Court File No. C66542

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Respondent (Appellant in appeal,
Respondent in cross-appeal)

-and-

JEFFREY BOGAERTS

Applicant (Respondent in appeal
Appellant in cross-appeal)

FACTUM OF THE RESPONDENT (APPLICANT, APPELLANT IN CROSS-APPEAL)

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PART I: NATURE OF THE CASE AND MATTERS AT ISSUE

> [A]lthough charged with law enforcement responsibilities, the OSPCA is opaque, insular, unaccountable, and potentially subject to external influence, and as such Ontarians cannot be confident that the laws it enforces will be fairly and impartially administered.
>
> *Bogaerts v. Ontario (Attorney General)*, [2019] O.J. No. 5 (Ont. S.C.J.) at ¶91.

1. This appeal is about the constitutionality of the delegation of police powers to a private organization without any oversight. The case essentially asks whether there should be any constitutionally-mandated safeguards legislated when police powers are prescribed to a private organization.

2. The OSPCA is a private charitable organization created by statute 100 years ago. The organization is governed by an independent board of directors. The organization sets its own goals, objectives and policy, including as it relates to law enforcement that it carries out. The organization receives some funding from the province, but a substantial portion of its investigations budget (~1/3 or $1M) must come from private donations.

3. Sections 11, 12 and 12.1 of the *Ontario Society for the Prevention of Cruelty to Animals Act* [hereinafter the "*OSPCA Act*" or simply the "Act"] delegate police powers to the

OSPCA. These sections of the Act are being challenged under section 7 of the *Charter*.

4. The court below found that the impugned sections of the *OSPCA Act* violated section 7 of the *Charter*. In coming to this conclusion, Justice Minnema recognized a new principle of fundamental justice, namely that "law enforcement bodies must be subject to reasonable standards of transparency and accountability".

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶86.

5. In addition to finding that the *OSPCA Act* violated the newly recognized principle, Justice Minnema also found that the structure of the OSPCA created by the *OSPCA Act*, "results in potential for conflicts of interest" and "the OSPCA is opaque, insular, unaccountable, and potentially subject to external influence, and as such Ontarians cannot be confident that the laws it enforces will be fairly and impartially administered".

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶85 & 91.

6. The Appellant [hereinafter "Ontario"] appeals the decision. In essence, Ontario's position is that it may delegate police powers, including entry into people's homes, to any organization at its complete discretion without any constitutionally mandated oversight.

7. In addition to appealing Justice Minnema's findings regarding the application of section 7 of the *Charter*, Ontario is also appealing Justice Johnston's discretionary finding that the Applicant, Mr. Bogaerts, qualified for public interest standing. Mr. Bogaerts is an animal owner and a paralegal who has been involved in *OSPCA Act*-related cases for many years through his professional and volunteer work.

Part II: Summary of Facts

The Applicant

8. Mr. Bogaerts is a paralegal who deals with *OSPCA Act* cases. He developed a genuine interest in *OSPCA Act* matters first by volunteering his time (i.e. providing transportation

and direction) to assist vulnerable people (i.e. shut-ins) who were dealing with *OSPCA Act*-related issues. His involvement in these cases eventually led him to become a paralegal licensed in Ontario. He is also an animal owner.

Bogaerts v. Ontario (Attorney General), [2016] O.J. No. 3251 (Ont. S.C.J.) at ¶18.

Affidavit of Jeffery Bogaerts, at ¶5-7, Respondent's Compendium tab 95, pp. 96-97.

The OSPCA and the OSPCA Act

9. The OSPCA is a private organization that is entirely independent from the government.

Affidavit of Lisa Kool, at ¶5, Respondent's Compendium tab 3, pp. 100-101.

Cross-examination of Connie Mallory, transcript p. 7, q. 13-18; Respondent's Compendium tab 1, p. 5.

Lisa Kool, Ministry of Community Safety and Correctional Services, answer to undertaking, Sessional Paper No. P-53; Respondent's Compendium tab 4, p. 105.

10. The OSPCA is "not an agent, joint venture, partner or employee of the [government of Ontario]".

Exhibits 7(A) & 7(C) – 2013 & 2015 Transfer Payment Agreements at Articles 22 and 23 respectively; Respondent's Compendium tab 5, pp. 121 & 171.

11. Policies and practices of the OSPCA, as it relates to its statutory powers, including police powers, are established internally by the OSPCA.

Cross-examination of Connie Mallory, transcript pp. 88-91, q. 388-400; Respondent's Compendium tab 1, pp. 61-64.

12. The OSPCA, as an organization, is comprised of four key components: (1) investigations; (2) animal sheltering; (3) rescue and relief; and (4) spay and neuter clinics. All of these components are operated under the authority of one board of directors, one CEO, and one finance department.

Cross-examination of Connie Mallory, transcript pp. 7-11, q. 19-23, 27-28, 38-42; Respondent's Compendium tab 1, pp. 5-9.

13. The chain of command related to the investigations wing of the OSPCA flows as follows: (1) agents report to inspectors; (2) inspectors report to regional inspectors; (3) regional

inspectors report to senior inspectors; and (4) senior inspectors report to the Chief Inspector. The Chief Inspector of the OSPCA is appointed by the CEO. At the time when the Application was heard, Connie Mallory was the Chief Inspector of the OSPCA.

Cross-examination of Connie Mallory, transcript pp. 91 & 144, q. 401-402 & 648;
Respondent's Compendium tab 1, p. 64 & 77.

14. Until 2013, the OSPCA had been entirely responsible for raising its own revenues to pay for its law-enforcement obligations. Before this time, the OSPCA had been operating with financial deficits in the millions of dollars. In 2013, the OSPCA and the Ontario government entered into a Transfer Payment Agreement [TPA] that provided $5.5 million dollars in funding to be used for various purposes, including law enforcement.

Exhibit 5(M) - OSPCA Audited Financial Statements for years ended 2009-2012;
Respondent's Compendium tab 6, pp. 191-255.

Affidavit of Lisa Kool, at ¶7, Respondent's Compendium tab 3, p. 101.

15. The OSPCA's investigations budget is at least $3 million annually. Of the $5.5 million provided through the TPA, approximately $2 million goes toward the OSPCA's investigations budget, leaving approximately $1 million for the OSPCA to fundraise to pay for its investigations.

Cross-examination of Connie Mallory, transcript pp. 15-17, q. 57-66;
Respondent's Compendium tab 1, pp. 10-12.

