

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

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**THE ATTORNEY GENERAL OF ONTARIO**

Respondent in cross-appeal (Appellant in appeal)

and

**JEFFREY BOGAERTS**

Appellant in cross-appeal (Respondent in appeal)

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**RESPONSE TO INTERVENORS AND FACTUM OF THE  
RESPONDENT IN CROSS-APPEAL,  
THE ATTORNEY GENERAL OF ONTARIO**

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September 13, 2019

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B E T W E E N:

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**I. Overview**

1. In this factum, Ontario (1) responds to the *Charter* section 7 issues raised by the intervenors Animal Justice Canada, the Information and Privacy Commissioner of Ontario, and the Canadian Civil Liberties Association; and (2) responds to the respondent's (appellant on the cross-appeal) submissions on the cross-appeal, mainly concerning s. 8 of the *Charter*.

2. The intervenors' section 7 submissions do not demonstrate that the "transparency and accountability" principle recognized by the application judge meets the test for a principle of fundamental justice set out by the Supreme Court of Canada. As set out in Ontario's factum on the appeal, the principle recognized by the application judge is not a legal principle; there is no consensus that the principle recognized by the application

judge is “vital or fundamental to our societal notion of justice”; and the principle recognized by the application judge does not produce a workable, objective standard.

3. With respect to the cross-appeal, Ontario submits that the application judge was correct to hold that s. 13(6) and 14 of the *Act* do not violate s. 8 of the *Charter*. The application judge correctly directed himself as to the applicable test under s. 8 and correctly concluded that the provisions do not engage an objectively reasonable expectation of privacy.

4. Even if—contrary to the application judge’s finding—the provisions do engage a reasonable expectation of privacy, the provisions do not authorize an unreasonable search or seizure. The purpose of the provisions is to relieve animals in distress, not to gather evidence for the prosecution of an offence under the *Act*. The *Act* requires agents and inspectors to have reasonable grounds to believe an animal is in distress before issuing an order under s. 13 or seizing an animal under s. 14. Finally, both orders issued under s. 13 and seizures made under s. 14 can be challenged before the Animal Care Review Board.

## **II. Analysis**

### *The principle is not a legal principle*

5. Contrary to Animal Justice’s submissions, Ontario does not suggest that a principle of fundamental justice must be an established legal test or a “uniform concept in

legislation". However, the presence of a rule, norm, standard or test in statutes has been used as an indicator that something is a legal principle.

An important indicator that a proposed rule or principle is a legal principle is that it is used as a rule or test in common law, statutory law or international law.

Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401, at para. 91

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), 2004 SCC 4, [2004] 1 S.C.R. 76, at para. 9 [*Canadian Foundation*]

R. v. Malmö-Levine; R. v. Caine, 2003 SCC 74, [2003] 3 S.C.R. 571, at paras. 113–114 [*Malmö-Levine*]

6. The IPC argues that the principle recognized by the application judge is present in international law and *Charter* jurisprudence. However, the international instrument and the decision in *Criminal Lawyers Association* cited by the IPC do not contain the principle recognized by the application judge. Rather, they deal with a right "to seek, receive and impart information" (ICCPR Article 19) and "freedom of expression" under s. 2(b) of the *Charter*, respectively.

IPC factum at paras. 23–36

Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23, [2010] 1 S.C.R. 815, at para. 5

*There is no consensus that the principle is vital or fundamental to our societal notion of justice*

7. In its factum on the appeal, Ontario noted that the examples of the principle recognized by the application judge—the application of freedom of information legislation, the open courts principle, and a right of appeal—all admit exceptions in particular circumstances. Ontario argued that this is an indicator that the principle is not fundamental.

8. In response, Animal Justice argues that “no principle of fundamental justice is absolute, in the sense that it can never yield to alternative values”.

Animal Justice factum at para. 57

9. Animal Justice also argues that principles of fundamental justice “are no more absolute than other *Charter* rights”.

Animal Justice factum at para. 57

10. Similarly, the IPC argues that a principle of fundamental justice “need not be an absolute or unyielding rule” and that “in cases involving competing claims, ‘no single principle is absolute’ or ‘capable of trumping’ all others”.

IPC factum at para. 41

11. Ontario makes two points in response. First, it is clear that principles of fundamental justice must be fundamental in some sense. According to the Supreme Court of Canada, the fact that a principle may be subordinated to other concerns is an indicator that it is *not* a principle of fundamental justice. In *Canadian Foundation* the Supreme Court of Canada rejected the “best interests of the child” as a principle of fundamental justice because it was “not ... a foundational requirement for the dispensation of justice” and not “the primary consideration” even though it was “a primary consideration”.

Canadian Foundation, *supra* at para. 10

12. The Court went on to explain that the best interests of the child was not a principle of fundamental justice because it could be subordinated to other concerns in appropriate contexts:

It follows that the legal principle of the “best interests of the child” may be subordinated to other concerns in appropriate contexts. For example, a person

convicted of a crime may be sentenced to prison even where it may not be in his or her child's best interests. Society does not always deem it essential that the "best interests of the child" trump all other concerns in the administration of justice. The "best interests of the child", while an important legal principle and a factor for consideration in many contexts, is not vital or fundamental to our societal notion of justice, and hence is not a principle of fundamental justice.

Canadian Foundation, *supra* at para. 10

13. For example, as pointed out in Ontario's factum on the appeal, freedom of information legislation does not provide an unqualified right of access to information in government hands (and nor for that matter does s. 2(b) of the *Charter*). Requests for the disclosure of records may be refused where the disclosure could reasonably be expected to, *inter alia*, interfere with a law enforcement matter, reveal investigative techniques and procedures currently in use or likely to be used in law enforcement, interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons, reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation, or facilitate the commission of an unlawful act or hamper the control of crime.

*Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, s. 14

14. Second, the Supreme Court's statement in *Mills* that no right is capable of trumping all others should not be used to suggest that something is a principle of fundamental justice despite being subordinated to other concerns in appropriate contexts. This statement was made in the context of balancing an already recognized principle of fundamental justice against other *Charter* rights, not in the context of determining whether to recognize a rule or principle as a principle of fundamental justice in the first place. In *Mills* there was no dispute that the right to full answer and defence is a principle of fundamental justice. The Court was attempting to resolve the apparent conflict between

the recognized principle of an accused's right to full answer and defence and a complainant's privacy and equality rights.

15. The Court explained that in doing so it rejected a “competing rights” approach where one right “trumped” another. Rather, it endorsed an approach whereby various rights are interpreted in light of one another. Thus what was required by the accused's right to full answer and defence was informed by the complainant's equality and privacy rights.

R v. Mills, [1999] 3 S.C.R. 668 at paras. 61–68

16. The Court's decision in *Mills* would be relevant if the issue were how to balance reasonable standards of transparency and accountability against another recognized right. However, it does not assist the court in determining whether to recognize a rule or principle as a principle of fundamental justice.

*The principle cannot be identified with sufficient precision*

17. Animal Justice argues that the third step of the *Canadian Foundation* test—that the proposed principle must give rise to workable, objective standard—does not mean “that there cannot be any dispute over the application of a principle of fundamental justice in specific cases and contexts”.

