Court File No.: C66542

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO

Appellant (Respondent on Cross-Appeal)

and

JEFFREY BOGAERTS

Respondent (Appellant on Cross-Appeal)

FACTUM OF THE INTERVENOR, CANADIAN CIVIL LIBERTIES ASSOCIATION

July 18, 2019

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I. OVERVIEW AND STATEMENT OF FACTS

1. This appeal concerns a constitutional challenge to certain provisions of the *Ontario Society for the Prevention of Cruelty to Animals Act* (***"OSPCA Act"***) which delegate regulatory and law enforcement powers to the Ontario Society for the Prevention of Cruelty to Animals (**"OSPCA"**), a private organization.

2. The lower court found that the impugned provisions violated section 7 of the *Canadian Charter of Rights and Freedoms* (the ***"Charter"***) on the basis that they did not comport with a novel principle of fundamental justice, namely, that "law enforcement bodies must be subject to reasonable standards of transparency and accountability". However, the lower court found that the impugned provisions did not violate section 8 of the *Charter*.

3. The Attorney General of Ontario (**"AGO"**) appeals the lower court's conclusions regarding section 7 of the *Charter*, as well as the public interest standing of the applicant in the first instance, Jeffrey Bogaerts (**"Mr. Bogaerts"**). Mr. Bogaerts cross-appeals the lower court's conclusion that certain provisions of the *OSPCA Act* do not contravene section 8 of the *Charter*.

4. The Canadian Civil Liberties Association (the **"CCLA"**) has intervened in this appeal to address three issues arising from the decision of the lower court concerning the recognition of the new principle of fundamental justice, the importance of transparency and accountability as legal principles, and the reasons why private organizations with private organizations with delegated law enforcement powers must be subject to standards of transparency and accountability.

5. The CCLA's intervention raise issues of general importance that transcend the interests of the parties and the other questions to be decided in this case. They will have consequences on matters of central importance to the CCLA's mission of promoting and fostering fundamental human rights and civil liberties such as: (i) the consistent application of the *Charter*; (ii) appropriately broad and generous interpretation of the rights protected by the *Charter*; and (iii) ensuring access to constitutional scrutiny of bodies exercising law enforcement powers.

II. ISSUES

6. The CCLA's intervention in this appeal is limited to three points:

(a) the legal principles applicable to the recognition of a new principle of fundamental justice;

(b) the meaning and substance of transparency and accountability as legal principles; and

(c) why, having regard to the rights protected by sections 7 and 8 of the *Charter*, private organizations with delegated law enforcement powers need to be subject to transparency and accountability.

III. ARGUMENT

A. The Legal Principles Applicable to the Recognition of a New Principle of Fundamental Justice

7. There is no dispute that applicable test for the recognition of a new principle of fundamental justice, as applied by the lower court, is that set out by the Supreme Court of Canada in *R. v. Malmo-Levine*:

(a) it must be a legal principle;

(b) there must be significant societal consensus that it is fundamental to the way in which the legal system ought fairly to operate; and

(c) it must be identified with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person.[1]

8. A proposed rule or principle will be seen as a legal principle where it is manifested in various legal instruments and used "as a rule or test in common law, statutory or international law."[2] While some legal principles may be deeply rooted in our legal system's history and traditions, others will emerge out of evolving societal values and normative judgments about what rights, interest and values should be protected in a free and democratic society.[3]

9. The principles of fundamental justice must be capable of growing in tandem with the society in which they have developed. The Supreme Court of Canada recognized that the principles of fundamental justice were to be section 7's workhorse. In his article on the theories of the principals of fundamental justice, Nader Hasan posits that the rights enumerated in sections 8 to 14 of the *Charter* inform the development of the principles of fundamental justice. This was recognized by Justice Lamer in *Re B.C. Motor Vehicle Act*

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[1] *R. v. Malmo-Levin*e, 2003 SCC 74 at para. 113, Brief of Authorities of Canadian Civil Liberties Association ("BOA"), Tab 1.

[2] *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7 ("*Federation of Law Societies*") at para. 91, BOA, Tab 2.