16. The OSPCA exercises its statutory police and investigative powers pursuant to its "Investigations Policy and Procedures Manual" [hereinafter "policy manual"]. The policy manual includes the OSPCA's policies associated with entering people's homes and seizures of personal property. The policy manual was established at the complete discretion of the OSPCA and it is not a public document.

Affidavit of Connie Mallory, at ¶8-16, Respondent's Compendium tab 7, pp. 257-259.

Cross-examination of Connie Mallory, transcript pp. 111-120, q. 497-522; Respondent's Compendium tab 1, pp. 67-76.

17. There is no statutorily prescribed complaint process or disciplinary procedure applicable to the OSPCA or its officers. Such matters are exclusively dealt with internally within the OSPCA in a non-transparent manner.

Affidavit of Connie Mallory, at ¶18-21, Respondent's Compendium tab 7, pp. 257-261.

18. The OSPCA collects personal information about people through the course of its investigations. The OSPCA has no internal "Freedom of Information" policy except that it destroys such information after a period of two years. In practice, however, the OSPCA does not make such information available to people upon request. As an example, when a person requested a copy of his OSPCA file, the OSPCA refused to provide it unless an OSPCA officer was subpoenaed to court.

Cross-examination of Connie Mallory, transcript pp. 73-81, q. 316-356;
Respondent's Compendium tab 1, pp. 48-56.

19. The OSPCA's communications department is responsible for putting out media releases that sometimes call for donations to support OSPCA investigations, and they sometimes include information about specific cases. Donor reports include statistics related to the number of OSPCA investigations initiated, animals seized and charges laid.

Affidavit of Connie Mallory, at ¶28-30, Respondent's Compendium tab 7, p. 263.

Cross-examination of Connie Mallory, transcript pp. 17-18 & 20-22, q. 67-74 & 83-87;
Respondent's Compendium tab 1, pp. 12-16.

Exhibit 5(H) - OSPCA annual reports, Respondent's Compendium tab 8, pp. 265-333.

Exhibit 5(O) - OSPCA media releases, Respondent's Compendium tab 9, pp. 334-357.

20. The OSPCA has also entered into memorandums of understanding [hereinafter "MOUs"] with various livestock agencies in Ontario (i.e. Dairy Farmers of Ontario, Beef Farmers of Ontario, Chicken Farmers of Ontario). These MOUs vary somewhat from one agency to another, but they all essentially set out an investigation procedure to be followed by the OSPCA when an investigation involves a member of a particular livestock agency. As a

result, the OSPCA conducts its investigations differently when the subject of an investigation is a MOU-agency-member.

Affidavit of Jeffrey Bogaerts, at ¶7, Respondent's Compendium tab 10, pp. 359-360.

Exhibit 5(D) – Media releases re: MOUs, Respondent's Compendium tab 11, pp. 364-371.

Cross-examination of Connie Mallory, transcript pp. 107-108, q. 487-488; Respondent's Compendium tab 1, pp. 65-66.[1]

21. The OSPCA operates one of the larger animal rescue operations in the province. It also investigates other animal rescue operations. Complaints about OSPCA-affiliated animal rescue operations are dealt with internally by the OSPCA.

Cross-examination of Connie Mallory, transcript pp. 81-85, q. 357-377; Respondent's Compendium tab 1, pp. 56-60.

22. Section 13(6) of the *OSPCA Act* authorizes the OSPCA to enter a dwelling without a warrant. However, the OSPCA has established a policy to obtain a warrant whenever permission to enter a dwelling unit is not obtained. This policy is not publicly known.

Cross-examination of Connie Mallory, transcript pp. 42-47, q. 184-204; Respondent's Compendium tab 1, pp. 29-34.

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, at s. 13.

23. The *OSPCA Act* provides no restrictions on what time of day an OSPCA Inspector or Agent can enter private property without a warrant pursuant to section 13(6) of the Act, including a dwelling unit. However, the OSPCA has set its own policy to restrict its officers from entering property outside of daylight hours.

Cross-examination of Connie Mallory, transcript pp. 34-40, q. 153-177; Respondent's Compendium tab 1, pp. 21-27.

24. The OSPCA does not have a policy with regards to how long a section 13(1) compliance order (and corresponding section 13(6) warrantless entry powers) can last. As a result, section 13(1) compliance orders, and corresponding section 13(6) warrantless entry

[1] Upon cross examination, the respondent and /or the OSPCA refused to provide copies of the MOUs.

powers, can theoretically last a year or longer. This decision is at the complete discretion of the OSPCA officer who issued the compliance order.

Cross-examination of Connie Mallory, transcript pp. 40-41, q. 178-182;
Respondent's Compendium tab 1, pp. 27-28.

25. The OSPCA does not have a policy to limit who may accompany an OSPCA officer when entering private property pursuant to section 13(6). This decision is at the complete discretion of the OSPCA officer in attendance.

Cross-examination of Connie Mallory, transcript pp. 47-48, q. 205-207;
Respondent's Compendium tab 1, pp. 34-35.

26. The OSPCA does not have a policy requiring a veterinarian to confirm the merits of a section 13(1) order, nor is there a policy requiring a veterinarian to confirm the satisfaction of such an order. Instead, it is at the complete discretion of an OSPCA officer to invoke or revoke a section 13(1) compliance order and corresponding section 13(6) warrantless entry powers.

Cross-examination of Connie Mallory, transcript pp. 50-54, q. 218-232;
Respondent's Compendium tab 1, pp. 36-40.

27. Likewise, the OSPCA does not have a policy requiring a veterinarian to confirm distress prior to the OSPCA seizing animals pursuant to sections 14(1)(b) and 14(1)(c) of the Act, or to confirm that an animal could, or should, be returned to its owner.

Cross-examination of Connie Mallory, transcript pp. 56-61, q. 242-261;
Respondent's Compendium tab 1, pp. 42-47.

28. Section 14 of the *OSPCA Act* allows the OSPCA to seize people's animals in specified circumstances, and section 15 of the Act allows the OSPCA to sell people's animals and keep the proceeds to compensate the OSPCA for their expenses (a.k.a. restitution claims). When this occurs, there is no OSPCA policy to provide an accounting or otherwise a

means to review the OSPCA's claims for compensation.

Affidavit of Connie Mallory, at ¶22-27, Respondent's Compendium tab, pp. 639-640.

Cross-examination of Connie Mallory, transcript pp. 29-32, q. 134-141; Respondent's Compendium tab, pp. 17-20.