Animal Justice factum at para. 62

18. Ontario agrees that it is not necessary for there to be no dispute about the application of a principle of fundamental justice. However, the principle itself contains no more objective standard than “reasonable” standards of accountability and transparency. What standards of transparency and accountability are “reasonably” required of law

enforcement bodies will obviously be highly contextual and the subject of disagreement among reasonable people. In *Canadian Foundation* the Court found that this meant that the “best interests of the child” is not a principle of fundamental justice. The same can be said of the principle at issue here.

The third requirement is that the alleged principle of fundamental justice be “capable of being identified with some precision” (*Rodriguez, supra*, at p. 591) and provide a justiciable standard. Here, too, the “best interests of the child” falls short. It functions as a factor considered along with others. Its application is inevitably highly contextual and subject to dispute; reasonable people may well disagree about the result that its application will yield, particularly in areas of the law where it is one consideration among many, such as the criminal justice system. It does not function as a principle of fundamental justice setting out our minimum requirements for the dispensation of justice.

*Canadian Foundation, supra* at para. 11 [emphasis added]

19. The IPC proposes a highly prescriptive set of legally binding standards that mirror the *Freedom of Information and Protection of Privacy Act*. These would include a duty to preserve records, a right to request access to records, a duty to render a written decision on access to records, and a right to appeal that decision to an independent adjudicator. While these standards would have the virtue of precision, they no longer resemble a legal principle. Instead, they would simply constitutionalize the *Freedom of Information and Protection of Privacy Act*.

IPC factum at para. 43

**The respondent’s additional proposed principle of fundamental justice should not be recognized**

20. As part of his cross-appeal, the respondent proposes a distinct principle of fundamental justice that “law enforcement bodies must be funded in such a manner to avoid actual or perceived conflicts of interest or apprehensions of bias”.

Respondent (appellant in cross-appeal)’s factum at para. 4



21. Animal Justice advocates for a similar principle that “law enforcement bodies must not be structured or funded in a way that creates conflicts of interest, real or perceived”.

Animal Justice factum at para. 68

22. Ontario submits that this principle does not meet the criteria for a principle of fundamental justice. Ontario agrees with the submissions of the Attorney General of Canada that public funding for law enforcement bodies is a matter of policy, not a matter of law. The Supreme Court’s jurisprudence on the principles of fundamental justice has warned against the danger of importing policy concerns into the s. 7 analysis. Specifically, the Court has repeatedly warned that Canadian Courts should not engage in a free-standing inquiry under s. 7 into whether a particular legislative measure “strikes the right balance” between individual and societal interests.

AG Canada factum at para. 27  
Re BC Motor Vehicle Act, [1985] 2 S.C.R. 486 at p. 503  
Malmo-Levine, *supra* at paras. 96–98

23. The respondent argues that this additional proposed principle is a legal principle because it relates to how the justice system operates. However, it is clear that not everything that “relates to how our justice system operates” is a legal principle. For example, the “harm principle” could be said to “relate to how our justice system operates”, but was nevertheless rejected as a principle of fundamental justice because it is not a legal principle.

Malmo-Levine, *supra* at paras. 113–114

24. *La*, which the respondent cites, did not recognize “the avoidance of conflict of interests” as a principle of fundamental justice or deal with the funding of law enforcement bodies. Rather, it dealt with the recognized principles of the accused’s right to full answer



and defence and right to a fair trial as expressed in the Crown's duty to preserve records in a criminal investigation.

*R v. La*, [1997] 2 S.C.R. 680, at para. 55

25. Furthermore, the additional proposed principle suffers from the same difficulty as the principle recognized by the application judge. It does not relate to any deprivation of life, liberty, or security of the person. Instead, it relates solely to the characteristics of law enforcement bodies in the abstract. A free-standing inquiry into the structure and funding of different kinds of law enforcement bodies is not what s. 7 was intended to do.

**The application judge correctly held that ss. 13(6) and 14(1) of the Act do not violate s. 8 of the Charter**

26. In his cross-appeal, the respondent (appellant on cross-appeal) argues that the application judge misdirected himself on the test applicable under s. 8 of the *Charter*.

Respondent (appellant in cross-appeal)'s factum at para 45

27. The respondent also argues that the application judge erred in holding that ss. 13(6) and 14(1) of the *OSPCA Act* do not engage a reasonable expectation of privacy.

Respondent (appellant in cross-appeal)'s factum at para. 53

28. Ontario submits that the application judge correctly concluded that the provisions do not infringe s. 8. First, his Honour correctly directed himself on the test under s. 8 of the *Charter*. Second, his Honour correctly found that the provisions do not engage a reasonable expectation of privacy.

29. Finally, even if the application judge was incorrect and the provisions do engage a reasonable expectation of privacy, they do not authorize unreasonable searches or seizures. The provisions strike a reasonable balance considering the regulatory context, the unique vulnerability of animals, and the safeguards in the Act. These safeguards include the requirements for inspectors and agents to have reasonable grounds to believe an animal is in distress, the limited purposes for which inspectors and agents can enter a building or place or seize an animal, and the ability to challenge orders and seizures before the Animal Care Review Board.

*It was not an error for the application judge to cite the Supreme Court's decision in Cole*

30. The appellant submits that the application judge was incorrect to rely on the decision of the Supreme Court of Canada in *R. v. Cole* because *Cole* “examines the constitutionality of a particular search or seizure, not the constitutionality of a law that authorizes a search or seizure”.

Respondent (appellant in cross-appeal)’s factum at para. 45

31. The application judge correctly stated the s. 8 framework and did not err by citing *Cole*. Contrary to the suggestion of the appellant, there is no separate analysis under s. 8 of the *Charter* for examining the constitutionality of a particular search or seizure as opposed to the constitutionality of a law that authorizes a search or seizure.

32. Rather, the reasonableness of the law authorizing a search or seizure is part of the analysis of whether a search or seizure is reasonable. In order to be reasonable a search or seizure must be authorized by law, the law itself must be reasonable, and the search

must be carried out in a reasonable manner. If the law authorizing a search is unreasonable, there is no need to consider the circumstances of a particular search.

Goodwin v. British Columbia (Superintendent of Motor Vehicles), 2015 SCC 46, [2015] 3 S.C.R. 250, at para. 48

33. In any event, the application judge did not mistakenly analyze any particular search or seizure. The applicant was not subjected to any search or seizure by OSPCA agents or inspectors. He was granted public interest standing to pursue this application. In light of that fact, the application judge correctly concluded that the only issue at the second step of the s. 8 analysis was whether the law was reasonable.

It was not an error to conclude that the provisions do not engage a reasonable expectation of privacy

34. The application judge was correct to conclude that the provisions do not engage a reasonable expectation of privacy. At the first step of the s. 8 test (whether the provisions engaged a reasonable expectation of privacy), His Honour focused on the nature of the subject matter and on whether the expectation of privacy was objectively reasonable in the totality of the circumstances.

Bogaerts v. Attorney General of Ontario, 2019 ONSC 41, at para. 35 [Bogaerts]

35. There were two main factors in his conclusion that the provisions did not engage an objectively reasonable expectation of privacy. First, he considered the context of animal welfare. This included the unique vulnerability of animals, arising from the fact that they are often kept out of public view and are unable themselves to report neglect or abuse. It also included the increased judicial and legislative recognition of the importance of protecting animals from neglect and abuse. The application judge correctly took these

factors into account in determining whether the owner or operator has an objectively reasonable expectation of privacy.

