples' rights and do not impair the rights of Ontario residents as little as possible;
24. The pith and substance of the *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, is of a moral issue related to criminal law, and constitutes an attempt by the province of Ontario to legislate in the area of criminal law;
25. To the extent that the *OSPCA Act* intrudes into criminal law, an area which is the exclusive jurisdiction of the Parliament of Canada, the *Act* is *ultra vires* the Province of Ontario for violating sections 91 and 92 of the *Constitution Act, 1982*;
26. The *OSPCA Act*, and especially sections 11.1, 11.2 and 18.1 of the *Act*, exposes Ontario residents to criminal prosecution while bypassing the protection provided by criminal law and procedure;
27. Sections 11.1, 11.2 and 18.1 of the *OSPCA Act* effectively duplicates the "Cruelty to Animals" section of the *Criminal Code*, namely sections 445.1 to 447.1, and said overlap supports an inference that the *OSPCA Act* serves a criminal law purpose;
28. The severity of penalties prescribed by section 18.1 of the *OSPCA Act* further characterizes the *Act* as criminal law; and
29. Such further and other grounds as counsel may advise and this Honourable Court may permit.

DATED: October 21, 2013

GREEN & ASSOCIATES

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Lawyers for the Applicant

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Constitutional Law Branch
4th floor, 720 Bay Street
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Fax: 416-326-4015

AND TO: **The Attorney General of Canada**
Justice Building
234 Wellington Street
Ottawa, Ontario K1A 0H8

Fax: 613-954-1920

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

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Lawyers for the Applicant

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF JEFFREY BOGAERTS

(sworn July 31, 2014)

I, **JEFFREY BOGAERTS**, of Lanark County, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the applicant of the above application, and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. For most of my life, including presently, I have owned and cared for animals in Ontario. While I have never been subjected to an Ontario Society for the Prevention of Cruelty to Animals [OSPCA] investigation or inquiry, the fact that I own and care for animals makes me subject to the *OSPCA Act*.
3. I have brought this application in the public's interest. I have read about various incidents involving the OSPCA and have personally attended several court proceedings involving the OSPCA, and it is my belief that various provisions of the OSPCA Act must be unconstitutional. I do not stand to gain anything from the outcome of this application, except satisfaction that the questions being asked with respect to this application and the constitutionality of the OSPCA Act have been determined by the Court.

4. Through research done by me and /or my lawyer, I have obtained the following documents which I believe may be relevant to these proceedings.
5. The OSPCA is a private provincial charity, with police powers granted through section 11 of the OSPCA Act. The OSPCA has a self described mission to "facilitate and provide for province-wide leadership on matters relating to the prevention of cruelty to animals and the promotion of animal welfare" and self described goals which include "to be a strong, unified and collaborative organization dedicated to the cultivation of a compassionate Ontario for all animals". A copy of the OSPCA "Backgrounder" and "Fact Sheet" from the OSPCA's website is attached as **Exhibit "A"** to this my affidavit. While such a mission and goals may be noble in nature, I also believe that it demonstrates ideological activism on behalf of the OSPCA.
6. The OSPCA has expressly set out goals it wishes to achieve with respect to animal welfare. Such goals have been determined privately and internally, and are formally set out at section 1 of the OSPCA's Agent and Inspector Training Manual. A copy of excerpts from the OSPCA Training and Reference Manual: Section 1, Animal Welfare Position Statements are attached as **Exhibit "B"** to this my affidavit. 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, such as People for the Ethical Treatment of Animals [PETA]. For example, a copy of PETA's Basic Care Standards for Dairy-Farmed Cows is attached as **Exhibit "C"** to this my affidavit.
7. In addition to privately and internally setting out policies to follow and goals to strive for while administering the law, the OSPCA has also negotiated agreements with other private organizations to determine how it will administer the law with respect to such

organizations' members. Various farm organizations, including Dairy Farmers of Ontario, Chicken Farmers of Ontario, Ontario Pork and Ontario Sheep Marketing Agency, have entered into "Memorandums of Understanding" [MOU] with the OSPCA, including an agreement on investigative practices. Such MOUs effectively result in some individuals being treated differently under the law by the OSPCA. I have been advised by my lawyer, Kurtis Andrews, and verily believe it to be true, that the OSPCA and the above livestock groups refuse to release a copy of the respective MOUs. A copy of media releases associated with these MOUs are attached as **Exhibit "D"** to this my affidavit.

8. The OSPCA has also implemented a zoos and aquariums registry which requires zoos, aquariums and other animal exhibit operators to register and disclose private information to the OSPCA. The registry is not legally prescribed, and is described as "voluntary", but the OSPCA has promised that "[zoos and aquariums] that don't join will be subject to more scrutiny". In other words, facilities that do not register and disclose private information (which they are not legally obligated to disclose) will be treated differently under the law. A copy of a newspaper report quoting the OSPCA with respect to the zoos and aquariums registry is attached as **Exhibit "E"** to this my affidavit. Such policies are especially concerning given the OSPCA's open deploement of animal exhibition, which is not prohibited under the law. A copy of the OSPCA's winter 2006 magazine, *Animals' Voice*, is attached as **Exhibit "F"** to this my affidavit.

9. Unlike every other agency in Ontario with police powers, the OSPCA is a private organization with no government oversight. The OSPCA's by-laws set out the corporate structure and voting procedures. Among the voting rules set out in the bylaws, the bylaws set out provisions which give more power to members (branch affiliates) that raise

greater revenues. Such revenues include proceeds from seized animals and donations inspired by promoting investigations and charges laid against people. A copy of Ontario Society for the Prevention of Cruelty to Animals: By-law Number Nine is attached as **Exhibit "G"** to this my affidavit. A copy of OSPCA Annual Reports are attached as **Exhibit "H"** to this my affidavit.