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, at s. 14.

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, at s. 15.

PART III: POSITION OF THE RESPONDENT WITH RESPECT TO THE ISSUES RAISED BY THE APPELLANT

29. Ontario takes the position that: (1) Justice Minnema erred in finding that the "Liberty" and "Security of the Person" aspects of section 7 of the *Charter* were engaged; (2) he erred in recognizing the new principle of fundamental justice, namely "law enforcement bodies must be subject to reasonable standards of transparency and accountability", and (3) Justice Johnston erred in his discretionary decision to grant public interest standing to the Applicant. Mr. Bogaerts takes the opposite position on each of these issues.

A. Engagement of section 7 of the *Charter*

Liberty interest

30. Ontario argues that the deprivation of Liberty provided by the imprisonment provisions of the *OSPCA Act* and *Criminal Code* are too remote from the provisions of the *OSPCA Act* that are being challenged, and so the Liberty aspect of section 7 is not engaged.

31. Ontario relies heavily on the *Polewsky* and *Schmidt* cases, neither or which involved legislation that questioned policing powers or otherwise involved offenses that featured a prospect of imprisonment. Both cases are easily distinguishable, with the prospect of imprisonment in both cases being related to entirely different legislation and offences.

32. The Supreme Court has confirmed that the Liberty aspect of section 7 is engaged when a person is exposed to a <u>risk</u> of imprisonment. Imprisonment does not need to be a certainty

in order to engage the Liberty aspect of section 7.

Reference re Motor Vehicle Act (British Columbia) S 94(2), [1985] 2 S.C.R. 486 (SCC), at ¶4.
R. v. Smith, 2015 SCC 34 (SCC), at ¶17.

33. The penal provisions of the *OSPCA Act* and *Criminal Code* cannot be disentangled from the impugned investigative powers of the *OSPCA Act*. Justice Minnema rightly determined that the same position Ontario held at trial was "overly technical and formulistic". Quoting Professor Hogg, he wrote "[a]ny law that imposes a penalty of imprisonment… is by virtue of that penalty a deprivation of liberty". Ontario has failed to recognize that, at the moment sections 11, 12 and 12.1 of the OSPCA are engaged by an OSPCA officer, the target of their investigation is genuinely at risk of imprisonment. There may be many possible outcomes, as there is in any case, but one plausible outcome without any intermediate actions taken by the accused is a conviction and order of imprisonment.

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶69.

34. It is noteworthy that the Applicant takes no issue with the penal provisions of the *OSPCA Act* or *Criminal Code per se*, except as it operates in tandem with impugned sections of the *OSPCA Act*. Ontario has failed to recognize the target of the Application, which is about the Act's delegation of police powers to a non-accountable and non-transparent organization.

35. It is important to keep in mind that the investigative powers of the *OSPCA Act* can be exercised by both OSPCA officers and police officers. There is nothing wrong with the Act when it is enforced by the police. There is only an issue when it is enforced by the OSPCA. It is for this reason that the sections of the Act that delegate police powers to the OSPCA specifically are being challenged.

Security of the Person interest

36. Regarding the engagement of the Security of the Person aspect of section 7, Ontario argues that Justice Minnema erred in four ways: (1) by applying the wrong test; (2) by conflating the analyses of sections 7 and 8; (3) by not conducting an analysis; and (4) for making a finding without a factual underpinning. In response, the Applicant adopts the findings of Justice Minnema at paragraphs 70-72 for the following reasons.

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶70-72.

<u>Ontario's argument #1: engagement of security of the person</u>

37. Ontario argued at trial and continues to argue here that that "Security of the Person" is only engaged where there is (1) "interference with bodily integrity and autonomy" or (2) "serious state imposed psychological stress".

38. The Applicant responds by submitting that there is no such closed list for what may constitute "Security of the Person". It is to be interpreted "broadly". Being subjected to unreasonable searches and seizures would nevertheless constitute "serious state imposed psychological stress". The cases listed at paragraph 32 of Ontario's factum also differ markedly from the interests that are at issue in this case because those cases are concerned with issues outside of the penal context.

Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307 (S.C.C.) at ¶82.

39. Notwithstanding that the issues go beyond search and seizure considerations, the Supreme Court and other courts have nevertheless found that the right to be secure from unreasonable search or seizure is concurrently covered by the Security of the Person aspect of sections 7 and 8 of the *Charter*. In stating that "not every search or seizure

necessarily engages s. 7" at paragraph 35 of its factum, Ontario essentially acknowledges that, in at least some contexts, the court may review a matter that involves search and seizure issues under section 7.

Reference re Motor Vehicle Act (British Columbia) S 94(2), [1985] 2 S.C.R. 486 (SCC), at ¶35.
R. v. Racette, [1988] 2 W.W.R. 318 (Sask. CA), at ¶72.
R. v. Pelletier (1989), 17 M.V.R. (2d) 23 (QB), at ¶25.
F.(S.) v. Canada (Attorney General), [2000] O.J. No. 60 (CA), at ¶17.

40. Notwithstanding the fact that the courts have recognized that state imposed searches and seizures fall into the ambit of "Security of the Person", the exercise of police powers, which includes being the target of an investigation, surveillance, entry into people's homes (whether with a warrant or not), seizure of property (including companion animals), and ultimately being charged with serious offences, including those with potential incarceration consequences, qualifies as serious state imposed psychological stress by interfering with individuals' interests of fundamental importance; namely intimate privacy expectations.

Ontario's argument #2: conflation of sections 7 and 8

41. Ontario argued at trial and continues to argue here that that "Security of the Person" cannot include issues related to searches and seizures, and that the constitutionality of issues related to searches and seizures must always be reviewed by way of section 8 analysis.

42. Justice Minnema disagreed, and rightly found that a section 7 analysis was appropriate in the "particular context" and based on the facts of this case "to properly address the applicant's issues". This is because the Justice recognized that the Applicant's challenge of sections 11, 12 and 12.1 of the *OSPCA Act* involve more than just search and seizure issues. Police powers involve a myriad of ancillary investigative powers beyond searches

and seizures that can have a profound effect on people. Such powers include but are not limited to: who to investigate or charge; how private information is collected, kept and disseminated; which types of issues / investigations to focus on or direct resources toward; how investigations are carried out; and / or any number of other discretionary investigative powers or public policy decisions related to same. The entire crux of this Application is that a non-transparent and non-accountable organization cannot be trusted with the entire basket of police powers, many of which are discretionary decisions that are not necessarily directly related to searches and seizures.