Bogaerts, supra at paras. 46–47

36. Second, his Honour considered the purpose of the provisions. He correctly concluded that the challenged provisions are aimed at ensuring animal welfare, not securing evidence of offences under the Act or the *Criminal Code*.

Bogaerts, supra at paras. 57, 61

37. Section 13(1) of the Act allows agents and inspectors to order the owner or custodian of an animal to take steps to relieve the animal from distress or have the animal examined and treated by a veterinarian. An inspector or agent may only enter a building or place under s. 13(6) in order to determine whether an owner or custodian is complying with an order to provide an animal with care, food, water, or shelter.

38. Similarly, s. 14(1) of the Act authorizes the seizure of an animal in distress from a building or place for the purpose of providing it with food, care or treatment.

In any event the provisions do not authorize unreasonable searches or seizures

39. In any event, Ontario submits that the provisions do not authorize unreasonable searches and seizures.

40. First, the provisions require an inspector or agent to have reasonable and probable grounds to believe that an animal is in distress either before issuing an order or seizing

an animal. Second, both orders under s. 13 and seizures under s. 14(1) are subject to review by an independent body.

41. With respect to s. 13:

- An agent of inspector must have reasonable grounds to believe that an animal is in distress before an order can issue under s. 13(1).

*Ontario Society for the Prevention of Cruelty to Animals Act*, R.S.O. 1990, c. O. 36, s. 13(1) [OSPCA]

- Orders must be in writing and must contain a notice that the order can be appealed to the Animal Care Review Board.

*OSPCA, supra*, ss 13(2), 17

- A person who is the subject of an order can apply to the Board for a revocation of the order if, in the opinion of the owner or custodian, the animal is no longer in distress. Alternatively, if the inspector or agent is of the opinion that the order has been complied with, he or she shall serve notice of the revocation of the order in writing forthwith.

*OSPCA, supra*, ss 17(2), 13(7)

- The statute provides a further appeal from the Animal Care Review Board to a judge of the Superior Court of Justice (s. 18(1)).

*OSPCA, supra*, s. 18(1)

42. With respect to s. 14:

- An agent or inspector may only act under s. 14(1) when a veterinarian has examined the animal, there are reasonable grounds to believe that an animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly, or an order has been made under s. 13 and the order has not been complied with.

*OSPCA, supra, s. 14(1)*

- When an animal is seized under s. 14 the owner or custodian, if known, must be notified in writing and the notice must include ss. 17(1) and (2) of the Act. These sections provide that an owner or custodian may appeal to the Animal Care Review Board to request the return of the animal (unless there is an order under s. 14(1.1)).

*OSPCA, supra, s. 17(1)*

- A justice of the peace or provincial judge may make an order authorizing the Society to keep an animal seized under s. 14(1) in its care if the owner or custodian has been charged with an offence pertaining to the welfare of or the prevention of cruelty to animals or if she is satisfied by information under oath that there are reasonable grounds to believe that the animal may be harmed if returned to its owner or custodian.

*OSPCA, supra, s 14(1.1)*

- The Society or the owner or custodian may apply to a justice of the peace or a provincial judge to order the return of an animal that is the subject of an order under s. 14(1.1).

*OSPCA, supra, s. 14(1.4)*

43. The respondent argues that the provisions are unreasonable because they do not provide for prior authorization. As he did before the application judge, the appellant relies on the decision of the Nova Scotia Provincial Court in *R. v. Vaillancourt*.

44. *Vaillancourt* was a challenge to the provision in Nova Scotia's animal welfare statute that authorized a peace officer to enter premises (other than a private dwelling), vehicles, or things to search for an animal in distress, and to take steps to relieve its distress. The provision required the officer to have reasonable and probable grounds to believe that an animal is in distress but did not require a warrant for premises other than private dwellings. The Nova Scotia court found that that lack of a requirement for a warrant violated s. 8 of the *Charter*.

*R v. Vaillancourt*, 2003 NSPC 59

45. The respondent's reliance on *Vaillancourt* is misplaced because the court in *Vaillancourt* was not examining a provision like s. 13(6) of the Ontario Act. Instead, it was examining a provision like s. 12 of the Ontario Act, which does require agents and inspectors of the OSPCA to obtain a warrant before searching a building or place for an animal in distress.

46. Section 13(6) of the Ontario statute depends on the prior issuance of an order issued on reasonable grounds to believe that an animal is in distress. The owner or custodian must be notified of the order and has an opportunity to contest it before an administrative tribunal. The purpose of the inspection authorized by the provision is to determine compliance with the order. A provision authorizing the enforcement of an order that may

itself be challenged before the Animal Care Review Board does not raise the same oversight concern as the provision at issue in *Vaillancourt*.

47. Furthermore, it is clear that whereas prior authorization is required in the criminal context, prior authorization is not necessarily required in order for search to be reasonable in the regulatory context. The court in *Vaillancourt* did not consider this jurisprudence and the respondent similarly fails to address it.

*Comité paritaire de l'industrie de la chemise v. Potash; Comité paritaire de l'industrie de la chemise v. Sélection Milton*, [1994] 2 S.C.R. 406

*British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3

*R v. Campanella*, 75 O.R. (3d) 342 (C.A.) at paras. 20–21

### **III. Conclusion**

48. Ontario respectfully requests that the appeal be allowed and the cross-appeal dismissed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

  
Daniel Huffaker  
Counsel for the Respondent in Cross-Appeal  
(Appellant in Appeal)



## Schedule A

1. Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401
2. Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General), 2004 SCC 4, [2004] 1 S.C.R. 76
3. R. v. Marmo-Levine; R. v. Caine, 2003 SCC 74, [2003] 3 S.C.R. 571
4. Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23, [2010] 1 S.C.R. 815
5. R v. Mills, [1999] 3 S.C.R. 668
6. Re BC Motor Vehicle Act, [1985] 2 S.C.R. 486
7. R v. La, [1997] 2 S.C.R. 680
8. Goodwin v. British Columbia (Superintendent of Motor Vehicles), 2015 SCC 46, [2015] 3 S.C.R. 250
9. Bogaerts v. Attorney General of Ontario, 2019 ONSC 41
10. R v. Vaillancourt, 2003 NSPC 59
11. Comité paritaire de l'industrie de la chemise v. Potash; Comité paritaire de l'industrie de la chemise v. Sélection Milton, [1994] 2 S.C.R. 406
12. British Columbia Securities Commission v. Branch, [1995] 2 S.C.R. 3
13. R v. Campanella, 75 O.R. (3d) 342 (C.A.)

## **Schedule B**

1. Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O. 36
2. Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31, ss. 1, 10(1), 12-2

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

**ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS**

**Interpretation**

1. (1) In this Act,

“accredited veterinary facility” means a veterinary facility as defined in the Veterinarians Act that is accredited under that Act; (“établissement vétérinaire agréé”)

“Board” means the Animal Care Review Board; (“Commission”)

“business day” means a weekday, excluding a day that is a holiday; (“jour ouvrable”)

“distress” means the state of being in need of proper care, water, food or shelter or being injured, sick or in pain or suffering or being abused or subject to undue or unnecessary hardship, privation or neglect; (“détresse”)

“orca” means a member of the species *Orcinus orca*; (“épaulard”)

“place” includes a vehicle or vessel; (“lieu”)

“prescribed” means prescribed by regulation made under this Act; (“prescrit”)

“veterinarian” means a person licensed as a veterinarian by the College of Veterinarians of Ontario. (“vétérinaire”) 2008, c. 16, s. 1; 2009, c. 33, Sched. 9, s. 9 (1); 2015, c. 10, s. 1.