[3] See, for example, *United States v. Burns*, 2001 SCC 7, BOA, Tab 3, where the Court recognized a principle of fundamental justice that was not anchored in history, but rather based on policy considerations that took into account evolving standards of decency and the collective abhorrence towards the death penalty in Canadian and in other democratic nations. See also Nader R. Hasan, "Three Theories of 'Principles of Fundamental Justice'", (2013) 63 SCLR (2d) 339 ("Hasan") at 361-365, BOA, Tab 15.

where he wrote that sections 8 to 14 of the *Charter* illustrate the parameters of the "right" to life, liberty and security of the person.[4] On this basis, the Supreme Court has recognized a number of principles of fundamental justice that are emanations of the particular rights, including, for example, the right to silence,[5] and the presumption of innocence at bail.[6] The purpose of recognizing these principles of fundamental justice is to ensure that the core rights protected by these principles are not undermined by gaps in our constitutional framework.

10. As Hasan notes, in addition to recognizing principles of fundamental justice as emanations of existing *Charter* rights, the Supreme Court has also recognized new principles of fundamental justice founded on the belief in dignity and worth of the human person, and on the rule of law.[7] This approach is exemplified by the Court's decisions in *R. v. Vaillancourt*[8] and *R. v. Martineau*.[9] Those cases involved constitutional challenges to the "constructive murder" provisions under the *Criminal Code*, which defined homicide as murder in certain circumstances regardless of whether or not the Crown could prove a subjective fault element. In *Vaillancourt*, the Court relied on the section 7 right to be presumed innocent, as well as the principle that criminal offences must contain a "fault element"[10] – the latter of which, Hasan explains, is "rooted in the idea that the Constitution protects the human dignity of all individuals, including those convicted of serious offences".[11] A similarly purposive approach to the recognition of a new principle of

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[4] *Re B.C. Motor Vehicle Act* (1985), [1985] 2 S.C.R. 486 ("*MVR*") at 502-503, BOA, Tab 4.
[5] *R. v. Hebert* (1990), [1990] 2. S.C.R. 151, BOA, Tab 5.
[6] *R. v. Pearson* (1992), [1992] 3 S.C.R. 665, BOA, Tab 6.
[7] Hasan, *supra*, at 361, BOA, Tab 15.
[8] *R. v. Vaillancourt* (1987), [1987] 2 S.C.R. 636 ("*Vaillancourt*"), BOA, Tab 7.
[9] *R. v. Martineau* (1990), [1990] 2. S.C.R. 633, BOA, Tab 8.
[10] *Vaillaincourt*, *supra*, at 654.
[11] Hasan, *supra*, at 362, BOA, Tab 15.

fundamental justice was taken by the Court in *R. v. Morgentaler*, where the legal abortion scheme under the *Criminal Code* was struck down on the basis it was "manifestly unfair."[12]

11. Accordingly, in considering the test for recognizing a new principle of fundamental justice enshrined in *Malmo-Levine*, it is imperative to have regard to the Supreme Court's rich history of developing new principles of fundamental justice that meet the needs of evolving legal landscape. This is required in order to ensure that such principles keep pace with the interpretation of the rights in sections 8 to 14 of the *Charter*, as well as the belief in dignity, and the rule of law. While recent jurisprudence from the Supreme Court of Canada has relied on the principles of fundamental justice of overbreadth, gross disproportionality and arbitrariness when applying section 7 of the *Charter*, the Supreme Court has not foreclosed the development of new principles of fundamental justice, and continues to recognize novel principles.[13]

B. The Centrality of Transparency and Accountability as Important Legal Principles

12. A number of academic articles, commissions, and reports have discussed the definition and parameters of transparency and accountability, and frequently do so with regard to the concepts of "oversight" and "review". Each of these articles, commissions, and reports, discussed below, note that accountability requires both *ex ante* oversight and *ex post facto* review to (i) forestall abuses of power; and (ii) ensure public confidence in the exercise of those powers. This commentary demonstrates that there is sufficient

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[12] *R. v. Morgentaler* (1998), [1998] 1. S.C.R. 30, BOA, Tab 9.
[13] See, for example, *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 72, BOA, Tab 10; *Federation of Law Societies*, *supra*, at para. 8, BOA, Tab 2.

societal consensus that the principles of transparency and accountability are fundamental to how the legal system ought to operate.