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶72.

43. The constitutional question of this Application is focussed on who is exercising police and other investigative powers, and this necessitates a review in a much broader context beyond looking at the reasonableness of any particular search or seizure power. The Applicant submits, and Justice Minnema agreed, that these broader issues are more appropriately considered pursuant to a section 7 analysis, which includes the flexibility of a "principles of fundamental justice" analysis.

44. On this subject, this court has also recently found that a search infringes upon a person's "security of the person" interest, albeit in the context of a section 8 analysis. The case nevertheless recognized a congruent relationship between sections 7 and 8 of the *Charter*.

R. v. Orlandis-Habsburgo, [2017] O.J. No. 4143 (Ont. C.A.) at ¶133.

45. It is noteworthy that there is nothing unconstitutional about the search and seizure powers of sections 11, 12 and 12.1 when these sections are employed by the police (or, hypothetically, ministry investigators) who are subject to transparency and accountability obligations. In the same way that the penal provisions are not the issue, *per se*, the search

and seizure elements of the impugned sections are not the issue *per se*. The issue is with the delegation of these powers to a non-transparent and non-accountable private organization. Ontario has again failed to recognize the target of the Application.

46. Justice Minnema did not conflate a section 7 analysis with a section 8 analysis; rather, he preferred the employment of a section 7 analysis on account of the context going beyond just search and seizure considerations typically dealt with through a section 8 analysis.[2]

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶73.

Ontario's argument #3: sufficient analysis

47. Ontario argues that there was no analysis of whether or not the impugned sections authorized an "unreasonable search or seizure".

48. It appears, from its submissions at paragraph 37 of its factum, that Ontario takes the position that the first step of the section 7 analysis, to establish whether or not "Security of the Person" was engaged, must involve both steps of a section 8 analysis, including the "unreasonableness" step. This is not how such an analysis should be performed under section 7, since it would essentially roll the "principles of fundamental justice" assessment into in the first step of the section 7 analysis.

49. The reason that the Applicant, the Intervenor, and Justice Minnema all spent very little time or attention on the first step of the section 7 analysis was because it is self-evident that sections 11, 12 and 12.1 of the *OSPCA Act* include authority to conduct searches and seizures, among other discretionary powers, and so the "Security of the Person" element of section 7 was clearly triggered. Any question about the "unreasonableness" of it is a "principles of fundamental justice" question to be determined.

[2] Note: the original Application asked that these issues be reviewed pursuant to a section 8 analysis in the alternative. However, both the Applicant and, evidently, the Court preferred to examine the issues under a section 7 analysis.

Ontario's argument #4: factual underpinning

50. Ontario complains that there is a lack of a factual underpinning to establish an infringement of the *Charter*. The Applicant disagrees, pointing to the voluminous evidence filed by both parties and contained in the record of this matter, pertaining to the OSPCA's structure, powers, practices, policies and procedures.

51. It appears from Ontario's submissions at paragraph 39 of it factum, that it demands more evidence, and specifically evidence of "infringements of the *Charter*". In response, the Applicant directs attention to the decision of Justice Johnston, whereby he struck, at the request of Ontario, several witnesses affidavits who claimed, among other things, that they suffered indignity and *Charter* violations on account of the powers granted by the *OSPCA Act*.

Bogaerts v. Ontario (Attorney General), [2016] O.J. No. 3251 (Ont. S.C.J.) at ¶25-31.

52. At the time of that motion, Ontario argued the opposite of what it is arguing now, claiming that the proposed affiants' evidence was irrelevant since it merely addressed the conduct of the OSPCA, including alleged *Charter* violations, rather than addressing the constitutional validity of the legislation itself.

53. Given that Ontario previously took the opposite position on this issue earlier in the proceedings, the Applicant respectfully submits that Ontario should be estopped from demanding a type of "factual underpinning" that it previously claimed was irrelevant.

54. If this Court requires context beyond what the existing record can provide, then the decisions listed below should provide adequate additional context.

Jessica Johnson v. OSPCA (2013), Decision Ref. No. 2012-03 (ACRB)
R. v. Hunter, [2011] O.J. No. 2335 (Ont. C.J.)
R. v. Hunter, [2011] O.J. No. 4120 (Ont. C.J.)
Ontario Society for the Prevention of Cruelty to Animals v. Straub, [2009] O.J. No. 2052 (Ont. S.C.J.)
R. v. Reimer, [2007] O.J. No. 5783 (Ont. C.J.)

B. The new principle of fundamental justice: "law enforcement bodies must be subject to reasonable standards of transparency and accountability"

55. 100 years ago, before the advent of the *Charter* and the legislation that we now enjoy to prescribe standards of transparency and accountability of our law enforcement agencies, the OSPCA was created by statute. That now antiquated structure, which is continued by the *OSPCA Act*, has failed to evolved or otherwise change in order to keep up with our modern oversight and constitutional expectations.

56. In particular, and unlike the police or ministry officers, the OSPCA and its officers are not subjected to the *Police Services Act*, *Ombudsman Act*, Freedom of Information legislation, or similar legislation.

57. Sections 11, 12 and 12.1 of the *OSPCA Act* provide OSPCA officers with the powers of a police officer, powers to seek and obtain a search warrant, and powers to seize and retain items with subsequent judicial authorization. While these powers include search and seizure powers, they also provide a myriad of other discretionary investigative powers.

58. Similar to our expectation of open access to the courts[3], the public's sense of justice has evolved to include an expectation that law enforcement bodies are subject to reasonable standards of transparency and accountability. This is especially true where, as in the case of the OSPCA, a law enforcement agency is statutorily empowered to enter people's homes, sometimes without a warrant.

59. Justice Minnema recognized these expectations as "basic tenets of our legal system, as well as our democratic process". He further recognized that "[i]t is vital that the public have confidence in the enforcement of our laws" and "[a] reasonable level of transparency and accountability is the cornerstone for that confidence".

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶87.

[3] See *Toronto Star Newspapers Ltd. v. Ontario (Attorney General)*, [2018] O.J. No. 2256 (Ont. S.C.J.) at ¶54.

60. It is upon these considerations that the below Court agreed that the police powers prescribed to the OSPCA are unconstitutional, with Justice Minnema coining the following newly recognized principle of fundamental justice: law enforcement bodies must be subject to reasonable standards of transparency and accountability.

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶81.