**Minor owner, custodian**

(2) Where the owner or custodian of an animal is a minor, the owner or custodian for the purposes of this Act is deemed to be the minor’s parents or guardians.

**Society continued**

2. The Ontario Society for the Prevention of Cruelty to Animals, a body politic and corporate incorporated by An Act to Incorporate the Ontario Society for the Prevention of Cruelty to Animals, being chapter 124 of the Statutes of Ontario, 1919, is continued under the name The Ontario Society for the Prevention of Cruelty to Animals in English and Société de protection des animaux de l’Ontario in French.

**Object**

3. The object of the Society is to facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom.

**Membership**

4. The Society shall consist of class A members, being affiliated societies, class B members, being individual members, and class C members, being honorary members, and each class has such rights and obligations as are provided in the by-laws of the Society.

#### **Board of directors: executive committee**

5. The affairs of the Society shall be controlled and managed by a board of directors and by an executive committee, both of which shall be composed and have such powers and duties as are provided in the by-laws of the Society.

#### **Officers**

6. The Society shall have such officers with such powers and duties as are provided in the by-laws of the Society.

#### **Chief Inspector**

6.1 (1) The Society shall appoint an employee of the Society as the Chief Inspector.

#### **Powers, duties**

(2) In addition to the powers and duties of an inspector or an agent of the Society, the Chief Inspector shall have the powers and duties that may be prescribed by regulation, including the power to establish qualifications, requirements and standards for inspectors and agents of the Society, to appoint inspectors and agents of the Society and to revoke their appointments and generally to oversee the inspectors and agents of the Society in the performance of their duties.

#### **Same**

(3) The Chief Inspector of the Society may have additional powers and duties as are provided in the by-laws of the Society.

#### **By-laws**

7. (1) The Society may pass such by-laws, not contrary to law, as it considers necessary for the control and management of its affairs and the carrying out of its object.

#### **Approval**

(2) No by-law of the Society is valid or shall be acted upon until it has been approved by a majority of the votes cast in accordance with the by-laws of the Society at an annual or special general meeting.

#### **Annulment**

(3) The Lieutenant Governor in Council may annul any by-law of the Society.

#### **Powers**

8. The Society,

- (a) may acquire and hold as a purchaser, donee, devisee or legatee, or in any other capacity, any interest in real estate;
- (b) may accept, receive and hold gifts, bequests or subscriptions of personal estate;
- (c) may grant, lease, bargain for, mortgage, sell, assign or otherwise dispose of any of its real or personal estate;
- (d) may erect, construct, equip and maintain such buildings and works as it considers advisable for its purposes; and
- (e) may do all such other matters and things as it considers advisable for carrying out its object.

**Exemption of property from taxation**

9. The lands and buildings of the Society are exempt from taxation except for local improvements and school purposes so long as they are held, used and occupied for the purposes of the Society.

**Prohibitions re holding out as Society, affiliated society**

10. (1) No corporation or other entity, other than the Society or an affiliated society, shall,

- (a) hold itself out as being the Society or an affiliated society having authority under this Act; or
- (b) use the name "humane society", "society for the prevention of cruelty to animals" or "spca" or the equivalent of any of those names in any other language, alone or in combination with any other word, name, initial or description.

**Exception**

(2) Despite clause (1) (b), a corporation or other entity that was an affiliated society on April 3, 2008 may continue to use the name "humane society", "society for the prevention of cruelty to animals" or "spca", or the equivalent of any of those names in any other language, alone or in combination with any other word, name, initial or description, even if it is no longer an affiliated society.

**Inspectors and agents**

**Powers of police officer**

11. (1) For the purposes of the enforcement of this Act or any other law in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals, every

inspector and agent of the Society has and may exercise any of the powers of a police officer.

### **Inspectors and agents of affiliates**

(2) Every inspector and agent of an affiliated society who has been appointed by the Society or by the Chief Inspector of the Society may exercise any of the powers and perform any of the duties of an inspector or an agent of the Society under this Act and every reference in this Act to an inspector or an agent of the Society is deemed to include a reference to an inspector or agent of an affiliated society who has been appointed by the Society or by the Chief Inspector of the Society.

### **Local police powers**

(3) In any part of Ontario in which the Society or an affiliated society does not function, any police officer having jurisdiction in that part has and may exercise any of the powers of an inspector or agent of the Society under this Act.

### **Identification**

(4) An inspector or an agent of the Society who is exercising any power or performing any duty under this Act shall produce, on request, evidence of his or her appointment.

### **Interfering with inspectors, agents**

(5) No person shall hinder, obstruct or interfere with an inspector or an agent of the Society in the performance of his or her duties under this Act.

## **OBLIGATIONS AND PROHIBITIONS RE CARE OF AND HARM TO ANIMALS**

### **Standards of care and administrative requirements for animals**

11.1 (1) Every person who owns or has custody or care of an animal shall comply with the prescribed standards of care, and the prescribed administrative requirements, with respect to every animal that the person owns or has custody or care of.

### **Exception**

(2) Subsection (1) does not apply in respect of,

- (a) an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry; or
- (b) a prescribed class of animals or animals living in prescribed circumstances or conditions, or prescribed activities.

### **Same**

(3) Subsection (1) does not apply to,

- (a) a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the Veterinarians Act;
- (b) a person acting under the supervision of a veterinarian described in clause (a); or
- (c) a person acting under the orders of a veterinarian described in clause (a), but only in respect of what the person does or does not do in following those orders.

### **Prohibitions re distress, harm to an animal**

#### **Causing distress**

11.2 (1) No person shall cause an animal to be in distress.

#### **Permitting distress**

(2) No owner or custodian of an animal shall permit the animal to be in distress.

#### **Training, permitting animals to fight**

(3) No person shall train an animal to fight with another animal or permit an animal that the person owns or has custody or care of to fight another animal.

#### **Owning animal fighting equipment, structures**

(4) No person shall own or have possession of equipment or structures that are used in animal fights or in training animals to fight.

#### **Harming law enforcement animals**

(5) No person shall harm or cause harm to a dog, horse or other animal that works with peace officers in the execution of their duties, whether or not the animal is working at the time of the harm.

#### **Exception**

- (6) Subsections (1) and (2) do not apply in respect of,
- (a) an activity permitted under the Fish and Wildlife Conservation Act, 1997 in relation to wildlife in the wild;
  - (b) an activity permitted under the Fish and Wildlife Conservation Act, 1997 or the Fisheries Act (Canada) in relation to fish;
  - (c) an activity carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry; or
  - (d) a prescribed class of animals or animals living in prescribed circumstances or conditions, or prescribed activities.

### **Same**

(7) Subsections (1) and (2) do not apply to,

- (a) a veterinarian providing veterinary care, or boarding an animal as part of its care, in accordance with the standards of practice established under the Veterinarians Act;
- (b) a person acting under the supervision of a veterinarian described in clause (a); or
- (c) a person acting under the orders of a veterinarian described in clause (a), but only in respect of what the person does or does not do in following those orders.

