

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

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

-and-

JEFFREY BOGAERTS

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

**REPLY FACTUM OF THE RESPONDENT
(APPLICANT, APPELLANT IN CROSS-APPEAL)
(re: submissions of the intervenors)**

DATED: September 13, 2019

KURTIS R. ANDREWS

Lawyer

P.O. Box 12032 Main P.O.

Ottawa, Ontario, K1S 3M1

Kurtis R. Andrews (57974K)

Tel: 613-565-3276

Fax: 613-565-7192

E-mail: kurtis@kurtisandrews.ca

Lawyer for the Respondent in Appeal

TO: Ministry of the Attorney General (Ontario)

Constitutional Law Branch

4th Floor, 720 Bay Street

Toronto, Ontario, M7A 2S9

Daniel Huffaker (56804F)

Tel.: 416-326-0296

Fax: 416-326-4015

Email: Daniel.Huffaker@ontario.ca

Lawyer for the Appellant in Appeal

BETWEEN:

COURT OF APPEAL FOR ONTARIO

ATTORNEY GENERAL OF ONTARIO

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

-and-

JEFFREY BOGAERTS

Applicant (Respondent in appeal
Appellant in cross-appeal)

**REPLY FACTUM OF THE RESPONDENT
(APPLICANT, APPELLANT IN CROSS-APPEAL)
(re: submissions of the intervenors)**

A. The intervenors in support of Justice Minnema’s principle of fundamental justice

1. Three intervenors, the Information and Privacy Commissioner of Ontario [IPC], Animal Justice Canada [AJC], and the Canadian Civil Liberties Association [CCLA], support the principle of fundamental justice recognized by Justice Minnema, that: “law enforcement bodies must be subject to reasonable standards of transparency and accountability”.
2. There is an apparent consensus among these supporters (together with the Applicant, Jeffery Bogaerts), that the essential question of this matter is:

Are there any institutional characteristics that every law enforcement body must possess for constitutional purposes?

followed by:

If so, what are those characteristics?

3. The Applicant respectfully submits that an answer in the negative cannot be tolerated in a free and democratic society which adheres to our *Charter* values. There must be some basic institutional characteristics that all law enforcement bodies must feature. The delegation of police powers cannot be arbitrary. The Applicant also respectfully submits

that, consistent with the submissions of the IPC, AJC and CCLA, such requisite institutional characteristics must include “reasonable standards of transparency and accountability”.

4. Systemic justice issues (for example: profiling, inherent bias, or inadequate enforcement capabilities) will generally not be identifiable on a case by case basis. Injustice trends, and policies or circumstances that support such trends, can only be effectively recognized by looking at issues from a broad perspective, and this is all but impossible without adequate access to information and accountability regimes.

The Information and Privacy Commissioner of Ontario

5. The IPC provided some of the most compelling submissions of this matter.
6. The context provided by the IPC (see IPC’s factum at paragraph 4) emphasized how remarkable the OSPCA’s absence from the applicable legislation was, and how the public has come to expect and rely on access to information from law enforcement bodies.
7. The IPC’s insights were particularly valuable in relation to the issues of this matter from an international law perspective (see IPC’s factum at paragraphs 22-28) and Canada’s historical experience (see IPC’s factum at paragraphs 29-33).
8. The IPC recognized that “a right to seek and receive information” is a legal principle recognized in international law and part of the covenant signed by Canada in 1976 (see the IPC’s factum at paragraphs 23-27). Similarly, such a factor was instrumental in the Supreme Court’s finding that the “best interests of the child” was a recognized “legal principle” in *Canadian Foundation for Children*.

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General),
[2004] S.C.J. No. 6 (S.C.C.) at ¶ 9 & 12.

9. It is acknowledged that the “best interests of the child” legal principle ultimately failed to

fulfill the latter two criteria of the test set out in *Canadian Foundation for Children*. However, unlike the “best interests of the child” principle, the principle of “reasonable standards of transparency and accountability” is “fundamental” and “the primary consideration”, not merely “a primary consideration”, for the dispensation of justice. The Applicant submits that all “law enforcement bodies must be subject to reasonable standards of transparency and accountability”, not just some. The essence of the principle is therefore never “subordinated to other concerns”. Examples of when a specific access to information request may be denied is akin to the “reasonable limits” of the principle.¹

Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General),
[2004] S.C.J. No. 6 (S.C.C.) at ¶10-11.

10. The IPC pointed out that access to information is a constitutionally entrenched right in many countries worldwide (see IPC’s factum at paragraph 28), strongly suggesting that it is considered to be a principle of fundamental justice in other jurisdictions.
11. The Applicant consequently adopts and relies on the IPC’s submissions in every respect.