61. Ontario appeals this finding, arguing that the newly recognized principle does not meet the three criteria: (1) it is a legal principle; (2) consensus is that the proposed principle is fundamental to our societal notion of justice; and (3) it produces a workable standard.

Criteria #1: legal principle

62. The newly recognized principle, whereby law enforcement bodies must bear certain institutional characteristics, such as transparency and accountability, is a legal principle in the sense that it is "a principle that relates to how our system of justice operates".

Trang v. Alberta (Edmonton Remand Centre), [2007] A.J. No. 907 (Alta. C.A.) at ¶30.

63. That law enforcement bodies must possess certain institutional hallmarks necessary to uphold public confidence in the administration of justice is not a vague principle of public policy, but rather it is essential to our sense of justice, the administration of justice and our justice system.

64. Other recognized principles of fundamental justice, such as arbitrariness, vagueness, overbreadth, and gross disproportionality, are not legal principles in the sense that they are clearly written laws or leave no room for judicial discretion. However, they do fulfill the two purposes of the legal principles criterion identified by the Supreme Court in *Canadian Foundation for Children, Youth and the Law*: they provide meaningful content for the section 7 guarantee and they avoid the adjudication of pure policy matters.

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] S.C.J. No. 6 (S.C.C.) at ¶8.

65. The same can be said of requiring a reasonable standard of transparency and accountability on the part of law enforcement bodies. Whether any particular law enforcement body should observe these principles cannot be considered a mere matter of policy, because these institutional characteristics impact the public's confidence in the effective enforcement of the law, and therefore the administration of justice more broadly.

66. Justice Minnema rightly recognized that the newly recognized principle is firmly entrenched within our sense of justice, the administration of justice and our justice system. He cited the *Police Services Act* and *Ombudsman Act* (and similar legislation) as particular statutes that provide reasonable standards of accountability, and he cited freedom of information legislation as statues that provide reasonable standards of transparency. It is under this legislative umbrella that Justice Minnema correctly found that "[the newly recognized] principle is already applied to virtually every public body and law enforcement agency".

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.) at ¶84, 88 & 91.

67. In contesting Justice Minnema's finding, Ontario relies heavily on the B.C. lower court decision of *U.S.A. v. Wakeling*. However, that case is easily distinguishable. The context of that case involved the impossible contention that a criminal investigation should be carried out in an open and transparent manner. It is understandable why that court rejected such a proposition. It is noteworthy that that court also specifically left the door open to the concept of transparency and accountability qualifying as a principle of fundamental justice in other contexts.

United States of America v. Wakeling, [2011] B.C.J. No. 212 at ¶48.

Criteria #2: fundamental to our societal notion of justice

68. Transparency and accountability have become a fundamental aspect of Canada's legal landscape; it is a "shared assumption upon which our system of justice is grounded", and it is viewed by society as "essential to the administration of justice".

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] S.C.J. No. 6 (S.C.C.) at ¶8.

69. Ensuring reasonable standards of transparency and accountability on the part of law enforcement bodies is a principle that is "vital or fundamental to our societal notion of justice", it constitutes a "basic norm for how the state deals with its citizens", and it is "fundamental in the sense that [it] would have general acceptance among reasonable people".

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 (S.C.C.), at ¶139, 141 & 173.

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] S.C.J. No. 6 (S.C.C.) at ¶8.

70. Ontario argues that the new principle is not fundamental to our societal notion of justice because it can be subordinated to other concerns in some contexts.

71. It must be emphasized that the new principle requires law enforcement bodies to be subject to <u>reasonable</u> standards of transparency and accountability, not absolute transparency and accountability. This is not unlike the guaranteed right to make full answer and defence, which may be similarly fettered if justified by a ground of law or policy.

R. v. St-Onge Lamoureux, [2012] 3 S.C.R. 187 (S.C.C.) at ¶71 & 74.

R. v. Basi, [2009] 3 S.C.R. 389 (S.C.C.) at ¶43.

72. It is important to not lose sight of the fact that the present case is dealing with circumstances whereby a private organization has been delegated extraordinary police

powers with literally no prescribed accountability or transparency standards. This is not a case where there is a concern that the transparency or accountability standards prescribed are not good enough – the problem is that there are no standards at all.

73. It is worth restating that other recognized principles of fundamental justice, such as arbitrariness, vagueness, overbreadth, and gross disproportionality, all still leave room for judicial discretion. As it relates to the newly recognized principle of fundamental justice, there is room for judicial discretion to determine if any particular law enforcement body should be subjected to prescribed standards of transparency and accountability, and what those standards should be (if any). What is clear, in the context of the present case, is that it should not acceptable to prescribe police powers, including entry into people's homes, to a private organization with absolutely no corresponding accountability or transparency standards.

74. Currently, the OSPCA has authority to enter people's homes, sometimes without a warrant, and there is no complaint process to address OSPCA conduct or policy, unlike any other law enforcement agency in Ontario. The same is true with respect to a total lack of transparency obligations, with no way for people to access files being kept on them, or to review investigative policies of the OSPCA. There are simply no accessible[4] legal mechanisms in place to entitle a review of the conduct, policy or activities of the OSPCA.

75. If other bodies that are charged with similar law enforcement powers are permitted to be similarly opaque, insular, unaccountable, and potentially subject to external influence, Ontarians similarly could not be confident that the laws they enforce would be fairly and impartially administered.

[4] The Applicant recognizes that the Animal Care Review Board, the Ontario Court of Justice, and the Divisional Court may theoretically provide some relief in some limited circumstances, but such legal options are not truly accessible to many if not most people in a practical sense, or may not be available at all.

76. It is noteworthy that other provinces have recognized the importance of ensuring adequate oversight of animal protection enforcement. In Manitoba, animal protection laws are primarily enforced by provincially-appointed inspectors employed by the Chief Veterinary Office, which is a division of Manitoba Agriculture and subject to oversight. In Québec, agents employed by the Ministry of Agriculture, Fisheries, and Food are primarily responsible for enforcing provincial laws. Animal protection laws in Newfoundland are enforced by the police. In British Columbia, Alberta, and Nova Scotia, SPCA inspectors exercising police powers are appointed by the provincial government (unlike in Ontario where they are appointed by the OSPCA) and are subject to the same oversight and accountability mechanisms as peace officers.