### **Veterinarians' obligation to report**

11.3 Every veterinarian who has reasonable grounds to believe that an animal has been or is being abused or neglected shall report his or her belief to an inspector or an agent of the Society.

## **PROHIBITION RE ORCA POSSESSION AND BREEDING**

### **Prohibition of orca possession and breeding**

11.3.1 (1) No person shall possess or breed an orca in Ontario.

### **Transition**

(2) Despite subsection (1), a person may continue to possess an orca in Ontario if the person possessed the orca in Ontario on March 22, 2015.

### **Same**

(3) Despite subsection (1), a person who first possessed an orca in Ontario on or after March 23, 2015, but before the day the Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2015 received Royal Assent, may continue to possess the orca in Ontario until the day that is six months after the day the Ontario Society for the Prevention of Cruelty to Animals Amendment Act, 2015 received Royal Assent.

## **PROTECTION OF ANIMALS BY SOCIETY**

### **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.

### **Accompaniment**

(1.1) An inspector or an agent of the Society conducting an inspection under this section may be accompanied by one or more veterinarians or other persons as he or she considers advisable.

### **Dwellings**

(2) The power to enter and inspect a building or place under this section shall not be exercised to enter and inspect a building or place used as a dwelling except with the consent of the occupier.

### **Accredited veterinary facilities**

(3) The power to enter and inspect a building or place under this section shall not be exercised to enter and inspect a building or place that is an accredited veterinary facility.

### **Time of entry**

(4) The power to enter and inspect a building or place under this section may be exercised only between the hours of 9 a.m. and 5 p.m., or at any other time when the building or place is open to the public.

(5) Repealed: 2015, c. 10, s. 4 (2).

### **Power to demand record or thing**

11.4.1 (1) An inspector or an agent of the Society may, for the purpose of ensuring that the standards of care or administrative requirements prescribed for the purpose of section 11.1 are being complied with, demand that a person produce a record or thing for inspection if the person owns or has custody or care of animals that are being kept for the purpose of animal exhibition, entertainment, boarding, hire or sale.

### **Subject of demand shall produce record or thing**

(2) If an inspector or an agent of the Society demands that a record or thing be produced for inspection, the person who is subject to the demand shall produce it for the inspector or agent within the time provided for in the demand.

### **Warrant – places where animals kept**

11.5 (1) A justice of the peace or provincial judge may issue a warrant authorizing one or more inspectors or agents of the Society named in the warrant to enter a building or place specified in the warrant, either alone or accompanied by one or more veterinarians or other persons as the inspectors or agents consider advisable, and to

inspect the building or place and do anything authorized under section 11.4 if the justice of the peace or provincial judge is satisfied by information on oath that,

- (a) an inspector or an agent of the Society has been prevented from entering or inspecting the building or place under section 11.4; or
- (b) there are reasonable grounds to believe that an inspector or an agent of the Society will be prevented from entering or inspecting the building or place under section 11.4.

### **Telewarrant**

(1.1) If an inspector or an agent of the Society believes that it would be impracticable to appear personally before a justice of the peace or provincial judge to apply for a warrant under subsection (1), he or she may, in accordance with the regulations, seek the warrant by telephone or other means of telecommunication, and the justice of the peace or provincial judge may, in accordance with the regulations, issue the warrant by the same means. 2009, c. 33, Sched. 9, s. 9 (2).

### **When warrant to be executed**

- (2) Every warrant issued under subsection (1) or (1.1) shall,
  - (a) specify the times, which may be at any time during the day or night, during which the warrant may be carried out; and
  - (b) state when the warrant expires.

### **Extension of time**

(3) A justice of the peace or provincial judge may extend the date on which a warrant issued under this section expires for no more than 30 days, upon application without notice by the inspector or agent named in the warrant.

### **Other terms and conditions**

(4) A warrant issued under this section may contain terms and conditions in addition to those provided for in subsections (1) to (3) as the justice of the peace or provincial judge considers advisable in the circumstances.

### **Entry where animal is in distress**

#### **Warrant**

12. (1) If a justice of the peace or provincial judge is satisfied by information on oath that there are reasonable grounds to believe that there is in any building or place an animal that is in distress, he or she may issue a warrant authorizing one or more inspectors or agents of the Society named in the warrant to enter the building or place, either alone or accompanied by one or more veterinarians or other persons as the inspectors or agents consider advisable, and inspect the building or place and all the

animals found there for the purpose of ascertaining whether there is any animal in distress.

### **Telewarrant**

(2) If an inspector or an agent of the Society believes that it would be impracticable to appear personally before a justice of the peace or provincial judge to apply for a warrant under subsection (1), he or she may, in accordance with the regulations, seek the warrant by telephone or other means of telecommunication, and the justice of the peace or provincial judge may, in accordance with the regulations, issue the warrant by the same means.

### **When warrant to be executed**

- (3) Every warrant issued under subsection (1) or (2) shall,
- (a) specify the times, which may be at any time during the day or night, during which the warrant may be carried out; and
  - (b) state when the warrant expires.

### **Extension of time**

(4) A justice of the peace or provincial judge may extend the date on which a warrant issued under this section expires for no more than 30 days, upon application without notice by the inspector or agent named in the warrant.

### **Other terms and conditions**

(5) A warrant issued under subsection (1) or (2) may contain terms and conditions in addition to those provided for in subsections (1) to (4) as the justice of the peace or provincial judge considers advisable in the circumstances.

### **Immediate distress – entry without warrant**

(6) If an inspector or an agent of the Society has reasonable grounds to believe that there is an animal that is in immediate distress in any building or place, other than a dwelling, he or she may enter the building or place without a warrant, either alone or accompanied by one or more veterinarians or other persons as he or she considers advisable, and inspect the building or place and all the animals found there for the purpose of ascertaining whether there is any animal in immediate distress.

### **Accredited veterinary facilities**

(7) The power to enter and inspect a building or place under subsection (6) shall not be exercised to enter and inspect a building or place that is an accredited veterinary facility.

### **Definition – immediate distress**

(8) For the purpose of subsection (6),

“immediate distress” means distress that requires immediate intervention in order to alleviate suffering or to preserve life.

### **Authorized activities**

#### **Inspect animals, take samples, etc.**

12.1 (1) An inspector or an agent of the Society or a veterinarian, 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 examine any animal there and, upon giving a receipt for it, take a sample of any substance there or take a carcass or sample from a carcass there, for the purposes set out in the provision under which the inspector's, agent's or veterinarian's presence is authorized or the warrant is issued.

#### **Same**

(2) An inspector, agent or veterinarian who takes a sample or carcass under subsection (1) may conduct tests and analyses of the sample or carcass for the purposes described in subsection (1) and, upon conclusion of the tests and analyses, shall dispose of the sample or carcass.

#### **Supply necessities to animals**

(3) If an inspector or an agent of the Society 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 and finds an animal in distress, he or she may, in addition to any other action he or she is authorized to take under this Act, supply the animal with food, care or treatment.

#### **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.

#### **Report to justice, judge**

(5) An inspector or an agent of the Society shall,

- (a) report the taking of a sample or a carcass under subsection (1) to a justice of the peace or provincial judge; and

- (b) bring any thing seized under subsection (4) before a justice of the peace or provincial judge or, if that is not reasonably possible, report the seizure to a justice of the peace or provincial judge.