10. To the best of my knowledge, the OSPCA is the only private organization with police powers in Ontario. As a private organization, the OSPCA is excluded from provincial oversight and accountability legislation. Most notably:
 - a. Pursuant to the *Police Services Act*, the OSPCA does not fall under the definition of a "police force", and OSPCA agents and inspectors do not fall under the definition of "police officer". This means that complaints about the OSPCA and its officers cannot be brought to Ontario's Independent Police Review Director pursuant to section 5 of the *Police Services Act*;
 - b. Pursuant to the *Ombudsman Act*, the OSPCA does not fall under the definition of a "governmental organization", which means that complaints about the OSPCA and its officers cannot be brought to Ontario's Ombudsman pursuant to the *Ombudsman Act*. The Ombudsman has recognized the problem with delegating legislative powers to non-governmental agencies with no or inadequate oversight. A copy of 2011-2012 Ombudsman Annual Report is attached as **Exhibit "I"** to this my affidavit. A copy of 2012-2013 Ombudsman Annual Report is attached as **Exhibit "J"** to this my affidavit; and
 - c. Pursuant to the *Freedom of Information and Protection of Privacy Act* and *Municipal Freedom of Information and Protection of Privacy Act*, the OSPCA does not fall under the definition of an "institution", which means that information about the OSPCA and policies of the OSPCA, as well as information being kept by the OSPCA about people subjected to investigations or other members of the public, cannot be accessed pursuant to the *Freedom of Information and Protection of Privacy Act* or *Municipal Freedom of Information and Protection of Privacy Act*. A copy of a document titled "Making an Access Request to a Police Service" is attached as **Exhibit "K"** to this my affidavit;
11. The OSPCA is on record confirming that proceeds from seized animals and revenues associated with recovering costs associated with seized animals are entered into the OSPCA general revenue accounts. Such accounts also serve to pay the salaries of

OSPCA Agents and Inspectors, meaning that OSPCA officers' salaries are directly linked to the financial products of their investigations. An excerpt from the cross-examination of OSPCA Chief Inspector Connie Mallory, on record as part of Court File No. SR11-992, is attached as **Exhibit "L"** to this my affidavit.


12. In recent years, the OSPCA has been suffering from increased financial deficits. I believe that such a situation with a police agency, with no government financial backing, creates a dangerous situation where decisions of the OSPCA through the course of their investigations may be prone to financial influence. A copy of OSPCA Audited Financial Statements are attached as **Exhibit "M"** to this my affidavit.
13. The OSPCA has expressly stated that it considers the expectations of donors when it enacts policy respecting its approach to enforcing animal welfare laws. More specifically, the OSPCA has recognized that its "tough" approach to law enforcement is expected from its donors - who ultimately pay for agent and inspector's salaries and resources. A copy of the OSPCA's summer 2006 magazine, *Animals' Voice*, is attached as **Exhibit "N"** to this my affidavit.
14. The OSPCA provides both shelter services and law enforcement. The OSPCA Act provides seizure powers and statutory authority to obtain ownership of animals through its law enforcement powers. The OSPCA also sells animals and uses stories associated with "rescued" animals to promote and inspire donations associated with its shelter services. I believe that these two components of the OSPCA are in an inherent and ongoing conflict of interest with each other, and it inevitably leads situations where seizures of animals may be influenced by financial interests of the OSPCA. A copy of

OSPCA press releases from the OSPCA's website are attached as **Exhibit "O"** to this my affidavit.

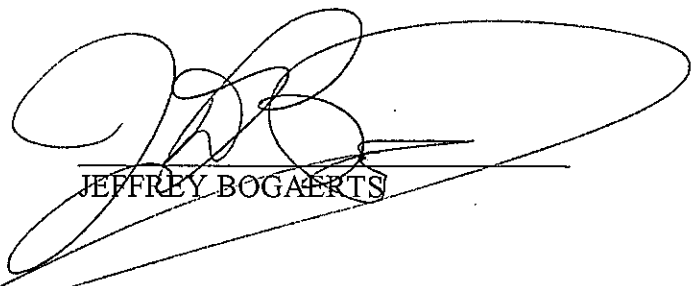
15. On March 1, 2009, amendments to the OSPCA Act came into force. The amendments included, for the first time, offence provisions prohibiting the causing or permitting animals to be in distress, and failing to provide prescribed standards of care. I believe that these offence provisions are, in pith and substance, criminal offences. These provisions interdict conduct in the interest of public morals. Even the OSPCA views these provisions in this way, describing these provisions as dealing with "animal abuse" and "animal cruelty". By enacting these provisions through provincial law, such sections of the *Act* deny individuals the procedural protections of the criminal law, while convictions under these provisions nevertheless impart the stigma of a criminal offence. A copy of OSPCA press releases from the OSPCA's website, describing such offences in this way, are attached as **Exhibit "P"** to this my affidavit.

16. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN before me)
at the City of Ottawa,)
in the Province of Ontario,)
on this 31st day of July, 2014.)



A commissioner etc.



JEFFREY BOGAERTS

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

AFFIDAVIT OF JEFFREY BOGAERTS
(sworn July 31, 2014)

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Lawyers for the Applicant

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JESSICA JOHNSON

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF JESSICA JOHNSON

(sworn August 6, 2014)

I, **JESSICA JOHNSON**, of The United Counties of Leeds Grenville, in the Province of Ontario,

MAKE OATH AND SAY:

1. I have had interactions with OSPCA in the past and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. I am 66 years old, disabled and live alone with companion animals in a home in a remote rural location of Ontario. I suffer from osteoarthritis, fibromialgia, chronic leg ulcers and am in need of a hip replacement that cannot be performed due to my other chronic health conditions. I cannot walk without assistance of a walker. I also suffer from depression. I receive treatment for all of my health conditions. It takes me longer to complete house chores, compared to a more able-bodied person, but I get everything done over the course of a day.

3. I live on a fixed Canada Post pension. I am effectively housebound with few visitors other than family. I currently reside with three small 'Yorkie-type' adult dogs, eight puppies from the same dogs, and two cats. All of my dogs live with me in my home. My feelings for my animals are as strong as if they were my own children.
4. Over the years, from time to time, I have allowed my dogs to breed and have sold the resulting puppies. I might receive between \$1000.00 and \$3000.00 in income for puppies sold in a given year.
5. Over the course of approximately 15 years, beginning in 1997, the OSPCA have harassed me about selling puppies. They accuse me of running a "puppy-mill", although I have never housed my dogs anywhere except in my house, nor have I ever been dependant on my dogs for income.