Animal Care Act, CCSM, c A-84, s. 7.
Animal Health Protection Act, CQLR c P-42, s. 55.9.17.
Animal Health and Protection Act, SNL 2010, c A-9.1, ss. 11 & 68.
Prevention of Cruelty to Animals Act, RSBC 1996, c 372, ss. 10, 21 & 22
Animal Protection Act, RSA 2000, c A-41, ss. 1(1)(g).
Animal Protection Act, SNS 2008, c 33, s. 34.

Criteria #3: produces a workable standard

77. The fact that the new principle is already applied to virtually every law enforcement agency demonstrates that it is a sufficiently cognizable and applicable principle of fundamental justice. We can rely on those norms for guidance on how the standards of the new principle should be applied.

78. While it is acknowledged by the Applicant that the newly recognized principle may require ongoing judicial elaboration over time on a case-by-case basis, it is sufficient for the purposes of this case to recognize the existence of the principle in general terms, as guided by the institutional characteristics of the OSPCA specifically, and the clear

deviations from the principle as it relates to the *OSPCA Act* in the present case.

79. It is noteworthy that it is not the court's role to decide how the legislature should proceed to apply the necessary standards. That is up to the legislature. In the present case, the legislature could adopt the accountability requirements of the *Police Services Act* or the *Ombudsman Act*, and / or the transparency requirements of the *Freedom of Information and Protection of Privacy Act*, or it could address the issues in some other way. For example, at present, some law-enforcement bodies are subject to the *Police Services Act*, while others are subject to the *Ombudsman Act* or similar legislation. In a different way, Children's Aid Societies are subject to the *Provincial Advocate for Children and Youth Act, 2007*, which provides ombudsman-like powers to the Provincial Advocate for Children and Youth. At the same time, while most public bodies are subject to the *Freedom of Information and Protection of Privacy Act*, municipalities, for example, are instead subject to the *Municipal Freedom of Information and Protection of Privacy Act*.

Police Services Act, R.S.O. 1990, c. P.15 at Part V.
Public Complaints - Local Complaints, O Reg 263/09.
Ombudsman Act, R.S.O. 1990, c. O.6, at s. 14.
Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, at s. 10-11.
Provincial Advocate for Children and Youth Act, 2007, S.O. 2007, c. 9, at s. 15-16.1.
Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, at s. 4.

80. The question of how the newly recognized principle could, or should, apply to the organizations listed at paragraph 55 of Ontario's factum is irrelevant to the present case. Apart from Ontario seemingly providing a succinct list of what is probably the closest examples of other private organizations with some investigative powers, the list is unhelpful because it fails to include a factual basis respecting the extent of their powers, or how these organizations actually operate. What is clear is that none of these

organizations enforce laws against the public at large, making them clearly distinguishable from the OSPCA.

81. In reference to the *Law Society Act* specifically, the Law Society of Ontario is a self-regulating body, funded by fees charged to licensees, that regulates lawyers and paralegals in Ontario. The Law Society's investigative powers are far more limited than the OSPCA's, are far less intrusive, and apply only to licensees' who invariably opt into this legislative scheme as a condition of the profession. The governing body of the Law Society, benchers, are also elected by licensees, so licensees have some influence over policy and who sits as adjudicators to hear discipline cases.

Law Society Act, R.S.O. 1990, c. L.8, at s. 49.3 & 49.10.

82. Similarly, the Ontario Securities Commission's investigative powers are far more limited than the OSPCA's, far less intrusive, and apply only to market participants who invariably opt into this legislative scheme by participating in the markets. Except for market participants, the public at large is essentially unaffected by the investigative components of the *Securities Act*.

Securities Act, R.S.O. 1990, c. S. 5, at s. 13(9).

83. It is noteworthy that, as rightly pointed out by Ontario at paragraph 55(c) of its factum, the Ontario Securities Commission <u>is</u> subjected to transparency and accountability standards by way of the *Freedom of Information and Protection of Privacy Act* and the *Ombudsman Act*. Rather than serve as an example of how the newly recognized principle will <u>not</u> produce a workable standard, Ontario has provided an example of reasonable standards of transparency and accountability that <u>would</u> satisfy the newly recognized principle of fundamental justice.

Does the OSPCA Act contravene the new principle of fundamental justice?

84. The OSPCA is not subjected to any legislated transparency or accountability standards, so the Act that delegates police powers to the OSPCA clearly contravenes the new principle. The OSPCA stands alone as the only law enforcement body in Ontario with police powers, but without legislated accountability or transparency obligations.

85. The Applicant fully supports Justice Minnema's findings at paragraphs 90-91 of the decision, which succinctly set out why the *OSPCA Act* contravenes the new principle. In addition, the Applicant submits the following, which further highlights how the *OSPCA Act* fails to prescribe the transparency and accountability norms that we expect from our law enforcement bodies.

86. Under the *Police Services Act*, police in Ontario are subject to a Code of Conduct, training requirements, restrictions on the use of force, dress code, and policy re: disclosure of personal information.

General, O Reg 268/10, at ss. 7-10 & 30.
Courses of Training for Members of Police Forces, O Reg 36/02.
Equipment and Use of Force, RRO 1990, Reg 926.
Disclosure of Personal Information, O Reg 265/98.

87. Part V of the *Police Services Act*, and *Public Complaints - Local Complaints*, O Reg 263/09, provides a comprehensive system for the oversight and accountability of police. It deals with both conduct and policy complaints.

Police Services Act, R.S.O. 1990, c. P.15 at Part V.
Public Complaints - Local Complaints, O Reg 263/09.

88. Government ministries and ministry investigative officers are subject to the complaint review process overseen by the Ontario Ombudsman.

Ombudsman Act, R.S.O. 1990, c. O.6, at s. 14.

89. There is no similar legislated accountability of the OSPCA, or otherwise any independent review process accessible to the public. As the evidence shows, the OSPCA deals with complaints against it and its officers internally.

90. Quite the opposite from providing a mechanism for accountability of the OSPCA, section 19 of the *OSPCA Act* actually releases OSPCA inspectors from civil liability associated with their conduct, except when proven to be done in bad faith.

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, at s. 19.

91. Under Ontario's *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 [FOIPPA], the public has the right to request records containing their personal information from the Ontario Provincial Police or a municipal police service (subject to some exceptions). The same is true with respect to information collected in association with provincial ministry investigations. Police / ministry information that can be requested via the FOIPPA include:

a. incident and investigation reports;
b. witness statements;
c. Crown or police briefs;
d. records of arrests;
e. officers' notes; and
f. policies, position statements, etc.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, at s. 10-11.