#### **Order to detain, return, dispose of thing**

(6) Where any thing is seized and brought before a justice of the peace or provincial judge under subsection (5), the justice of the peace or provincial judge shall by order,

- (a) detain it or direct it to be detained in the care of a person named in the order;
- (b) direct it to be returned; or
- (c) direct it to be disposed of, in accordance with the terms set out in the order.

#### **Same**

(7) In an order made under clause (6) (a) or (b), the justice of the peace or provincial judge may,

- (a) authorize the examination, testing, inspection or reproduction of the thing seized, on the conditions that are reasonably necessary and are directed in the order; and
- (b) make any other provision that, in his or her opinion, is necessary for the preservation of the thing.

#### **Application of Provincial Offences Act**

(8) Subsections 159 (2) to (5) and section 160 of the Provincial Offences Act apply with necessary modifications in respect of a thing seized by an inspector or an agent of the Society under subsection (4).

#### **Order to owner of animals, etc.**

13. (1) Where an inspector or an agent of the Society has reasonable grounds for believing that an animal is in distress and the owner or custodian of the animal is present or may be found promptly, the inspector or agent may order the owner or custodian to,

- (a) take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress; or
- (b) have the animal examined and treated by a veterinarian at the expense of the owner or custodian.

#### **Order to be in writing**

(2) Every order under subsection (1) shall be in writing and shall have printed or written thereon the provisions of subsections 17 (1) and (2).

(3) Repealed: 2008, c. 16, s. 10 (1).

#### **Time for compliance with order**

(4) An inspector or an agent of the Society who makes an order under subsection (1) shall specify in the order the time within which any action required by the order shall be performed.

#### **Idem**

(5) Every person who is served with an order under subsection (1) shall comply with the order in accordance with its terms until such time as it may be modified, confirmed or revoked and shall thereafter comply with the order as modified or confirmed.

#### **Authority to determine compliance with order**

(6) If an order made under subsection (1) remains in force, an inspector or an agent of the Society may enter without a warrant any building or place where the animal that is the subject of the order is located, either alone or accompanied by one or more veterinarians or other persons as he or she considers advisable, and inspect the animal and the building or place for the purpose of determining whether the order has been complied with.

#### **Revocation of order**

(7) If, in the opinion of an inspector or an agent of the Society, the order made under subsection (1) has been complied with, he or she shall revoke the order and shall serve notice of the revocation in writing forthwith on the owner or custodian of the animal that is the subject of the order.

#### **Taking possession of animal**

14. (1) An inspector or an agent of the Society may remove an animal from the building or place where it is and take possession thereof on behalf of the Society for the purpose of providing it with food, care or treatment to relieve its distress where,

- (a) a veterinarian has examined the animal and has advised the inspector or agent in writing that the health and well-being of the animal necessitates its removal;
- (b) the inspector or agent has inspected the animal and has reasonable grounds for believing that the animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly; or
- (c) an order respecting the animal has been made under section 13 and the order has not been complied with.

#### **Order for Society to keep animal**



(1.1) A justice of the peace or provincial judge may make an order authorizing the Society to keep in its care an animal that was removed under subsection (1) if,

- (a) the owner or custodian of the animal has been charged, in connection with the same fact situation that gave rise to the removal of the animal under subsection (1), with an offence under this Act or any other law in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals; and
- (b) the justice of the peace or provincial judge is satisfied by information on oath that there are reasonable grounds to believe that the animal may be harmed if returned to its owner or custodian.

#### **Order re costs**

(1.2) Where a justice of the peace or provincial judge makes an order under subsection (1.1), he or she may also order that the whole or any part of the cost to the Society of providing food, care or treatment to the animal pursuant to its removal under subsection (1) and pursuant to the order under subsection (1.1) be paid by the owner or custodian of the animal to the Society.

#### **Same**

(1.3) The Society or owner or custodian of the animal may at any time apply to a justice of the peace or provincial judge to vary an order made under subsection (1.2) and the justice of the peace or provincial judge may make such order as he or she considers appropriate.

#### **Order to return animal**

(1.4) The Society or the owner or custodian may apply to a justice of the peace or provincial judge to order the return of an animal that is the subject of an order made under subsection (1.1) and, if satisfied that there are no longer reasonable grounds to believe that the animal may be harmed if returned to its owner or custodian, the justice of the peace or provincial judge may order the return of the animal to its owner or custodian, subject to any conditions that the justice of the peace or provincial judge considers appropriate.

#### **Destruction of animal**

(2) An inspector or an agent of the Society may destroy an animal,

- (a) with the consent of the owner; or
- (b) if a veterinarian has examined the animal and has advised the inspector or agent in writing that, in his or her opinion, it is the most humane course of action.

#### **Notice**

(3) An inspector or an agent of the Society who has removed or destroyed an animal under subsection (1) or (2) shall forthwith serve written notice of his or her action on the owner or custodian of the animal, if known.

#### **Same**

(4) Every notice under subsection (3) respecting the removal of an animal under subsection (1) shall have printed or written on it the provisions of subsections 17 (1) and (2). 2009, c. 33, Sched. 9, s. 9 (5).

#### **Liability of owner for expenses**

15. (1) If an inspector or an agent of the Society has provided an animal with food, care or treatment, the Society may serve on the owner or custodian of the animal a statement of account respecting the food, care or treatment and the owner or custodian is, subject to an order made under subsection 14 (1.2) or (1.3) or 17 (6), liable for the amount specified in the statement of account.

#### **Power to sell**

(2) Where the owner or custodian refuses to pay an account under subsection (1) within five business days after service of the statement of account or where the owner or custodian, after reasonable inquiry, cannot be found, the Society may sell or dispose of the animal and reimburse itself out of the proceeds, holding the balance in trust for the owner or other person entitled thereto.

#### **Society, affiliated society deemed to be owner of abandoned animal**

15.1 If the Society or an affiliated society takes custody of an animal and no person is identified as the animal's owner or custodian within a prescribed period of time, the Society or affiliated society, as the case may be, is deemed to be the owner of the animal for all purposes.

### **ANIMAL CARE REVIEW BOARD**

#### **Board continued**

16. (1) The Animal Care Review Board is continued under the name Animal Care Review Board in English and Commission d'étude des soins aux animaux in French.

#### **Idem**

(2) The Board shall consist of not fewer than three persons who shall be appointed by the Lieutenant Governor in Council.

#### **Chair, vice-chair**



(3) The Lieutenant Governor in Council may appoint one of the members of the Board as chair and another of the members as vice-chair.

### **Composition of Board for hearings**

(4) A proceeding before the Board shall be heard and determined by a panel consisting of one or more members of the Board, as assigned by the chair or vice-chair of the Board.

### **Remuneration of members**

(5) The members of the Board shall receive such remuneration and expenses as the Lieutenant Governor in Council determines.

### **Appeal to Board**

17. (1) The owner or custodian of any animal who considers themselves aggrieved by an order made under subsection 13 (1) or by the removal of an animal under subsection 14 (1) may, within five business days of receiving notice of the order or removal, appeal against the order or request the return of the animal by notice in writing to the chair of the Board.