Animal Justice Canada

12. AJC’s submissions at paragraphs 39-66 also support Justice Minnema’s principle of fundamental justice. AJC’s submissions are particularly valuable by arguing how the purpose of legislation can be undermined without reasonable standards of accountability and transparency.

Canadian Civil Liberties Association

13. The CCLA’s submissions also support Justice Minnema’s principle of fundamental justice. The CCLA’s submissions add substantially to the authorities in support of the new principle by drawing heavily on academic and commissions of inquiry references.

¹ Criteria three of the *Canadian Foundation for Children* test is further addressed in reply below at paragraphs 28-29.

B. The intervenors opposed to Justice Minnema's principle of fundamental justice

14. Two intervenors, the Attorney General of Canada [AGC] and the Railway Association of Canada [RAC], oppose the principle of fundamental justice recognized by Justice Minnema. It is noteworthy that the RAC's opposition is tempered by an alternative proposal to circumscribe Justice Minnema's articulation of the principle.
15. Like the Attorney General of Ontario [AGO], the AGC and RAC² have not addressed the essential question set out at paragraph 2 above.

The Attorney General of Canada

16. The AGC essentially made the same submissions as the AGO. Like the AGO, the AGC contended that the analysis must proceed by way of a section 8 *Charter* analysis, rather than the section 7 analysis preferred by Justice Minnema, the Applicant, and the three intervenors in favour of the principle.
17. Like the AGO, the AGC contended that the impugned sections of the *OSPCA Act* only trigger search and seizure concerns covered under section 8 of the *Charter*. Such a position ignores the fact that the impugned sections of the *OSPCA Act* go beyond merely providing search and seizure powers. Section 11 of the *OSPCA Act* provides general investigative powers, and not all investigations even necessarily involve a search or seizure. Consequently, section 11 may expose a person's *Charter* interests without section 8 ever being available to examine the underlying justice issues.
18. The Applicant further notes that each of the *Charter*'s legal rights (sections 7-14) may be engaged through the employment of section 11 of the *OSPCA Act*. For example, an *OSPCA* investigation could trigger a corresponding duty to participate in the first-party

² Subject to the RAC's apparent concession that it is unacceptable for a law enforcement body to be devoid of any standards of accountability and transparency.

disclosure process governed by *Charter* section 7.³

R. v. McNeil, [2009] 1 S.C.R. 66 (S.C.C.) at ¶23.

R. v. O'Connor, [1995] S.C.J. No. 98 (S.C.C.) at ¶63 & 73.

19. The Applicant adds that a right to access to information through freedom of information legislation may potentially form part of an accused's right to make a full answer and defence. It is conceivable that information relevant to a person's defence may not be discoverable through either first-party or third-party disclosure processes, but it could be discovered through a freedom of information request. As a result, an accused's right to make a full answer and defence (as governed by *Charter* section 7) may be restricted by a lack of reasonable standards of transparency and accountability.

See for example: *R. v. Millbank Fur Farm Limited* (11 September 2019), Guelph 181523 (Ont. Prov. Ct.).

20. The point is that section 11 of the *OSPCA Act* engages a myriad of *Charter* protected rights, including rights protected under section 7, and where issues transcend multiple aspects of the *Charter*, it is most appropriate to review those issues under the broader scope of section 7. State action which implicates the administration of justice, impinging on the protected rights of section 7, are properly reviewed under a section 7 analysis.

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 (S.C.C.) at ¶77-79.

The Railway Association of Canada

21. The RAC has an obvious self-interest in the matter, since it represents two railway companies and the CN and CP Police Services by extension.
22. The RAC argues that the impugned sections of the *OSPCA Act* empower OSPCA individuals, not the OSPCA as an organization, and that this fact somehow undermines Justice Minnema's findings. The Applicant responds by respectfully submitting that this is an overly technical and inconsequential argument, and inconsistent with how the

³ The AGC recognized this at paragraph 25 of its factum.

Courts view law enforcement bodies in other *Charter* contexts.

23. The record shows that the policies and practices of the OSPCA, as it relates to its statutorily prescribed investigative powers, are established internally by the OSPCA. OSPCA inspectors carry out their law enforcement duties as a unit, which inevitably includes the participation of OSPCA administration staff, upper management and executive. The OSPCA, as with any law enforcement body, functions as an organization.

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

Ontario Society for the Prevention of Cruelty to Animals Act, R.S.O. 1990, c. O.36, at s. 11.

24. In other *Charter* contexts, there is no distinction between individual police officers and “the police” as an organizational unit. For example, in the context of disclosure obligations or delay caused by an investigating body, duties and responsibilities are not prescribed to individual officers alone – the law enforcement body as a whole is accountable. In addition, it is noteworthy that freedom of information legislation and / or the *Police Services Act / Ombudsman Act* apply to the police as an organization.

