

FOR IMMEDIATE RELEASE:

Court rules that the Application to question the constitutionality of the *OSPCA Act* will proceed

Perth, Ontario – June 15, 2016 – The Honourable Mr. Justice J.M. Johnson of the Superior Court of Justice ruled against a motion by the Attorney General for Ontario [AGO] to strike out an Application to question the constitutionality of the *OSPCA Act*. Had the AGO been successful with its motion, the Application would have been dismissed. As a result of the decision, the Application will proceed to be determined on its merits.

Ottawa lawyer Kurtis Andrews was counsel for the Applicant, Mr. Jeffery Bogaerts of Smiths Falls.

Hart Schwartz of the Ministry of the Attorney General was lawyer for the AGO.

The Application was filed at the Lanark County Courthouse in Perth Ontario on October 18, 2013. The purpose of the Application is to determine whether or not the *OSPCA Act* (1) is unconstitutional by granting police powers to a private organization without adequate oversight, accountability and transparency, (2) is unconstitutionally vague and /or overbroad with its definition of “distress”, (3) is unconstitutional by authorizing unreasonable searches of peoples’ homes, farms and seizures of their animals without judicial authorization or oversight; and (4) legislates criminal law and therefore falls outside of the province’s constitutional jurisdiction.

In coming to his conclusion, the court found that Mr. Bogaerts had public interest standing to bring the Application.

In support of its findings, the court also found that “the grounds and legal basis for the Applicant’s Application [were] properly set out in [the] Notice of Application and Notice of Constitutional Question” and “the Notice of Application and Constitutional Question both raise[d] serious justiciable issues”.

The court further found that “[Mr. Bogaerts has] a real stake and /or genuine interest in the constitutionality of the Act” and that the Application is a reasonable and effective way to bring the issues before the courts.

In addition to its motion to strike out the Application, the AGO also brought a motion to strike the Applicant’s evidence. The AGO was partially successful in this regard, with the court ordering that the affidavit evidence of persons who have had various issues with the *OSPCA* be struck out. The affidavit evidence of Mr. Bogaerts himself was left primarily intact.

Overall, Mr. Andrews and Mr. Bogaerts are very pleased with this decision and look forward to the opportunity to have the Application determined on its merits.

For more information on the Application, see www.fixthelaw.ca.

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