### **Same**

(1.1) The notice shall set out the remedy or action sought and the reasons for the appeal or request.

### **No appeal if there is order for Society to keep animal**

(1.2) Subsection (1) does not apply if an order in respect of the animal under subsection 14 (1.1) is in force.

### **Application for revocation of order**

(2) Where, in the opinion of the owner or custodian of an animal in respect of which an order under subsection 13 (1) has been made, the animal has ceased to be in distress, the owner or custodian may apply to the Board to have the order revoked by notice in writing to the chair of the Board.

### **Notice of hearing**

(3) Within five business days of the receipt of a notice under subsection (1) or (2), the chair of the Board shall,

- (a) fix a time, date and place at which the Board will hear the matter; and
- (b) notify the Society and the owner or custodian who issued the notice of the time, date and place fixed under clause (a).

### **Date of hearing**

(4) The date fixed for a hearing shall be not more than 10 business days after the receipt of a notice under subsection (1) or (2).

### **Procedure at hearing**

(5) At a hearing, the Society and the owner or custodian are entitled to hear the evidence, cross-examine, call witnesses, present argument and be represented by persons authorized under the *Law Society Act* to represent them.

### **Powers of Board**

(6) After a hearing or, with the consent of the Society and the person who issued the notice under subsection (1) or (2), without a hearing, the Board may,

- (a) respecting an order made under subsection 13 (1), confirm, revoke or modify the order appealed against;
- (b) respecting the removal of an animal under subsection 14 (1), order that the animal be returned to the owner or custodian and may make an order in the same terms as an order may be made under subsection 13 (1);
- (c) order that the whole or any part of the cost to the owner or custodian of an animal of complying with an order made under subsection 13 (1) be paid by the Society to the owner or custodian; or
- (d) order that the whole or any part of the cost to the Society of providing food, care or treatment to an animal pursuant to its removal under subsection 14 (1) be paid by the owner or custodian of the animal to the Society.

### **Notice of decision**

(7) Notice of the decision of the Board made under subsection (6), together with reasons in writing for its decision, shall be served forthwith on the Society and the owner or custodian of the animal.

### **Society order not stayed**

(8) An appeal to the Board in respect of an order made under subsection 13 (1) does not stay the operation of the order.

### **Appeal**

18. (1) The Society or the owner or custodian may appeal the decision of the Board to a judge of the Superior Court of Justice.

### **Notice of appeal**

(2) The appeal shall be made by filing a notice of appeal with the local registrar of the court and serving a copy thereof on the other parties before the Board within 15

business days after the notice of the Board's decision is served on the appellant under subsection 17 (7).

### **Date of hearing**

(3) The appellant or any person served with notice of appeal may, upon at least two business days notice to each of the other parties, apply to the judge to fix a date for the hearing of the appeal.

### **Decision**

(4) The appeal shall be a new hearing and the judge may rescind, alter or confirm the decision of the Board and make such order as to costs as he or she considers appropriate, and the decision of the judge is final.

## **OFFENCES**

### **Offences**

18.1 (1) Every person is guilty of an offence who,

- (a) contravenes subsection 11 (5);
- (b) contravenes or fails to comply with section 11.1;
- (c) contravenes subsection 11.2 (1), (2), (3), (4) or (5);
- (c.1) contravenes subsection 11.3.1 (1);
- (c.2) contravenes subsection 11.4.1 (2);
- (d) contravenes subsection 13 (5);
- (e) contravenes or fails to comply with an order of the Board; or
- (f) knowingly makes a false report to the Society in respect of an animal being in distress.

### **Penalty – individuals**

(2) Every individual who commits an offence under clause (1) (a), (c.2), (d), (e) or (f) is liable on conviction to a fine of not more than \$1,000 or to imprisonment for a term of not more than 30 days, or to both.

### **Same**

(3) Every individual who commits an offence under clause (1) (b), (c) or (c.1) is liable on conviction to a fine of not more than \$60,000 or to imprisonment for a term of not more than two years, or to both.

### **Penalty – corporations**

(4) Every corporation that commits an offence under subsection (1) is liable on conviction to the same fine to which an individual is liable for the offence.

#### **Penalty – directors, officers**

(5) Every director or officer of a corporation who authorized, permitted or participated in the corporation's commission of an offence under subsection (1) is also guilty of the offence and on conviction is liable to the same penalty to which an individual is liable for the offence, whether or not the corporation has been prosecuted or convicted.

#### **Prohibition order**

(6) If a person is convicted of an offence under clause (1) (b) or (c), the court making the conviction may, in addition to any other penalty, make an order prohibiting the convicted person and, if the convicted person is a corporation, the directors and officers of the corporation described in subsection (5), from owning, having custody or care of, or living with any animal, or any kind of animal specified in the order, for any period of time specified in the order, including, in the case of an individual, for the remainder of the person's life and, in the case of a corporation, forever.

#### **Restitution order**

(7) If a person is convicted of an offence under clause (1) (b) or (c), the court making the conviction may, in addition to any other penalty, make an order that the convicted person pay the whole or any part of the cost to the Society of providing food, care or treatment to an animal that was the victim of the offence of which the convicted person was convicted.

#### **Other orders**

(8) If a person is convicted of an offence under clause (1) (b) or (c), the court making the conviction may, in addition to any other penalty, make any other order that the court considers appropriate, including an order that the convicted person undergo counselling or training.

#### **Order to remove orca**

18.2 (1) When a person is convicted of possessing an orca in Ontario in contravention of subsection 11.3.1 (1), the court shall order the person to remove the orca from Ontario within a period of time specified by the court.

#### **Prohibition does not apply**

(2) The prohibition against possessing an orca in subsection 11.3.1 (1) does not apply in respect of an orca that is the subject of an order under subsection (1) until the period of time specified by the court has elapsed.

#### **Offence, failure to remove orca**

(3) A person who fails to comply with an order described in subsection (1) is guilty of an offence.

**Penalty — individuals**

(4) An individual who commits an offence under subsection (3) is liable on conviction to a fine of not more than \$250,000 or to imprisonment for a term of not more than two years, or to both.

**Penalty — corporations**

(5) A corporation that commits an offence under subsection (3) is liable on conviction to the same fine to which an individual is liable for the offence.

**Penalty — directors, officers**

(6) A director or officer of a corporation who authorized, permitted or participated in the corporation's commission of an offence under subsection (3) is also guilty of the offence and on conviction is liable to the same penalty to which an individual is liable for the offence, whether or not the corporation has been prosecuted or convicted.

**Order to allow Society to cause orca to be removed**

18.3 (1) If a person has been convicted of an offence under subsection 18.2 (3) for failing to comply with an order to remove an orca from Ontario, and if the person continues to possess the orca in Ontario, the Society may apply to a judge of the Ontario Court of Justice for any order necessary to allow the Society to cause the orca to be removed from Ontario.

**Costs**

(2) If an order is made under subsection (1), the person referred to in subsection (1) shall pay the Society any costs that the Society incurred in bringing the application and any costs the Society incurs in causing the orca to be removed from Ontario.

**MISCELLANEOUS MATTERS**

**Inspector, etc., not personally liable**

19. No inspector or agent of the Society and no veterinarian or member of the Board is personally liable for anything done by him or her in good faith under or purporting to be under the authority of this Act.