R. v. McNeil, [2009] 1 S.C.R. 66 (S.C.C.) at ¶14.

R. v. Morin, [1992] 1 S.C.R. 771 (S.C.C.) at ¶46.

25. At paragraph 16 of the RAC factum, the RAC argues that there is a lack of consensus of what constitutes a “law enforcement body”. The Applicant replies by stating that this is obvious. If an organization's mandate includes law enforcement (i.e. its personnel are employed for law enforcement purposes), it is clearly a law enforcement body. Having said this, the Applicant acknowledges that different law enforcement bodies have varying degrees of law enforcement powers. As a result, any analysis will be contextual to determine the nature and degree of the appropriate “standard” of transparency and accountability that would be considered “reasonable” in any given case.

26. Such contextual considerations do not disqualify Justice Minnema’s recognized principle, however, in the same manner that there is no “hard and fast” test for reasonableness in a *Charter* section 8 analysis.

Goodwin v. British Columbia (Superintendent of Motor Vehicles), [2015] 3 S.C.R. 250 (S.C.C.) at ¶57.

27. What should be clear and indisputable (and seemingly conceded by the RAC) is that it is unacceptable to delegate extraordinary police powers to an organization which is not subject to any standards of accountability and transparency.

28. At paragraph 18 of its factum, the RAC also takes particular issue with the insertion of the word “reasonable” into Justice Minnema’s principle. It contends that this somehow undermines its qualification as a principle of fundamental justice because it makes the principle less capable of identification and prediction, and subjects it to subordination to competing interests. The Applicant replies by stating that the opposite is true, and the insertion of the word “reasonable” makes the principle more workable.

29. It is highly instructive that *Charter* sections 1, 8, 11(a), 11(b), and 11(e) all use the word “reasonable” or “unreasonable” for the same reason. Other sections of the *Charter* use similar words to enable a similarly contextual application.

30. At paragraphs 29-31 of the RAC’s factum, the RAC correctly distinguishes railway police (and the CN and CP Police Services by extension) from the OSPCA. The RAC identifies standards of transparency and accountability that railway police (and the CN and CP Police Services by extension) are subjected to. These facts support Justice Minnema’s finding that “while the manner and extent of the transparency and accountability will vary depending on context, this proposed principle is already applied to virtually every public body and law enforcement agency, demonstrating that it is a “cognizable and applicable” principle of fundamental justice”.

C. Intervenor submissions with respect to the Applicant’s cross-appeal and proposed principle of fundamental justice

31. Two intervenors made submissions respecting the Applicant’s cross-appeal and proposed 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”. AJC supported the principle, while the AGC opposed it.

Animal Justice Canada

32. Similar to its other arguments, AJC’s submissions on this issue are particularly helpful because it comes from the unique perspective of being primarily concerned with advocating for a more effective animal welfare regime.

33. The AJC’s submissions support the Applicant’s argument that the proposed principle of fundamental justice will serve to protect the interests of an accused as well as the animals the legislation was designed to protect.

The Attorney General of Canada

34. The AGC’s arguments on this issue miss the target of the Applicant’s cross-appeal, which is about the avoidance of “actual or perceived conflicts of interest or apprehensions of bias”. It is not about public versus private funding *per se*. The Applicant recognizes that private funding (i.e. a licensing fee system) of a law enforcement body is a matter of policy and can be acceptable as long as it is done in a manner which avoids actual or perceived conflicts of interest or apprehensions of bias.

35. The avoidance of “actual or perceived conflicts of interest or apprehensions of bias” is not a mere policy matter, but, rather, essential to ensure the fair and reputable administration of justice.

36. Contrary to the submissions of the AGC, there is ample record before the Court to assess this issue, as evidenced by Justice Minnema’s findings of fact that the OSPCA is prone to conflicts of interest and external influences.

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

D. Intervenor submissions with respect to the Applicant’s cross-appeal and issues with respect to warrantless entry into dwellings

37. Two intervenors provided submissions with respect to this issue: AJC opposed the Applicant’s position, while the CCLA provided supportive arguments.
38. It is important to reiterate that the Applicant’s cross-appeal on this issue is about Justice Minnema’s erroneous finding that the impugned search and seizure provisions did not constitute a “search” or “seizure” as defined by the *Charter* (re: step 1 of a section 8 analysis).