2011

6. In February and March of 2011, I suffered from an especially humiliating and upsetting experience at the hands of the OSPCA. At that time, OSPCA officers entered my home and seized all of my dogs. They claimed that my house was not clean enough to house dogs; however, they promised that if it was cleaned to their satisfaction, they would return my dogs. Although I did not agree with their opinion of my home, I cleaned it from top to bottom in order to get my dogs back.
7. The OSPCA returned four days later and agreed to return my dogs if I paid them \$2,449.51 for alleged boarding and care during the four day period when they had custody of my dogs. A copy of the Invoice dated March 8, 2011 is attached as **Exhibit "A"** to this my affidavit. I could not afford to pay it all at once, and asked to pay in

instalments. The OSCPA refused, kept the dogs and, presumably, sold or otherwise disposed of my dogs. Following the loss of my dogs, I fell into a state of severe depression.

8. My dogs were my only regular companions. After the 2011 seizure, I obtained other dogs to care for and keep as company.

2012

9. Beginning in May of 2012, I suffered from another especially humiliating and upsetting experience at the hands of the OSPCA.
10. It began following an argument I had with my neighbour, Barbara Hammond, about my dogs getting loose and running on her property. On May 8, 2012, I wrote Ms. Hammond a letter informing her that I would call the police if she came onto my property again.
11. I did not know at the time, but have since been informed by the OSPCA through disclosure, that the OSCPA received an "anonymous" complaint on May 11, 2012, about me respecting my dogs.
12. Around the same time, the OSPCA attempted to contact me and left a message. On May 16, 2012, I called the OSPCA and told them that my dogs were no longer loose.
13. On May 18, 2012, OSPCA Agent Hitchen executed a search warrant and came onto my property with OSPCA Agent Rene Baker, two OPP officers, and two unidentified individuals (later identified as Algonquin College students). A copy of the search warrant dated May 18, 2012 is attached as **Exhibit "B"** to this my affidavit. I was asleep at the time, in a chair in my living room, and was awoken by my dogs barking. Agent Hitchen entered my home through a bedroom window. She then opened the bedroom door and

walked through my house toward the front door. Upon seeing Agent Hitchen as she came through my house, I shouted "what are you doing in my house?" Agent Hitchen did not identify herself, or otherwise respond. She proceeded to the front door, unlatched it and permitted 5 other people to enter my home. I was shocked at what was happening. I believed that Agent Hitchen's entry into my home was illegal and called 911.

14. The OSCPAs then proceeded to inspect my home, take pictures and notes. Agent Hitchen then issued Orders to me with respect to my animals. A copy of the OSCPAs Orders dated May 18, 2012 are attached as **Exhibit "C"** to this my affidavit.
15. Unlike the last time, I contacted a lawyer, Kurtis Andrews. I could not afford to pay for legal services, however, so Mr. Andrews assisted me in what became a *pro bono* arrangement. I was informed by Mr. Andrews, and verily believe it to be true, that what followed involved legal costs that would have otherwise greatly exceeded \$30,000.00.
16. With the assistance of my lawyer, I appealed the OSPCA orders to the Animal Care Review Board [ACRB]. The OSPCA responded by retaining prominent criminal lawyer Clayton Ruby and a fellow partner of his firm. A hearing before the ACRB took place over the course of the next seven months. In the end, the ACRB found that only one of the OSPCA's orders was valid (requiring me to have one of my dog's, "Vickie", teeth cleaned and treated for gingivitis), and it ordered the OSPCA to pay me \$207.47 to compensate me for veterinarian costs associated with my other dogs. A copy of the ACRB decision dated January 31, 2013, is attached as **Exhibit "D"** to this my affidavit.
17. At the ACRB hearing, the two veterinarians who examined my dogs confirmed that such small breed dogs are renowned for having dental issues, and severe dental issues are normal and common. An excerpt of the ACRB transcript dated September 11, 2012, is

attached as **Exhibit "E"** to this my affidavit.

18. During the ACRB appeal, the OSPCA executed additional search warrants and again entered my property and home. A copy of the other search warrants, dated June 5, June 19 and September 7, 2012, are attached as **Exhibit "F"** to this my affidavit.
19. Also during the ACRB hearing, the OSPCA seized one of my dogs, "Logan". While in its care, the OSPCA determined that Logan was in perfect health. A copy of the veterinarian's report is attached as **Exhibit "G"** to this my affidavit. I was nevertheless invoiced over \$306.80 to get Logan back and cautioned that, if I did not pay the amount indicated, the OSPCA "may dispose of" my dog pursuant to section 15 of the *OSCPA Act*. A copy of the "Statement of Account" dated June 25, 2012, is attached as **Exhibit "H"** to this my affidavit. The OSCP A eventually waived the costs and returned Logan.
20. Also during the ACRB hearing, I was charged with committing offences pursuant to the *OSPCA Act*. A copy of the summons dated October 17, 2012, is attached as **Exhibit "I"** to this my affidavit. I eventually plead guilty to obstructing the OSPCA because I gave Vickie away due to the fact that I could not afford to have her teeth cleaned. I paid a fine of \$200.00 and all other charges were dropped.
21. Following the ACRB decision, the OSPCA appealed the \$207.47 award. At appeal, I did not participate due to legal costs and fear of costs sanctions if I lost. The OSPCA succeeded with their appeal in my absence. During their appeal, the OSPCA elected to not to call the veterinarians who examined my dogs and who had testified at the ACRB hearing. The OSPCA also elected to not tender the Veterinarian's reports on the dogs as evidence. A copy of the veterinarian's reports are attached as **Exhibits "G"** and **"J"** to this my affidavit. A copy of the Superior Court of Justice decision dated November 13,

2013, is attached as **Exhibit "K"** to this my affidavit.

22. My experiences described above have left me with profound feelings of fear, stress, anxiety, paranoia, humiliation and sense of violation. In order to deal with such issues, I have taken antidepressants in the past; however, I had to stop such medication due to a conflict with antibiotics needed to treat my leg ulcers. I have sought counselling from a community social worker. I have limited or no access to a mental health professional services due to my mobility issues and where I live.

23. I live in fear of the OSPCA again forcing their way into my home and seizing my dogs. I further feel as though I have no privacy or security of my home. As a disabled woman, with health issues described above, and a senior living alone in a relatively remote area, I also feel especially vulnerable to being subject to unaccountable abuse and violations of my rights.


24. I further have no idea of what constitutes "distress" as defined by the *OSPCA Act*. Given the above described conduct of the OSPCA, and their apparent definition of the term, it seems to me that it could conceivably include anything - including moderate tartar typically found with small dogs.

25. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN before me ^{Town of Lundhurst})
at the City of Ottawa,)
in the Province of Ontario,)
on this 6th day of August, 2014)



JESSICA JOHNSON



A commissioner etc.

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

AFFIDAVIT OF JESSICA JOHNSON
(sworn August 6, 2014)

GREEN & ASSOCIATES LAW OFFICES

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Lawyers for the Applicant

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF MENNO STREICHER

(affirmed August 13, 2014)

I, **MENNO STREICHER**, of the town of Milbank, Perth County, in the Province of Ontario,

AFFIRM AND SAY:

1. I am a Senior Bishop of the Milverton Old Order Amish Community and have had interactions with OSPCA in the past and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. I am 57 years old and was born and raised in the Milverton Old Order Amish Community. I was appointed Senior Bishop in 2002. I, like most people in our Amish community, have owned and cared for many animals during my lifetime, including livestock and dogs.
3. As Senior Bishop, I serve as the leader of the community, making top decisions that are agreed upon by the majority of the leaders of the community and maintaining the order of the community by ensuring that members of the community abide by such decisions.

4. As Senior Bishop, I am also an authority on the beliefs and traditions of the Old Order Amish. Such beliefs and traditions include the following:

- a. People should care for their animals properly and should never be cruel or abuse animals. However, God intended animals to serve the needs of people;
- b. Amish doctrine prohibits us from resisting state authority;
- c. Amish doctrine prohibits us from taking any action against the state or state authorities, regardless of any oppressive conduct of the state or state authorities;
- d. Amish doctrine prohibits us from resisting state authorities' requests to enter private property, including farms, barns and homes. In other words, Amish are prohibited from denying consent to enter private property when asked by state authorities;
- e. Amish doctrine prohibits us from taking any aggressive action against the state or state authorities, including:
 - i. Amish may not bring an application for a remedy under the *Canadian Charter of Rights and Freedoms*, or any other law, in response to any action of the state or state authorities upon us;
 - ii. Amish may not appeal a conviction or other decision of the Courts.
- f. When involved in court proceedings, Amish are expected to vet decisions and receive instructions through the Amish community's elders. Depending on the gravity of the situation and decisions to be made, the matter may require scrutiny and direction from more senior elders, including those from outside Canada.

5. Amish beliefs of non-resistance are taught from the bible, including from the following verses:

- a. (Titus 3:1-2) "1 Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work. 2 To speak evil of no man, to be no brawlers, but gentle, shewing all meekness unto all men"; and
- b. (Peter 2:17-20) "17 Honour all men. Love the brotherhood. Fear God. Honour the King. 18 Servants, be submissive to your masters with all respect, not only to those who are good and gentle, but also to those who are unreasonable. 19 For this finds favor, if for the sake of conscience toward God a person bears up under sorrows when suffering unjustly. 20 For what credit is there if, when you sin and are harshly treated, you endure it with patience? But if when you do what is right and suffer for it you patiently endure it, this finds favor with God."

6. *The Dordrecht Confession of Faith* contains the chief articles of the Amish general Christian Faith. Articles 13 and 14 provide us with direction and explain our faith with

respect to the above described beliefs. An English translation of *The Dordrecht Confession of Faith* is attached as **Exhibit "A"** to this my affidavit.

7. The following is an account of my recent experience with the OSPCA.
8. I live with my wife Viola Streicher on our farm near Millbank, in Perth County, Ontario. Over the course of several years, we farmed a number of disciplines, including raising pigs, horses, sheep and dogs as well as growing hay and grain. In 2009, we brought in hired help for our livestock business due to our age and health conditions.
9. In 2009, my wife Viola and I received a municipal license to operate a dog kennel. Between 2009 and 2012, we bred and sold Boxers, Cocker Spaniels, Poodles and Golden Retriever breed dogs. Several other people in our community also raise and sell dogs.
10. On Sept 14, 2012, our lives changed forever when an OSPCA truck came into our laneway. Inspector Carol Vanderheide told us she had a complaint and wanted to see our dogs. We were not asked for consent, but nevertheless did not resist and proceeded to show her our dogs.
11. At the time, one of our dogs, Josie, was being treated by our veterinarian after being injured in a fight with another dog. Inspector Vanderheide insisted upon moving Josie so that she could examine her. In the process, the wound that was being treated broke open. Inspector Vanderheide then accused us of not providing proper care to our dogs.
12. We loved our dogs and kept very good care of all of them. My wife Viola made this clear to Inspector Vanderheide. Inspector Vanderheide became visibly angry and ordered Josie to be seen by a veterinarian immediately. Of course, given the injury caused by the Inspector, we would have done so without being ordered.

13. In addition to the order to take Josie to a veterinarian, Inspector Vanderheide also issued several other OSPCA Orders. Some of the orders were against our religion, including to provide improved lighting and ventilation, despite the obvious fact that we do not receive any hydro service. We were also ordered to provide toys to our dogs. None of the orders served any purpose, because we were already providing adequate care to all of our dogs. A copy of the Orders are attached as **Exhibit "B"** and **Exhibit "C"** to this my affidavit.
14. On or around November 27th, 2012 we sought a review of the Orders before the Animal Care Review Board [ACRB]. Before the scheduled hearing date, Inspector Vanderheide sent us a registered letter which contained a "Notice of Modification or Revocation" dated November 29th, 2012 which revoked all of the Orders. A copy of the "Notice of Modification or Revocation" is attached as **Exhibit "D"** to this my affidavit. As a result of the revocation, the ACRB notified us that our matter would not be heard because the remedy being sought had become moot. A copy of the notice from the ACRB dated November 30, 2012, is attached as **Exhibit "E"** to this my affidavit.
15. On or around November 21, 2012, Inspector Vanderheide returned to our farm and served my wife and I with a Summons charging us each with 9 animal cruelty charges. A copy of the Summons is attached as **Exhibit "F"** to this my affidavit.
16. We did not believe that we were guilty of any offence. Despite our beliefs that we should not resist the actions of the State, I decided that in the best interest of ourselves and fellow Amish members, we would defend ourselves. As a Senior Bishop of our Old Order Amish Community, this decision caused a tremendous amount of stress in the family and the church. The church was in such an uproar over this that Bishops came

from the United States to settle things down. The Bishops travelled from the United States by bus and the cost of the trip was paid for by our Church community.