**Service of orders, notices, etc.**

20. Any order, notice or statement of account required or authorized to be served under this Act shall be served personally or by registered mail, courier, fax, electronic mail or other prescribed method in accordance with the regulations.

### **Conflict with municipal by-laws**

21. In the event of a conflict between a provision of this Act or of a regulation made under this Act and of a municipal by-law pertaining to the welfare of or the prevention of cruelty to animals, the provision that affords the greater protection to animals shall prevail.

## **REGULATIONS**

### **Regulations**

22. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing activities that constitute activities carried on in accordance with reasonable and generally accepted practices of agricultural animal care, management or husbandry for the purposes of clauses 11.1 (2) (a) and 11.2 (6) (c);
- (b) prescribing classes of animals, circumstances and conditions or activities for the purposes of clauses 11.1 (2) (b) and 11.2 (6) (d);
- (c) exempting any person or class of persons from any provision of this Act or of a regulation made under this Act, and prescribing conditions and circumstances for any such exemption.

### **Same**

(2) The Minister responsible for the administration of this Act may make regulations,

- (a) prescribing and governing the powers and duties of the Chief Inspector of the Society, including the power to establish qualifications, requirements and standards for inspectors and agents of the Society, to appoint inspectors and agents of the Society and to revoke their appointments and generally to oversee the inspectors and agents of the Society in the performance of their duties;
- (b) prescribing standards of care for the purposes of section 11.1;
- (b.1) prescribing administrative requirements for the purposes of section 11.1 relating to animals that a person owns or has custody or care of, including, but not limited to,
  - (i) requiring the establishment of a committee to oversee an animal's welfare and prescribing the functions, duties, governance and operation of such a committee,
  - (ii) requiring a committee referred to in subclause (i) to develop and implement a plan to promote an animal's care,

- (iii) requiring the development and implementation of a program designed by a veterinarian to provide care for an animal, and
- (iv) requiring specified records to be kept or disclosed;
- (c) governing the report required under section 11.3, including its contents and the manner of making the report;
- (d) prescribing forms for the information on oath required by subsection 11.5 (1), 12 (1) or 14 (1.1), for a warrant issued under subsection 11.5 (1) or 12 (1) and for an order issued under subsection 14 (1.1) or (1.4);
- (e) governing applications for and the issue of warrants by telephone or other means of telecommunication for the purposes of subsections 11.5 (1.1) and 12 (2), prescribing the forms required to apply for a warrant under those subsections and the forms for the warrants issued under those subsections, prescribing rules for the execution of such warrants and prescribing evidentiary rules with respect to such warrants;
- (f) prescribing a period of time for the purpose of section 15.1;
- (g) governing the service of orders, notices and statements of account for the purposes of section 20.



## **Freedom of Information and Protection of Privacy Act, RSO 1990, c F.31**

### **Purposes**

1 The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  - (i) information should be available to the public,
  - (ii) necessary exemptions from the right of access should be limited and specific, and
  - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

[...]

### **Right of access**

10 (1) Subject to subsection 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

- (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[...]

## **EXEMPTIONS**

### **Cabinet records**

12 (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;



- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations.

### **Exception**

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

### **Advice to government**

13 (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

### **Exception**

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

- (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;
- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;
- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,
  - (i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
  - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

### **Idem**

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy.

### **Law enforcement**

14 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

**Idem**

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

### **Refusal to confirm or deny existence of record**

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

### **Exception**

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

### **Idem**

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

### **Civil Remedies Act, 2001**

14.1 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the Civil Remedies Act, 2001, conduct a proceeding under that Act or enforce an order made under that Act.

### **Prohibiting Profiting from Recounting Crimes Act, 2002**

14.2 A head may refuse to disclose a record and may refuse to confirm or deny the existence of a record if disclosure of the record could reasonably be expected to interfere with the ability of the Attorney General to determine whether a proceeding should be commenced under the Prohibiting Profiting from Recounting Crimes Act, 2002, conduct a proceeding under that Act or enforce an order made under that Act.

### **Relations with other governments**

15 A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution; or
- (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council.

### **Relations with Aboriginal communities**

15.1 (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of relations between an Aboriginal community and the Government of Ontario or an institution; or
- (b) reveal information received in confidence from an Aboriginal community by an institution.

### **Definition**

(2) In this section,

“Aboriginal community” means,

- (a) a band within the meaning of the Indian Act (Canada),
- (b) an Aboriginal organization or community that is negotiating or has negotiated with the Government of Canada or the Government of Ontario on matters relating to,
  - (i) Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*, or
  - (ii) a treaty, land claim or self-government agreement, and
- (c) any other Aboriginal organization or community prescribed by the regulations.

### **Defence**

16 A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

### **Third party information**

17 (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

### **Tax information**

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

### **Consent to disclosure**

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

### **Economic and other interests of Ontario**

18 (1) A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;



- (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
- (i) submissions in respect of a matter under the Municipal Boundary Negotiations Act commenced before its repeal by the Municipal Act, 2001, by a party municipality or other body before the matter is resolved;
- (j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.

### **Exception**

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.

### **Information with respect to closed meetings**

18.1 (1) A head may refuse to disclose a record that reveals the substance of deliberations of a meeting of the governing body or a committee of the governing body of an educational institution or a hospital if a statute authorizes holding the meeting in the absence of the public and the subject-matter of the meeting,

- (a) is a draft of a by-law, resolution or legislation; or
- (b) is litigation or possible litigation.

### **Exception**

(2) Despite subsection (1), the head shall not refuse to disclose a record under subsection (1) if,

- (a) the information is not held confidentially;
- (b) the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than 20 years old.

## **Application of Act**

(3) The exemption in subsection (1) is in addition to any other exemptions in this Act.

### **Solicitor-client privilege**

19 A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

### **Danger to safety or health**

20 A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

### **Personal privacy**

21 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
  - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
  - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and



- (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

### **Criteria re invasion of privacy**

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

### **Presumed invasion of privacy**

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

### **Limitation**

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution;
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
  - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
  - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario; or
- (d) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

### **Refusal to confirm or deny existence of record**

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

### **Species at risk**

21.1 A head may refuse to disclose a record where the disclosure could reasonably be expected to lead to,

- (a) killing, harming, harassing, capturing or taking a living member of a species, contrary to clause 9 (1) (a) of the *Endangered Species Act, 2007*;
- (b) possessing, transporting, collecting, buying, selling, leasing, trading or offering to buy, sell, lease or trade a living or dead member of a species, any part of a living or dead member of a species, or anything derived from a living or dead member of a species, contrary to clause 9 (1) (b) of the *Endangered Species Act, 2007*; or
- (c) damaging or destroying the habitat of a species, contrary to clause 10 (1) (a) or (b) of the *Endangered Species Act, 2007*.

#### **Information soon to be published**

22 A head may refuse to disclose a record where,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

#### **Exemptions not to apply**

23 An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Jeffrey Bogaerts

- and -

Attorney General of Ontario

Appellant in Cross-Appeal (Respondent in Appeal)

Respondent in Cross-Appeal (Appellant in Appeal)

Proceeding commenced at Perth  
  
COURT OF APPEAL FOR ONTARIO

RESPONSE TO INTERVENORS AND FACTUM  
OF THE RESPONDENT IN CROSS-APPEAL,  
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