Animal Justice Canada

39. AJC appears to have misidentified the sections applicable to this issue that are the subject to the cross-appeal. The Applicant questions the constitutionality of sections 13(6), 14(1)(b) and 14(1)(c) of the *OSPCA Act*. AJC frames its submission around justifying the reasonableness of sections 11.4(1) and 12(6) of the *OSPCA Act* (which were part of the original Application, but not part of this appeal), neither of which authorize entry into people’s homes. AJC’s submissions on this issue are therefore mostly irrelevant. The main thrust of the Applicant’s arguments are about the expectation of privacy within a person’s home and the unreasonableness of warrantless entry into and seizures from people’s homes.
40. Notwithstanding the apparent error, AJC’s main arguments against the Applicant’s position relate to the “uniquely difficult” enforcement challenges of animal protection

laws. The Applicant recognizes that this is true. However, such challenges do not excuse the legislature from a constitutional obligation to require judicial authorization whenever it is feasible to do so. As the record shows, judicial authorization is feasible with respect to each of the impugned search and seizure provisions of the *OSPCA Act*.

41. It is noteworthy that the *McKinley Transport* decision that was heavily relied upon by AJC actually serves to support the Applicant's arguments regarding the unconstitutionality of the impugned sections of the *OSPCA Act*. In that case, the "random monitoring" system of the *Income Tax Act* constituted a "search" for constitutional purposes. The same should be true with respect to the impugned sections of this case. The Court in *McKinley* also specifically distinguished the impugned sections of the *Income Tax Act* with anything involving "entry onto the private property of an individual to conduct a search or seizure", and stated "[the individual], has a significant privacy interest in the inviolability of his home". This is the main principle relied upon by the Applicant in the present case.

R. v. McKinley Transport Ltd., [1990] 1 S.C.R. 627 (S.C.C.) at ¶22 & 34.

Canadian Civil Liberties Association

42. The CCLA does not directly address the impugned search and seizure provisions of the *OSPCA Act*. It does, however, provide helpful submission about search and seizure issues more broadly and in the context of delegating such powers to a private organization.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13TH DAY OF SEPTEMBER, 2019.



Kurtis R. Andrews

**SCHEDULE “A”
AUTHORITIES CITED**

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

R. v. McNeil, [2009] 1 S.C.R. 66 (S.C.C.).

R. v. O’Connor, [1995] S.C.J. No. 98 (S.C.C.).

R. v. Millbank Fur Farm Limited (11 September 2019), Guelph 181523 (Ont. Prov. Ct.).

Gosselin v. Quebec (Attorney General), [2002] 4 S.C.R. 429 (S.C.C.)

R. v. Morin, [1992] 1 S.C.R. 771 (S.C.C.).

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

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

R. v. McKinley Transport Ltd., [1990] 1 S.C.R. 627 (S.C.C.).

SCHEDULE “B”

Ontario Society for the Prevention of Cruelty to Animals Act

R.S.O. 1990, CHAPTER O.36

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. 2008, c. 16, s. 7 (1).

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. 2008, c. 16, s. 7 (2).

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. R.S.O. 1990, c. O.36, s. 11 (3).

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. 2008, c. 16, s. 7 (3).

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. 2008, c. 16, s. 7 (3).

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9; 2009, c. 33, Sched. 9, s. 9 (4).

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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. 2008, c. 16, s. 9.

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). 2008, c. 16, s. 9.

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. R.S.O. 1990, c. O.36, s. 13 (1).

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). R.S.O. 1990, c. O.36, s. 13 (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. R.S.O. 1990, c. O.36, s. 13 (4).

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. R.S.O. 1990, c. O.36, s. 13 (5); 2008, c. 16, s. 10 (2).

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. 2008, c. 16, s. 10 (3).

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. 2008, c. 16, s. 10 (3).

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. R.S.O. 1990, c. O.36, s. 14 (1).

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. 2008, c. 16, s. 11 (1).

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. 2008, c. 16, s. 11 (1).

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. 2008, c. 16, s. 11 (1).

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. 2008, c. 16, s. 11 (1).

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. R.S.O. 1990, c. O.36, s. 14 (2); 2008, c. 16, s. 11 (2).

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. 2008, c. 16, s. 11 (3).

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).

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

-and-

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

Court File No. C66542

COURT OF APPEAL FOR ONTARIO

REPLY FACTUM OF THE RESPONDENT
(APPLICANT, APPELLANT IN CROSS-APPEAL)
(re: submissions of the intervenors)

KURTIS R. ANDREWS

Lawyer

P.O. Box 12032 Main P.O.

Ottawa, Ontario, K1S 3M1

Kurtis R. Andrews (LSUC # 57974K)

Tel: 613-565-3276

Fax: 613-565-7192

E-mail: kurtis@kurtisandrews.ca

Lawyer for the Applicant (Respondent in appeal, appellant
in cross-appeal)