17. Eventually, it was decided that we had to cease resistance. We plead guilty in order to put an end to the matter. With a guilty plea from Viola, the Crown agreed to a penalty which involved a limitation on the number of dogs we were allowed to have on our property for a period of one year, plus two years of warrantless inspections requiring 6 hours notice by the OSPCA. With great reservation, and without believing it to be true, Viola plead guilty.

18. The ordeal described above has been a very stressful and humiliating experience. Inspector Vanderheide, together with Township officials, are aware of my position as Senior Bishop of my community. To my knowledge, no other kennel in Perth East or Wellesley Township has been targeted in the same manner or with the same vigor. I verily believe that the OSPCA targeted our kennel, starting at the top with a Senior Bishop, in order to set an example to others within the Old Order Amish Community.

19. I make this affidavit in support of the within application and for no other or improper purpose.

AFFIRMED before me)
at the City of Woodstock,)
in the Province of Ontario,)
on this 13th day of August, 2014)


MENNO STREICHER



A commissioner etc.

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

AFFIDAVIT OF MENNO STREICHER
(affirmed August 13, 2014)

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Lawyers for the Applicant

TAB 6

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF ANNE PROBST

(sworn August 13, 2014)

I, ANNE PROBST, of the town of Drumbo Ontario, Oxford County, in the Province of Ontario,

MAKE OATH AND SAY:

1. I have had interactions with OSPCA in the past and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. My husband and I operate a beef farm.
3. I prepared the following affidavit after refreshing my memory using notes I took at the time of the below described events. A copy of my notes are attached as **Exhibit "A"** to this my affidavit.
4. On Tuesday February 21, 2006, I let our 12 week old Catahoula puppy, Lexi, outside to urinate and defecate. A short time later I heard her 'yowling' and found my neighbour's large Rottweiler type dog on top of her. I scared him away and brought Lexi inside.

5. I then called my veterinarian, Dr. Terry Fried. Because he was not immediately available, I then called Hickson Veterinarians, a Division of Tavistock Veterinarians, and brought Lexi into the Tavistock Veterinarians.
6. It was determined by the Tavistock Veterinarians that Lexi had a broken leg. The Tavistock Veterinarians put a Robert-Jones bandage on her leg and sent her home the same day with 7 days of pain medication. I was told to expect advice regarding any further recommended care within the next couple of days.
7. On Wednesday February 22, 2006, I placed a call to Dr. Fried and discussed the previous day's events. Because he is our regular veterinarian, and we trust him through past experience, we decided to have him provide all further care with respect to Lexi.
8. On Thursday February 23, 2006, I called the Tavistock Veterinarians and arranged to pick up Lexi's x-rays. On Friday February 24, 2006, I called Dr. Terry Fried and left a message to arrange a time to view Lexi's x-rays. Later the same day, I called the Tavistock Veterinarians and confirmed that I would no longer need their services because our regular veterinarian would be providing further care.
9. On Monday morning, February 27, 2006, I went into town to get a cage and other supplies for Lexi's care. Upon my return, at approximately 12:15 p.m., I was confronted by two OSPCA agents, Agent Dawn Young and Inspector Rebecca Tanti, who were parked in a truck behind my house.
10. By way of disclosure regarding a future Animal Care Review Board [ACRB] appeal, as described below, I later learned that the agents had conducted an investigation on my property by searching our farm and taking pictures of our farm while I was not home.

11. Inspector Tanti proceeded to inform me that she was there regarding a criminal case of animal abuse involving a dog. At the time, Lexi was still on the pain medication prescribed by the Tavistock Veterinarians. I was told that if I did not cooperate, they would get a warrant and remove Lexi.
12. Inspector Tanti then issued an OSPCA order to have Lexi examined by a veterinarian within 30 minutes. A copy of the Order is attached as **Exhibit "B"** to this my affidavit. I suggested that it was an impossible request, and pointless given that I had already taken Lexi to the nearest clinic, the Tavistock Veterinarians. I was then told that I could be charged if I did not comply. Inspector Tanti and Agent Young then proceeded to the end of my laneway and parked on the road.
13. In a sincere effort to satisfy the Agents, I called Dr. Fried, who is a mobile veterinarian, and asked him to come as soon as possible. Unfortunately, he was two hours away, but said he would come as soon as possible.
14. At approximately 2:40 p.m., Inspector Tanti and Agent Young returned up my laneway, accompanied by 3 police officers in 3 police cruisers. I told her that Dr. Fried was coming as soon as possible. She indicated that she had spoken to him on the telephone, but provided no more information. She then informed me that she was seizing Lexi. Up to this point, she still had not even looked at Lexi who was in my house.
15. Because I believed I had no choice and was fearful of criminal charges, I gave Lexi to the OSPCA. Lexi was wagging her tail when she was taken from our house. The OSPCA then put Lexi in a cage and drove away with her in the back of their pickup truck.

16. Shortly after Lexi was seized, I placed a call to Dr. Fried to let him know that Lexi was gone. I was told by Dr. Fried, and verily believe it to be true, that he had spoken to Inspector Tanti before they returned and they had agreed to wait for him and receive a report from him about Lexi by fax. A copy of a letter from Dr. Fried outlining this call is attached as **Exhibit "C"** to this affidavit.
17. I was told by Dr. Fried, and verily believe it to be true, that after I spoke to him, he called Inspector Tanti again, but this time she refused to have any discussion with him. She also refused to divulge where Lexi was being taken.
18. The next morning, on Tuesday February 28, 2006, we made several efforts to find out what was going on with respect to Lexi. We contacted Inspector Tanti's superiors with the OSPCA, but were told that they could not provide us with any information.
19. On the same day, we contacted a lawyer, Mr. Brian Budden, who then made efforts to find out what was happening. I was told by Mr. Budden, and verily believe it to be true, that he was informed that Lexi was brought back to the Tavistock Veterinarians by the OSPCA. By way of disclosure regarding a future ACRB appeal, as described below, I later learned that this clinic called in a complaint about Lexi to the OSPCA after we informed them that we were obtaining veterinarian services from a different veterinarian, and this clinic also provided the OSPCA with a verbal recommendation to seize Lexi. Following all of this, the same clinic had resumed care of Lexi by authority provided by the OSPCA.
20. At approximately 1:30 p.m. that same day, my husband informed the OSPCA that we wanted Lexi to be transferred to a veterinarian other than the veterinarian who had made the original complaint. At approximately 4:00 p.m., Inspector Tanti informed us that Lexi

had been transferred to another veterinarian, but they would not provide us with any more information.