13. Oversight and review are sometimes seen as two distinct concepts, both of which are required to achieve accountability. The differences between oversight and review have been recognized in the national security framework, which share similarities with the law enforcement context, by Kent Roach, Craig Forcese, and Leah Sherriff in their article "Oversight and Review: Turning Accountability Gaps into Canyons?". In that article, the authors defined "oversight" as "real-time" governance, writing as follows:

> Put simply, in Canadian practice, "oversight" is command/control over operations (what one might call real time or close to real time governance).[14]

14. The authors then went on to describe "review" as "after-the-fact auditing", as follows:

> "Review" is after-the-fact auditing of operations, measured against some set of criteria (e.g., compliance with the law or policy) (what one might call *ex post facto* accountability). A reviewer does not have operational responsibility for what is being reviewed and this helps ensure that reviewers remain independent and are not complicit, or seen to be complicit, in what is being reviewed.[15]

15. The authors then proceeded to explain why the differences between oversight and review are necessary to consider when evaluating whether or not accountability has been achieved. In so explaining, the authors note how oversight amounts to a more complete

[14] Kent Roach, Craig Forcese, and Leah Sheriff, "Bill C-51 Backgrounder #5: Oversight and Review: Turning Accountability Gaps into Canyons?" (Social Science Research Network: 2015) (Roach et al") at 8, BOA, Tab 16.
[15] *Ibid*.

method of evaluating of the exercise of state power than review, as the latter involves only a partial assessment of those powers:

> [W]hile robust oversight involves judicial and/or executive authorization for each individual activity (or classes of activity), review is a partial assessment. Review depends on a "sampling" of past conduct or an audit. Not every activity or even class of activities is audited, and certainly not audited annually or in anything close to real time. This fundamental structural distinction must be kept in mind in assessing review as an effective form of accountability.[16]

16. The fact that e*x post facto* review is insufficient, on its own, to achieve accountability was also highlighted in the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*. In that report, Commissioner O'Connor noted that after-the-fact controls in the form of judicial review are limited in what they can accomplish due to the timing of that review, and the fact it only arises when a matter proceeds to litigation. Commissioner O'Connor stated that the "judiciary is a reactive institution" that can only respond to misconduct "when it becomes an issue in a criminal prosecution or the subject of a civil lawsuit or a judicial review of executive behaviour".[17]

17. Notably, in that same commission of inquiry, Commissioner O'Connor highlighted the lack of direction and oversight which lead the RCMP to share information with United States law enforcement, and ultimately, to Mr. Arar's detention:

> <u>These failures should never have occurred</u>. It was incumbent upon the RCMP and its senior officers to ensure that Project A-O Canada received clear and accurate direction with regard to how information was to be shared and <u>to exercise sufficient oversight to rectify any unacceptable practices</u>. Indeed, there was an especially strong need for

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[16] *Ibid*.

[17] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Mechanism for the RCMP's National Security Activities, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*" (Ottawa: Public Works and Government Services Canada, 2006) ("Arar Inquiry") at 491, BOA, Tab 17.

> reaction and oversight because of the lack of training and experience in national security investigations of most of the Project A-O Canada members, including the managers.[18]

18. Likewise, in the *Report of the Inquiry into Pediatric Forensic Pathology*, Commissioner Goudge emphasized the lack of accountability and oversight with respect to Dr. Smith's practices, writing:

> The tragic story of pediatric forensic pathology in Ontario from 1981 to 2001 is not just the story of Dr. Smith. It is equally the story of failed oversight. The oversight and accountability mechanisms that existed were not only inadequate to the task but also inadequately employed by those responsible for using them.
>
> […]
>
> For far too long, Dr. Smith was not held accountable. […] [T]he shortcomings represent systemic failings of oversight that must be corrected if public confidence is to be restored.[19] [emphasis added]

19. Recognizing the necessity of transparency and accountability mechanisms has crucial implications in situations where section 8 rights may also be at stake, in particular in the context of warrantless searches. The purpose of the right to be free from unreasonable search and seizure is animated by *preventing* unlawful search and seizure in order to avoid unreasonable intrusions into individuals' privacy. It is not adequate to simply evaluate the propriety of a search or seizure once such an intrusion has taken place. As the Supreme Court of Canada noted in *Hunter v. Southam*:

> If the issue to be resolved in assessing the constitutionality of searches […] were in fact the governmental interest in carrying out a given search outweighed that of the individual in resisting the governmental intrusion upon his privacy, then it would be appropriate to determine

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[18] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar, Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006) at 24, BOA, Tab 18.