92. The OSPCA and its officers are not subject to the FOIPPA or any other similar access to information statute. The OSPCA has no formal access to information policy. In practice, however, the OSPCA does not provide access to information. This means that a person could be the target of an investigation, or unwittingly been under surveillance (as a target or not), or otherwise had information collected by the OSPCA about them, or had their

personal privacy otherwise breached by the OSPCA, and there would be no accessible means to discover it.

93. An example of the difficulty that exists to obtain access to OSPCA held information is found in *Hunter v. Ontario Society for the Prevention of Cruelty to Animals*. In that case, a motion was required to obtain access to OSPCA held information (including OSPCA polices, complaint records, and animal-boarding-tariffs), despite the OSPCA actually being obligated to produce it through the normal civil litigation discovery process.

Hunter v. OSPCA, [2013] O.J. No. 4856 (Ont. C.J.), at ¶19, 29-33, & 42-44.

94. It is also noteworthy that, as part of this Application, the OSPCA refused to disclose copies of the MOUs between the OSPCA and various livestock groups, which were requested as an undertaking during the cross-examination of OSPCA Chief Inspector Connie Mallory. This refusal further confirms a general policy of the OSPCA to deny access to information.

Response to undertakings dated Oct. 19, 2017; Respondent's Compendium tab 12, pp. 372-373.

95. The *OSPCA Act* has created a private police force which is empowered to secretly collect and keep files on members of the public without a means to know about it or access it. This further prevents the OSPCA from being held accountable for its conduct and / or policies.

96. It is noteworthy that, while the substance of this Application may be novel from a constitutional law standpoint, the courts have nevertheless commented on the apparent injustices and dangers related to such a delegation of police powers to a private organization – and the SPCA in particular.

97. In the Newfoundland and Labrador decision, *R. v. Clarke*, the Court recognized the

inherent flaws of that province's legislation, which, at the time, also delegated investigative powers (including search and seizure powers) to the NLSPCA:

> That a private organization such as the S.P.C.A. would be given the authority to investigate and sometimes to even prosecute alleged *Criminal Code* of Canada offences is unacceptable. Private individuals and organizations cannot be allowed to usurp the responsibilities of the police and the Attorney General.
>
> *R. v. Clarke*, [2001] N.J. No. 191 (N.L Prov. Ct.) at ¶6.

98. While commenting on the *Clarke* case, the Court in *Beazley (Re)* held:

> [The province's *Animal Protection Act*] includes a provision for an application by a "peace officer" for a search warrant to apprehend animals which are believed to be in distress. Unlike most public statutes, section 2 of the Act includes members of a corporation, the SPCA, as "peace officers."
>
> Despite these constitutional guarantees of the right to sanctity and security in one's home, our *Animal Protection Act* purports to allow a member of the SPCA to apply for a search warrant to enter a private dwelling, by force if necessary.
>
> ...Since Magna Carta, as a society we have established a core set of human rights. We must never take these rights for granted, for they were hard earned, and paid for literally with the blood, sweat, toil and tears of our forebears. Chief among these is the right to be secure in our homes from unwarranted government action. No private citizen ought to have the ability to apply for judicial authorization to invade one's home.
>
> *Beazley (Re)*, [2007] N.J. No. 337 (N.L Prov. Ct.), at ¶3-6 & 22.

99. It is noteworthy that, in 2012, Newfoundland and Labrador rescinded the NLSPCA's investigative powers (including search and seizure powers), leaving these powers to the RCMP.

100. In summary, police and ministry officers are subjected to legislated accountability regarding their policy and conduct, and transparency with regards to policy and information that they collect about people. The OSPCA meanwhile is not subjected to any of these important checks and balances. It is therefore respectfully submitted that it is a departure from the principles of fundamental justice to provide police powers to the

OSPCA without also subjecting the OSPCA to the same, or similar, legislated transparency and accountability. Sections 11, 12 and 12.1 of the *OSPCA Act* contravene principles of fundamental justice and section 7 of the *Charter* as a result.

C. Standing

101. The granting of public interest standing is discretionary, and so this court will only be justified to intervene in the exercise of such discretion if Justice Johnston misdirected himself, or no weight, or insufficient weight, was given to relevant considerations. This is a high threshold and neither of these two circumstances are present in this case.

102. Discretion to grant standing is to be exercised by the courts in a "liberal and generous manner".

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, [2012] 2 S.C.R. 524 (S.C.C.) at ¶2.

103. As recognized by Ontario, the court must consider the following when deciding to grant public interest standing: (1) if there is a serious justifiable issue; (2) if the party has a real stake or genuine interest; and (3) whether the Application is a reasonable and effective way to bring the issue before the courts. Justice Johnston properly considered each factor.

104. Ontario appears to acknowledge that the first item is satisfied, but it contests the second and third items.

105. Justice Johnston rightly summarizes the facts that he considered with regards to the second item, at paragraph 18 of his decision. He specifically found that the Applicant is not a mere "busybody". There is no misdirection or insufficient weight present in his reasoning or conclusion.

Bogaerts v. Ontario (Attorney General), [2016] O.J. No. 3251 (Ont. S.C.J.) at ¶16 & 18.
Affidavit of Jeffery Bogaerts, at ¶5-7, Respondent's Compendium tab 2, pp. 96-97.

106. Justice Johnston also rightly summarized the facts that he considered with regards to the third item, at paragraphs 19-21. Once again, there is no misdirection or insufficient weight present in his reasoning or conclusion. In addition, the simple fact that the constitutional issues of the Application have never been adjudicated before, despite the many years that the legislation has been in effect, strongly suggests that there is no more practicable means to bring the matter before the court.

Bogaerts v. Ontario (Attorney General), [2016] O.J. No. 3251 (Ont. S.C.J.) at ¶19-21.

107. Justice Johnston rightly considered all three factors in combination and with the flexibility required. Justice Johnston's discretionary decision is entitled to deference and, with respect, this court has no reason to interfere.

108. It should be noted that, as part of Ontario's arguments on the standing issue, it contended that the evidence that was struck by Justice Johnston demonstrated that there was "a cohort of people" that would have been a better choice as an Applicant. Ontario further contended that there was "no evidence before the motion judge even suggesting that other people who are more directly affected by the legislation… were economically disadvantaged… or unable for some other reason to serve as applicants".

109. Ontario has clearly overlooked the evidence that was before the motion judge. Mr. Bogaerts' uncontested evidence was that "other [potential Applicants] were all unable or unwilling to [be the Applicant], including as a result of financial, religious and mobility issues that they all face."