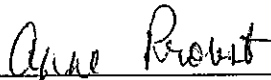
21. On Wednesday March 1, 2006, Inspector Tanti arrived at our farm with a Notice of Removal and invoice for the costs of removal. Later that day, I called the OSPCA for an update and was told Lexi was fine, but I could not be given any more information. By way of disclosure regarding a future ACRB appeal, as described below, I later learned that Lexi's leg had been amputated by West Brant Animal Hospital that same day. A copy of West Brant Animal Hospital invoice is attached as **Exhibit "D"** to this affidavit.
22. I called Inspector Tanti every day for several days following Lexi's seizure. I was only ever told that Lexi was fine, but would not be given any other information.
23. On Thursday March 2, 2006, I filed an appeal to the Animal Care Review Board to have the Notice of Removal revoked and Lexi returned. A few days later, Inspector Tanti provided the OSPCA's disclosure which revealed, for the first time, that Lexi's leg had been amputated. I was also given a bill for the amputation.
24. On Wednesday March 15, 2006, my appeal to the Animal Care Review Board was held. The Board revoked the removal order because it involved an unreasonably short compliance time to obtain veterinarian care. All of the costs claimed by the OSPCA were also ordered to be "borne by the Society except for the costs associated with Dr. Ricker's examination and treatment of Lexi on February 21, 2006."
25. The Board further found that "there was ample evidence that the dog was not in pain after the first few days and no evidence to the contrary was presented by the Society" and "[t]he seizure cannot be subsumed under Section 14 1(a) because no advice in writing to

the effect that the dog's health and welfare required removal (ie a signed Certificate of a Veterinarian), as a result of an examination of the dog at the time of seizure, had been issued by Dr. Ricker." A copy of the ACRB decision is attached as **Exhibit "E"** to this my affidavit.


26. On Sunday March 12, 2006, my husband and I wrote a letter to then OSPCA Chief Inspector Mike Draper outlining the events of Lexi's seizure and what we felt to be unprofessional and disrespectful behaviour on the behalf of Inspector Tanti. A copy of our letter is attached as **Exhibit "F"** to this my affidavit. Chief Inspector Draper replied in total disagreement, defended his Inspectors' conduct, and accused Dr. Fried of being responsible for the incident. A copy of Chief Inspector Draper's reply is attached as **Exhibit "G"** to this my affidavit. Instead of taking any action to address the conduct of Inspector Tanti, Chief Inspector Draper defended his inspector and filed a complaint against Dr. Fried with the Ontario College of Veterinarians.

27. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN before me)
at the City of Woodstock)
in the Province of Ontario,)
on this 13th day of August, 2014)



ANNE PROBST



A commissioner etc.

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

AFFIDAVIT OF ANNE PROBST
(sworn August 13, 2014)

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TAB 7

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF DR. LAWRENCE E. GRAY
(sworn August 6, 2014)

I, **DR. LAWRENCE E. GRAY**, of the village of Winchester, Dundas County, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I have had many interactions with the Ontario Society for the Prevention of Cruelty to Animals [OSPCA] and animal welfare matters in general over a period of about 60 years, and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. I graduated from Ontario Veterinary College of Ontario in 1955 with Honours and a Public Health award. I practiced veterinary medicine in Winchester, Ontario, between August of 1956 and July 1, 2014. Throughout such times, I operated a large animal and mixed practice from my veterinary clinic and office at 593 Main Street, Winchester, Ontario.
3. I have served on counsel and as reeve on the local municipality for about 20 years until 1992. I have served on a Volunteer Board as a member for Carefor Health and Community Services for Eastern Ontario and have recently resigned after approximately 20 years of active participation.

4. I was first involved in an animal welfare case during my undergraduate studies in or around 1953. Together with other students, I was assigned to attend a farm where a farmer was accused of failing to provide sufficient feed to cattle. At the time, we were assigned to assess whether or not the farmer was satisfying a requirement to provide sufficient feed.
5. I recall another incident in or around 1957-58 when OSPCA personnel were summoned from Toronto to Morrisburg to deal with a police investigation involving a person who was fraudulently shipping stray and unwanted dogs to Western Canada under the pretence that the dogs were trained 'cattle dogs'. When the dogs arrived c.o.d., and were clearly untrained crossbreeds, the dogs were abandoned with the railroad. I was asked to provide veterinarian advice with respect to the investigation. However, the OSPCA inspectors from Toronto were too impatient to wait while I treated my more important and truly sick animals, and so they cancelled the request for my involvement
6. From the mid-1950s to the present, I have been involved in several animal welfare cases, with some investigations being conducted by the OPP, and others (especially more recently) being conducted by the OSPCA. Such cases involved a variety of animals, including small and large animal. My involvement has included advice on animal health and care, assessments of animal health and care, and expert testimony regarding same in court.
7. Over the years, I have witnessed a marked change in the way animal welfare cases are handled by the authorities. Up until around the mid-1980s, such cases were dealt with in a manner more focussed on helping an individual who might be experiencing difficulty with caring for their animals. During those times, it was my opinion that the OSPCA and OPP would endeavour to work with individuals to better educate them and, in some cases involving hardship, assist efforts to provide feed and /or new homes for the animals.
8. Since around the late 1980s, and especially over the past decade, the OSPCA has taken a much more aggressive approach to dealing with animal welfare cases. Over the past approximately 25 years, instead of using resources to help people, the OSPCA have practiced a more 'dictatorial' approach. This approach includes issuing orders to require exceptionally high standards of care, seizures of animals that did not, in my opinion, need

to be seized, and measures which require animal owners to pay the OSPCA significant amounts of money in order to have their animals returned.