[19] Ontario Ministry of the Attorney General, *Report of the Inquiry into Pediatric Forensic Pathology in Ontario* (Toronto: Queens Printer, 2008) Vol. I at 20-21, BOA, Tab 19.

> the balance of the competing interests after the search had been conducted. Such a post facto analysis would, however, be seriously at odds with the purpose of s. 8. That purpose is, as I have said, to protect individuals from unjustified state intrusions upon their privacy. That purpose requires a means of preventing unjustified searches before they happen, not simply of determining, after the fact, whether they ought to have occurred in the first place.[20] [emphasis added]

20. *Ex ante* oversight is required in such circumstances because of the nature of the harm arising from section 8 violations. Once a breach of privacy has taken place, that breach cannot be undone or cured.[21] In addition, *ex post facto* review, as a complaints-based system, assumes a certain level of privilege, and may not be accessible to all litigants.

21. For these reasons, the CCLA submits that the principles of transparency and accountability – including, as they do, oversight and review mechanisms – are legal principles properly recognized as principles of fundamental justice under section 7 of the *Charter*.

22. Similarly, for all of the reasons stated above, these principles are necessary to avoid an infringement of section 8 where there is no requirement to obtain prior judicial authorization for a search.

C. Why Private Bodies Exercising Law Enforcement Powers Need to be Subject to Heightened Scrutiny in the form of Transparency and Accountability

i. Private Bodies Exercising Law Enforcement Powers Cannot be Immune from *Charter* Review

23. The CCLA submits that heightened scrutiny is required to ensure the transparency and accountability of private bodies exercising law enforcement powers. This is because

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[20] *Hunter v. Southam* (1984), [1984] 2 S.C.R 145 at 160, BOA, Tab 11.
[21] *R. v. Nova Scotia (Ombudsman)*, 2017 NSCA 9 at para. 24, BOA, Tab 12.

with a private body, unlike a public organization, there is often no guarantee (or obligation to demonstrate) that its inspectors and agents are well-trained, are subject to policies regarding the exercise of their powers, are educated about the *Charter*, are required to produce reports, or are subject to oversight in the form of an ombudsperson or other accountability body.

24. Where private bodies exercising law enforcement powers have the potential to infringe on a person's right to liberty, security of the person or privacy, sections 7 and 8 require heightened scrutiny of those bodies through the legal mechanisms of transparency and accountability. These bodies should not be immune from *Charter* review when exercising law enforcement powers. This is not to say that section 7 is triggered simply by virtue of another body *having* law enforcement powers. Section 7 is trigged when a body with law enforcement powers *deprives* a person of their right to liberty and security of the person.

25. As an example of why private bodies need to be subject to such legal principles, the CCLA refers to concerns raised in the literature with respect to private security used in service of public policing. In a research report prepared by Public Safety Canada in 2015, the authors noted the widespread concerns of the use of private security in this manner:

> A key set of concerns surrounding the role of private security and privatization are how to ensure accountability, transparency and the principles of democratic policing. Concerns have been expressed that the increased "marketization of crime control" requires a discussion of the governance of private security. Furthermore, the Law Reform Commission of Canada noted that the law and regulatory frameworks have not kept pace with the expansion of private security. […] Observers have argued that private security should be subjected to the same form of democratic governance and accountability as the public police. A recent report on police modernization by the Association of Municipalities Ontario noted that there is currently minimal public

> oversight of the private security industry. In all of the jurisdictions reviewed for this project, there are concerns with the oversight and accountability of the private security industry. There are questions about the rights of citizens whose rights are violated by private security officers, among others.[22] [citations omitted] [emphasis added]

26. As private organizations are generally not subject to any public scrutiny, applying the principle of fundamental justice requiring transparency and accountability will ensure the exercise of their law enforcement powers do not remain immune from review where section 7 and section 8 interests are at stake.

ii. Transparency and Accountability are Necessary in the Case of Warrantless Searches

