

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE ATTORNEY GENERAL OF ONTARIO

Respondent (Appellant in Appeal)

-and-

JEFFREY BOGAERTS

Applicant (Respondent in Appeal)

NOTICE OF MOTION

The Moving Party, Animal Justice Canada, will make a motion in writing to the Associate Chief Justice of the Court of Appeal at Osgoode Hall in the City of Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing under subrule 37.12.1(1) because it is on the consent of the Respondent (Appellant in Appeal) and unopposed by the Applicant (Respondent in Appeal).

THE MOTION IS FOR:

1. Leave to intervene as a friend of the court in the hearing of this appeal and cross-appeal.
2. Leave to file a factum not to exceed 30 pages in length, addressing both the appeal and the cross-appeal, by June 19, 2019;

3. Leave to make up to 60 minutes of oral submissions at the hearing of the appeal and cross-appeal, subject to the discretion of the panel hearing the appeal and cross-appeal; and
4. Such further and other relief as counsel may advise and this Honourable Court deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Rules 13 and 37 of the *Rules of Civil Procedure*;
2. This appeal concerns the public interest and engages the *Charter of Rights and Freedoms*;
3. Animal Justice Canada (“**Animal Justice**”) is Canada’s leading animal advocacy organization focused on animal law. It is well-placed to provide the Court with unique and relevant submissions. Its proposed submissions are different from either of the parties;
4. Animal Justice has an identifiable interest in the matters at issue in this proceeding. Its record demonstrates that the efficacy of animal protection legislation and enforcement go to the heart of its mandate, and these matters are directly engaged in this appeal and cross-appeal;
5. Animal Justice’s proposed submissions are grounded in the arguments and issues raised by the parties, in particular the reasonableness of the searches authorized under the *Ontario Society for the Prevention of Cruelty to*

Animals Act, R.S.O. 1990, c. O.36 (the “*OSPCA Act*”), and the principles of fundamental justice – including novel principles – that apply or ought to apply in this context. As to the former issue – the reasonableness of the searches – Animal Justice is broadly aligned with the Respondent (Appellant in appeal). With respect to the applicable principles of fundamental justice, Animal Justice is broadly aligned with the Applicant (Respondent in appeal);

6. If granted leave to intervene, Animal Justice proposes to make the following submissions with respect to s. 8 of the *Charter*:
 - a. Animal Justice will endorse and defend the Ontario Superior Court’s conclusion that the search provisions in the *OSPCA Act* do not violate s. 8 of the *Charter*;
 - b. Section 8, as much as any other section of the *Charter*, requires a contextual analysis. This means that the reasonableness of the search for the purposes of s. 8 must be understood in light of the context in which the search is undertaken, the statutory regime at issue, and the efficacy of the search;
 - c. The context of animal protection legislation demands robust preventative and investigative search powers, because (a) animals are frequently kept on private property, and are vulnerable to being abused out of sight, (b) animals cannot self-report abuse, and (c) there are virtually no oversight mechanisms (such as reporting or

filing requirements) to ensure breaches of animal protection legislation are identified;

d. The search powers set out in s. 11.4(1) of the *Act* are limited to those who have chosen to engage in a regulated activity;

e. The warrantless search powers set out in s. 12(6) of the *Act* are reasonable because they are limited to circumstances in which an animal is in “immediate distress”. Given Ontario’s explicit legislative recognition that animals have inherent moral value, permitting the ongoing abuse or suffering of animals while a warrant is obtained is not a mere administrative delay or inconvenience – the statute is, by necessity, describing exigent circumstances;

7. If granted leave to intervene, Animal Justice proposes to make the following submissions with respect to s. 7 of the *Charter*:

a. Animal Justice will endorse and defend the novel principle of fundamental justice found by the Ontario Superior Court that law enforcement bodies must be subject to reasonable standards of transparency and accountability;

b. Transparency and accountability are necessary to ensure not only that persons subject to laws are treated fairly, but also to ensure that the laws themselves are adequately enforced and their enforcement subject to public scrutiny;

- c. The protection of animals depends on the enforcement of regulatory and criminal law by public bodies that are subject to reasonable standards of transparency and accountability. This is critically important in order to ensure the meaningful enforcement of animal protection legislation, which is at the heart of Animal Justice's mandate;
- d. The fundamental assumptions of the legal system are compromised to the extent that laws on the books are not adequately or properly enforced, or to the extent that the public cannot confirm that they are adequately and properly enforced. In the present circumstances, this undermines both the clear purposes of the legislation (to protect animals), and the public confidence in the integrity of law enforcement functions;
- e. In order to maintain public confidence in the administration of justice, the state must ensure that the bodies tasked with enforcing regulatory and criminal laws are subject to the safeguards traditionally required of public bodies;
- f. The principle that enforcement bodies must be subject to reasonable standards of transparency and accountability has sufficient certainty and permanence to be characterized as a principle of fundamental justice;

- g. In this context, the Ontario Society for the Prevention of Cruelty to Animals is not subject to reasonable standards of transparency and accountability;
8. Animal Justice intervened in the court below, and its submissions were cited and/or relied upon by the court in, *inter alia*, paragraphs 43, 46, 47, 48, 52, 83, 88, 91 and 97 of the court's decision (indexed as *Bogaerts v. Attorney General of Ontario*, 2019 ONSC 41);
9. Animal Justice's motion is consented to by the Respondent (Appellant in appeal), and unopposed by the Applicant (Respondent in appeal); and
10. Such further and other grounds as counsel may advise and this Honourable Court deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Camille Labchuk, with supporting exhibit, affirmed on April 15, 2019; and
2. Such further and other evidence as counsel may advise and this Honourable Court deem just.

DATED: April 15, 2019

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-and-

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Applicant (Respondent in
Appeal)

Respondents (Appellant in Appeal)

Court of Appeal File No: C66542
Superior Court File No.: 749/13

Proceeding commended at Perth
COURT OF APPEAL FOR ONTARIO

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