9. In some relatively recent cases, I have witnessed the OSPCA issue orders that would be nearly impossible to comply with, despite my advice to the contrary, such as to providing three inches of bedding for dairy cattle where rubber mats already existed.
10. In some relatively recent cases, I have witnessed the OSPCA issue orders with impossible compliance timelines, despite my advice to the contrary, sometime requiring non-urgent action within a few days.
11. In some relatively recent cases, I have witnessed the OSPCA issue orders that do not benefit animals, such as to house dogs in cramped indoor conditions using barley straw as bedding, instead of roomier outdoor areas.
12. In some relatively recent cases, I have witnessed practices whereby the OSPCA brings its own veterinarian to an investigation for the purpose of obtaining an opinion necessary to remove animals. In more than one instance, I refused to recommend the removal of animals, and so the OSPCA sought the opinion of their own veterinarian, brought in from a great distance, in order to seize the animals. In other instances, the OSPCA has simply refused to accept my recommendations.
13. I have also witnessed the OSPCA impose animal welfare standards respecting farm animals which are not consistent with normal farming practices. I verily believe that the OSPCA, or individual OSPCA personnel, have especially high standards expected of agriculture animals which are neither practical nor feasible to accommodate.
14. In some relatively recent cases, I have witnessed the OSPCA seize animals and, in the process, cause more distress to the animals than they would ever suffer if left with their owner. For example, when horses are seized, the process involves horses being rounded up and loaded onto trailers. The horses are then subject to further distress when they are subject to lengthy transport. I do not believe that the OSPCA gives sufficient concern to the stress caused when animals are removed from their familiar surroundings and people.
15. I have also been involved in situations where the OSPCA seizes animals and then, a few days later, offers to return the animals if the person pays costs of seizure and boarding.

Where people cannot pay to have their animals returned, the OSPCA will sell the animals and keep the proceeds. Sometimes, the same individuals are subject to this practice repeatedly, year after year, and it typically involves people of limited financial means.

16. I have also witnessed situations where the OSPCA frustrates people with their orders to a degree where they simply give their animals to the OSPCA. In such cases, an order is issued, then another, and then another in what seems to be an endless process. Often the orders involve highly subjective interpretations of distress, such as the quality of feed, grooming, and housing. In one case, after unsubstantiated accusations, the subject quality-bred dogs were given to the OSPCA out of frustration and then appeared for sale in the local newspaper within a week.
17. I have also witnessed a practice by the OSPCA, especially in recent decades, where an inspector will seem to deliberately target a particular individual and repeatedly subject the individual to orders, inspections, and seizures. In at least some cases, the OSPCA orders, inspections and seizures have been undertaken despite my expressed opinion that it is unwarranted. Such conduct by the OSPCA would qualify as harassment in my opinion and, in at least some cases, I believe that the purpose was to frustrate the individual to a degree where he or she gives up owning animals.
18. A notable case involved a Mr. Ralph Hunter from Iroquois Ontario. In that case, the OSPCA attended Mr. Hunter's farm continuously over a period of 25 years - despite his expressed desire for them to leave him alone. On more than one occasion, the OSPCA seized his animals despite my advice to the contrary. On more than one occasion, the OSPCA seized his horses (multiple truckloads of horses on one occasion), subjected the horses to substantial distress in the process, and then a few days later offered to return his horses if Mr. Hunter paid a substantial sum for their return. I never understood how the OSPCA could conclude that the conditions warranted removal one day, and then offer to return the animals a few days later. To the best of my knowledge, Mr. Hunter has never been convicted of an animal welfare offences.
19. In summary, I believe that the OSPCA has failed terribly in considering peoples' circumstances before aggressively pursuing punitive measures. I believe that the OSPCA could use its resources better by helping people take care of their animals, rather than

immediately seeking punitive measures. I further believe that animals' best interests are often not well served by OSPCA policy and procedures. I further believe that the OSPCA's interpretation of "distress" is highly subjective and difficult to predict. Finally, I believe that some people are deliberately targeted by the OSPCA, and are unduly subjected to OSPCA scrutiny and harassment.

20. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN before me)
at the village of Winchester,)
in the Province of Ontario,)
on this 6th day of August, 2014)



Commissioner for Taking Oaths



DR. LAWRENCE E. GRAY

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
PERTH, ONTARIO

DR. LAWRENCE E. GRAY
(sworn August 6, 2014)

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Lawyers for the Applicant

TAB 8

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JEFFREY BOGAERTS

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

AFFIDAVIT OF CARL R. NOBLE

(sworn August 13, 2014)

I, **CARL NOBLE**, of the Municipality of South Bruce Peninsula, in the Province of Ontario,

MAKE OATH AND SAY:

1. I was a former board member of the Ontario Society for the Prevention of Cruelty to Animals [OSPCA] and as such have direct knowledge of the matters herein deposed. Unless I indicate to the contrary, these matters are within my own knowledge and are true. Where I have indicated that I have obtained facts from other sources, I have identified the source and I believe those facts to be true.
2. I have been a beef farmer continually since 1968 and currently raise registered Herefords.
3. Between 1994 and 2003, I volunteered as a director of the "Grey-Bruce Humane Society" [GBHS], as it was known then. Between 2003 and 2006 I volunteered as a director of the "Grey-Bruce OSPCA" [GB-OSPCA].
4. As a director of the GBHS, my responsibilities included:

- a. Fund-raising;
 - b. Attending regular meetings;
 - c. Transporting animals as required;
 - d. Planning and project coordination.
5. Between 1998 and 2006, I also volunteered as a provincial director of the OSPCA.
6. As a director of the OSPCA, my responsibilities included:
- a. Attending regular meetings;
 - b. Attending annual meeting.
 - c. In 2006, I was the chair of the OSPCA "Investigations Committee".

Grey-Bruce Humane Society

7. The GBHS operated for many years until 2003, during which times it functioned to provide care for animals in the Counties of Grey and Bruce. During these times, it was an "affiliate" organization of the provincial OSPCA and operated pursuant to the powers of the *OSCPA Act*.
8. While I was part of the organization, the GBHS operated on an annual budget of approximately \$7,000.00. The philosophy of the GBHS was to assist animal owners as much as possible to ensure that their animals were being cared for adequately. For example, when cattle were found without enough food, the GBHS would undertake to supply food until the owner could be found and the GBHS was satisfied that the cattle would continue to receive adequate care. The GBHS seized animals only as a last resort, and only charged animal owners when there was no other option.
9. Before 2003, all locally collected donations to the OSPCA went towards the GBHS operating revenues.