27. The application of the principles of transparency and accountability to private bodies exercising law enforcement powers is also necessary because are section 8 concerns raised by an inspector or agent's ability to conduct warrantless searches. This is the case with regards to an inspector's or agent's search of all types of buildings and places, and not just in respect of dwellings. This is because devices (including personal computers and smartphones) located in an otherwise commercial or work space that could form the subject of an inspection and/or investigation can contain information that goes to the user's biographical core, and therefore attract a reasonable expectation of privacy. As the Supreme Court of Canada recognized in *R. v. Cole*:

> Computers that are used for personal purposes, regardless of where they are found or to whom they belong, "contain the details of our financial, medical, and personal situations" (*Morelli*, at para. 105). This is particularly the case where, as here, the computer is used to browse the Web. Internet-connected devices "reveal our specific interests, likes, and propensities, recording in the browsing history and cache files the

[22] Ruth Montgomery and Curt Taylor Griffiths, *The Use of Private Security Services for Policing* (Ottawa: Public Safety Canada: 2015) at 21, BOA, Tab 20.

> information we seek out and read, watch, or listen to on the Internet" (*ibid*.).
>
> This sort of private information falls at the very heart of the "biographical core" protected by s. 8 of the *Charter*.[23]

28. In order to prevent abuses of power, ensure public confidence in the administration of those powers, and avoid possible breaches of both section 7 and section 8 rights, the CCLA submits that private organizations exercising law enforcement investigation powers need to be subject to transparency and accountability.

iii. Private Bodies Having Regulatory and Criminal Law Functions Must Separate the Exercise of those Powers

29. The new principle of fundamental justice recognized by the lower court is also required with respect to private organizations who have both regulatory and criminal law powers to ensure those functions are being exercised in a manner that complies with section 7 of the *Charter*, and protects section 8 rights.

30. Under the *OSPCA Act*, inspectors are able to exercise inspection functions and subsequently conduct warrantless seizures of items they have reasonable grounds to believe are evidence of an offence under the statute.

31. For instance, under section 11.4(1) of the *OSPCA Act*, an inspector or agent may enter a building for the purposes of determining whether certain requirements are being complied with. That section provides:

> <u>Inspection — animals kept for animal exhibition, entertainment, boarding, hire or sale</u>
>
> 11.4 (1) An inspector or an agent of the Society may, without a warrant, enter and inspect a building or place where animals are kept in order to determine whether the standards of care or administrative requirements

[23] *R. v. Cole*, 2012 SCC 53 at paras. 47-48, BOA, Tab 13.

> prescribed for the purpose of section 11.1 are being complied with if the animals are being kept for the purpose of animal exhibition, entertainment, boarding, hire or sale.[24]

32. In addition, under section 12.1(4), that inspector would be entitled to seize any thing found in the course of that inspection. That section provides:

> Seizure of things in plain view
>
> (4) An inspector or an agent of the Society who is lawfully present in a building or place under the authority of any provision of this Act or of a warrant issued under this Act may, upon giving a receipt for it, seize any thing that is produced to the inspector or agent or that is in plain view if the inspector or agent has reasonable grounds to believe,
>
> (a) that the thing will afford evidence of an offence under this Act; or
>
> (b) that the thing was used or is being used in connection with the commission of an offence under this Act and that the seizure is necessary to prevent the continuation or repetition of the offence.[25]

33. These provisions, insomuch as they contemplate the maturation of an inspection into an investigation that could lead to penal consequences, underscore the need for inspectors to be subject to heightened accountability and transparency. It is imperative that the public know that private organizations are not using their inspection powers to effect searches and seizures in furtherance of investigations that may lead to penal consequences. This is precisely the kind of mischief the Supreme Court of Canada referred to in *R. v. Jarvis*, where it considered the section 7 implications of the audit and investigative powers of the Canada Custom and Revenue Agency (**"CCRA"**) under the *Income Tax Act*:

> Although the taxpayer and the CCRA are in opposing positions during an audit, when the CCRA exercises its investigative function they are in a more traditional adversarial relationship because of the liberty

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[24] *Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O. 36, s. 11.4(1).
[25] *Ibid*, s. 12.1(4).