Affidavit of Jeffery Bogaerts, at ¶7, Respondent's Compendium tab 2, p. 97.

110. Three affiants formed the cohort referred to at paragraphs 64 and 65 of Ontario's factum: (1) Jessica Johnson; (2) Menno Streicher; and (3) Anne Probst.

111. Jessica Johnson was a senior living in a remote rural area in Ontario. She was suffering from serious physical and mental health issues, was housebound, limited in terms of mobility, and she lived on a modest fixed income.

Agreed Statement of Facts dated May 8, 2019, at ¶1(a), Respondent's Compendium tab 15, p. 393.

112. Menno Streicher was 57 years old and born and raised in the Milverton Old Order Amish Community. Amish doctrine prohibited him from taking any action against the province or the "state" of any kind, including for a remedy under the *Canadian Charter of Rights and Freedoms* or any other law.

Agreed Statement of Facts dated May 8, 2019, at ¶1(b), Respondent's Compendium tab 15, p. 393-394.

113. Ann Probst was a farmer, with two children in University, who could not afford the financial risks of litigation. However, she did offer to become co-applicant if the province would not seek cost sanctions against her. This offer was not accepted.

Affidavit of Ann Probst sworn August 18, 2015, at ¶4-9, Respondent's Compendium tab 13, p. 375-376.

114. All three of the cohort provided evidence illustrating their inability to act as Applicant. As their evidence also showed, the *OSPCA Act* affects people who are vulnerable due to finances, mobility, mental health and / or religion. Cognitive abilities are another factor preventing others from acting as an Applicant. Ontario's contention that alternative parties were readily available is simply not true.

Part IV: Additional issues and argument raised by the respondent

115. Except as it relates to the respondent's cross appeal, the respondent raises no additional issues.

Part V: Order Sought

116. The Applicant requests:

a. that, in addition to the relief sought by way of the cross-appeal, Ontario's appeal be dismissed;

b. costs; and

c. such further and other relief that this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14TH DAY OF MAY, 2019.

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Kurtis R. Andrews

Court File No. C66542

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Respondent (Appellant in appeal,
Respondent in cross-appeal)

-and-

JEFFREY BOGAERTS

Applicant (Respondent in appeal
Appellant in cross-appeal)

RESPONDENT'S CERTIFICATE

The Applicant (Respondent in appeal, Appellant in cross-appeal) certifies that an order under subrule 61.09(2) of the Rules of Civil Procedure is not required, and that he will require 1.5 hours for oral argument to respond to the appeal, not including reply.

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Kurtis R. Andrews

SCHEDULE "A"
AUTHORITIES CITED

Bogaerts v. Ontario (Attorney General), [2019] O.J. No. 5 (Ont. S.C.J.)

Bogaerts v. Ontario (Attorney General), [2016] O.J. No. 3251 (Ont. S.C.J.)

Reference re Motor Vehicle Act (British Columbia) S 94(2), [1985] 2 S.C.R. 486 (S.C.C.)

R. v. Smith, 2015 SCC 34 (S.C.C.)

Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307 (S.C.C.)

R. v. Racette, [1988] 2 W.W.R. 318 (Sask. C.A.)

R. v. Pelletier (1989), 17 M.V.R. (2d) 23 (Q.B.)

F.(S.) v. Canada (Attorney General), [2000] O.J. No. 60 (Ont. C.A.)

R. v. Orlandis-Habsburgo, [2017] O.J. No. 4143 (Ont. C.A.)

Jessica Johnson v. OSPCA (2013), Decision Ref. No. 2012-03 (ACRB)

R. v. Hunter, [2011] O.J. No. 2335 (Ont. C.J.)

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Ontario Society for the Prevention of Cruelty to Animals v. Straub, [2009] O.J. No. 2052 (Ont. S.C.J.)

R. v. Reimer, [2007] O.J. No. 5783 (Ont. C.J.)

Trang v. Alberta (Edmonton Remand Centre), [2007] A.J. No. 907 (Alta. C.A.)

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), [2004] S.C.J. No. 6 (S.C.C.)

United States of America v. Wakeling, [2011] B.C.J. No. 212

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 (S.C.C.)

R. v. St-Onge Lamoureux, [2012] 3 S.C.R. 187 (S.C.C.)

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R. v. Clarke, [2001] N.J. No. 191 (N.L Prov. Ct.)

Beazley (Re), [2007] N.J. No. 337 (N.L Prov. Ct.)

Hunter v. OSPCA, [2013] O.J. No. 4856 (Ont. C.J.)

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, [2012] 2 S.C.R. 524 (S.C.C.)

SCHEDULE "B"
STATUTES AND REGULATIONS CITED

TAB	STATUTE
1	*Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O.36
2	*Animal Care Act*, CCSM, c A-84, s. 7
3	*Animal Health Protection Act*, CQLR c P-42, s. 55.9.17
4	*Animal Health and Protection Act*, SNL 2010, c A-9.1, s. 68
5	*Prevention of Cruelty to Animals Act*, RSBC 1996, c 372, ss. 10, 21 & 22
6	*Animal Protection Act*, RSA 2000, c A-41, ss. 1(1)(g)
7	*Animal Protection Act*, SNS 2008, c 33, s. 34
8	*Police Services Act*, R.S.O. 1990, c. P.15 at Part V
9	*Public Complaints - Local Complaints*, O Reg 263/09
10	*General*, O Reg 268/10
11	*Courses of Training for Members of Police Forces*, O Reg 36/02
12	*Equipment and Use of Force*, RRO 1990, Reg 926
13	*Disclosure of Personal Information*, O Reg 265/98
14	*Ombudsman Act*, R.S.O. 1990, c. O.6, at s. 14
15	*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, at s. 10-11
16	*Provincial Advocate for Children and Youth Act, 2007*, S.O. 2007, c. 9, at s. 15-16.1
17	*Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, at s. 4
18	*Law Society Act*, R.S.O. 1990, c. L.8, at s. 49.3 & 49.10
19	*Securities Act*, R.S.O. 1990, c. S. 5, at s. 13(9)

ATTORNEY GENERAL OF ONTARIO
Respondent (Appellant in appeal, respondent in cross-appeal)

-and-

JEFFREY BOGAERTS
Applicant (Respondent in appeal, appellant in cross-appeal)

Court File No. C66542

COURT OF APPEAL FOR ONTARIO

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