10. In or around 2003, the provincial body of the OSPCA revoked the GBHS affiliation purportedly because it was not using provincially sanctioned agents /inspectors. In 2004, the OSPCA informed the GBHS that it could no longer use the name "Humane Society" and sued the GBHS for an injunction to prevent the name from being used.
11. In 2003, immediately after the OSPCA's efforts to strip the GBHS of its affiliation and powers, the OSPCA began operation of the GB-OSPCA. At this time, the former GBHS board, including myself, were effectively assigned as board of the new GB-OSPCA. From 2003 onward, all locally collected donations to the OSPCA went directly towards the provincial OSPCA's operating revenues, rather than to the local detachment.
12. As part of the new branch designation, the OSCPA employed its own inspector, Ms. Jennifer Bluhm, as the OSPCA inspector for Grey and Bruce Counties. Volunteer Agent Cheryl Roberts was also designated by the provincial body to enforce animal welfare law in the region. Beginning at that time, the new GB-OSPCA operated on a budget of approximately \$52,000.00, with around \$50,000.00 allocated to Ms. Bluhm's salary.
13. Inspector Bluhm is now "Senior Inspector" for the South-western Ontario region.
14. Inspector Bluhm and Agent Roberts practiced a much more aggressive approach to animal welfare law enforcement. They operated with less interest in helping people, and more interest in enforcing penalties, seizing animals and laying charges. In one instance, while confiding in me, I recall Agent Roberts patting her badge and exclaiming "this is power", with the obvious inference that she enjoyed exercising the power she possessed as an OSPCA Agent.
15. In particular, Inspector Bluhm and Agent Roberts made it a practice to aggressively seize

animals in order to compel animal owners to pay fees for their return (purportedly authorized by sections 14, 15 and 15.1 of the *OSPCA Act*). In my opinion, such actions were often extortive, coercive and /or fraudulent.

16. I was informed by veterinarian Dr. Kevin Belbeck, and I verily believe it to be true, that he was pressured by the OSPCA to recommend seizures of peoples' animals in cases where he felt it was not necessary. Subsequent to this, the OSPCA brought a veterinarian in from a distant county in order to obtain their desired recommendations for seizures.
17. Soon after Inspector Bluhm's appointment, she effectively became in charge of the GB-OSPCA. She dictated a number of policy changes for the organization, including with respect to raising revenues for the OSPCA. Inspector Bluhm insisted on employing practices aimed at raising greater revenues. Such revenues were necessary to pay for her salary. In time, as a result of Inspector Bluhms' practices, the former GBHS board disintegrated and was replaced by appointees of the OSPCA.
18. In or around early 2013, the OSPCA announced that it would cease operations of the GB-OSPCA, citing financial issues. As part of this announcement, the OSPCA suggested that the local Grey and Bruce County municipalities pay for OSPCA services. To the best of my knowledge, no such agreements were ever entered into and OSPCA's involvement in Grey-Bruce Counties ended on or around June 1, 2013.
19. I verily believe that the OSPCA's pull-out from Grey and Bruce Counties was a ploy to raise revenues from municipal governments. Several municipal by-laws referenced the OSPCA, assuming continued operation of the OSPCA, and so its pull-out caused significant problems associated with the enforceability of local by-laws.

20. The remains of the GBHS facilities now operate as the "Grey-Bruce Animal Shelter", offering limited animal shelter services only.

Director - Provincial OSPCA

21. Following the dissolution of the GBHS, and my subsequent appointment to the GB-OSPCA board, I was also appointed to a position on the provincial OSPCA board, and remained in that position for eight (8) years until May of 2006.
22. As a member of the provincial board, I was supposed to assist in directing policy and decisions of the OSPCA. However, in practice, the executive and the staff made all of the substantive decisions.
23. For the most part, the board was not even provided with complete information about the organization or on matters we were supposed to direct. The executive and staff simply failed to share such information.
24. As part of my role as a board member, I participated on the Investigations Committee for one year in 2006.
25. During my time on the Investigations Committee, I recall debating a request from the Chief Inspector to outfit inspectors with bullet proof vests, handcuffs, batons and hand-guns for personal protection purposes. I was not in favour of permitting any of the requested items because there was no evidence that it was needed. However, the request was granted and inspectors are now outfitted with all of these items except for hand-guns.
26. During my time on the Investigation Committee, I was provided with a copy of the OSPCA Inspector and Agent Training Manual. A copy of the OSPCA Inspector and Agent Training Manual given to me is attached as **Exhibit "A"** to this my affidavit. I

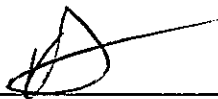
understood that the manual was important information because it contained information I needed to form opinions and make recommendations as a member of the Investigation Committee. Since then, I have discovered that at least part of the manual was removed from the copy provided to me. The OSPCA's Animal Welfare Position Statements were removed from Section 1 of the copy given to me. A copy of the OSPCA's Animal Welfare Position Statements is attached as **Exhibit "B"** to this my affidavit. This section outlined the OSPCA's position on various animal welfare issues, and the goals the OSPCA wished to achieve through enforcement of the law. I verily believe that this section was omitted deliberately in order to keep an activist-type agenda secret from its own board members. Had I seen this document, I would have certainly taken issue with the policies described therein - especially the positions on "Farm and Agriculture Animals".

27. In May of 2006, I, along with 26 board members, resigned in protest to the OSPCA's direction regarding policy and principles, aggressive investigative and enforcement tactics, and lack of financial disclosure to board. We all represented moderate voices on the board, compared to the other members' extreme views on animal welfare issues and activism. Some members of the board would certainly qualify as animal rights activists in my opinion. We were ultimately replaced by similar activist types.
28. I specifically recall one especially disturbing incident at an OSPCA meeting (I believe, but am not certain, that it was a Investigations Committee meeting) when Chief Inspector Mike Draper, as he was then, proudly proclaimed that:
 - a. "every farm is an opportunity" to seize animals, issue orders and lay charges; and
 - b. when the OSPCA charges someone, the law makes it so they are "guilty until proven innocent".

29. In 2008, a Justice Committee report was released dealing with issues related to the operation of the OSPCA. I testified as part of the preparation of that report. A copy of the Justice Committee report is attached as **Exhibit "C"** to this my affidavit.

30. I make this affidavit in support of the within application and for no other or improper purpose.

SWORN before me *Woodstock*)
at the City of Ottawa,)
in the Province of Ontario,)
on this 13th day of August, 2014)



Commissioner for Taking Oaths



CARL R. NOBLE

JEFFREY BOGAERTS
Applicant

-and-

ATTORNEY GENERAL OF ONTARIO
Respondent

Court File No. 749/13

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APPLICATION RECORD

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