> interest that is at stake. In these reasons, we refer to the latter as the adversarial relationship. It follows that there must be some measure of separation between the audit and investigative functions within the CCRA. Of course, having determined this, it remains for us to determine the bounds between the ITA audit and investigation and then to discuss the legal consequences.[26] [emphasis added]

34. In other words, an inspector's search powers for a regulatory purpose cannot be used in furtherance of a criminal investigation. These concerns are elevated with respect to private organizations who have no obligation to disclose how these functions are administered, or the outcomes of the exercise of their powers. Accordingly, at the very least, these bodies ought to be subject to the principles of transparency and accountability so that such information is available to the targets of inspections and investigations.

IV. ORDER REQUESTED

35. The CCLA undertakes not to seek any costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of July, 2019.

Ewa Krajewska, Graeme Hamilton, and Alannah Fotheringham

Lawyers for the Intervenor, the Canadian Civil Liberties Association

[26] *R. v. Jarvis*, 2002 SCC 73 at para. 84, BOA, Tab 14.

TAB A

SCHEDULE "A" – AUTHORITIES CITED

Case Law

1. *R. v. Malmo Levin*e, 2003 SCC 74
2. *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7
3. *United States v. Burns*, 2001 SCC 7
4. *Re B.C. Motor Vehicle Act* (1985), [1985] 2 S.C.R. 486
5. *R. v. Hebert* (1990), [1990] 2. S.C.R. 151
6. *R. v. Pearson* (1992), [1992] 3 S.C.R. 665
7. *R. v. Vaillancourt* (1987), [1987] 2 S.C.R. 636
8. *R. v. Martineau* (1990), [1990] 2. S.C.R. 633
9. *R. v. Morgentaler* (1998), [1998] 1. S.C.R. 30
10. *Carter v. Canada (Attorney General)*, 2015 SCC 5
11. *Hunter v. Southam* (1984), [1984] 2 S.C.R 145
12. *R. v. Nova Scotia (Ombudsman)*, 2017 NSCA 9
13. *R. v. Cole*, 2012 SCC 53
14. *R. v. Jarvis*, 2002 SCC 73

Secondary Sources

15. Nader R. Hasan, "Three Theories of 'Principles of Fundamental Justice'", (2013) 63 S.C.L.R (2d) 339
16. Kent Roach, Craig Forcese, and Leah Sheriff, "Bill C-51 Backgrounder #5: Oversight and Review: Turning Accountability Gaps into Canyons?" (Social Science Research Network: 2015)
17. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Mechanism for the RCMP's National Security Activities, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*" (Ottawa: Public Works and Government Services Canada, 2006) [Excerpts]
18. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar, Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006) [Excerpts]

19. Ontario Ministry of the Attorney General, *Report of the Inquiry into Pediatric Forensic Pathology in Ontario* (Toronto: Queens Printer, 2008) Vol. I

20. Ruth Montgomery and Curt Taylor Griffiths, *The Use of Private Security Services for Policing* (Ottawa: Public Safety Canada: 2015)

TAB B

SCHEDULE "B" – STATUTES CITED

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

Inspection — animals kept for animal exhibition, entertainment, boarding, hire or sale

11.4 (1) An inspector or an agent of the Society may, without a warrant, enter and inspect a building or place where animals are kept in order to determine whether the standards of care or administrative requirements prescribed for the purpose of section 11.1 are being complied with if the animals are being kept for the purpose of animal exhibition, entertainment, boarding, hire or sale.

[…]

Seizure of things in plain view

(4) An inspector or an agent of the Society who is lawfully present in a building or place under the authority of any provision of this Act or of a warrant issued under this Act may, upon giving a receipt for it, seize any thing that is produced to the inspector or agent or that is in plain view if the inspector or agent has reasonable grounds to believe,

(a) that the thing will afford evidence of an offence under this Act; or

(b) that the thing was used or is being used in connection with the commission of an offence under this Act and that the seizure is necessary to prevent the continuation or repetition of the offence.

Court File No.: C66542

THE ATTORNEY GENERAL OF ONTARIO
Appellant in Appeal
(Respondent in Cross-Appeal)

-and-

JEFFREY BOGAERTS
Respondent in Appeal
(Appellant in Cross-Appeal)

COURT OF APPEAL FOR ONTARIO

FACTUM OF THE INTERVENOR, CANADIAN CIVIL LIBERTIES ASSOCIATION

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