

ANIMAL PROTECTION IN ONTARIO

*Impact of the decision of the Ontario Superior Court
in the case of Bogaerts v. Ontario*

Bogaerts challenged the constitutionality of the OSPCA Act Primary Arguments

Search warrants and warrantless entry violate section 8 of the Charter

Pith and substance is Criminal Law and therefore within Federal jurisdiction

The Act violates section 7 of the *Canadian Charter of Rights and Freedoms* by granting a private charity policing powers without government oversight.

Section 7 of the *Canadian Charter of Rights and Freedoms*

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”
[emphasis added]

Justice Minnema of the Ontario Superior Court of Justice in Bogaerts:

"I find that the applicant has established a principle of fundamental justice that 'law enforcement bodies must be subject to reasonable standards of transparency and accountability'."

"The last question then in this analysis is whether the *OSPACA Act* in constituting the OSPACA contravenes that principle."

"In my view the answer ... is yes."

Court suspends decision for 12 months

"In my view it would be beneficial to allow the legislature sufficient time to consider the range of possibilities or to start from scratch in making policy choices. I conclude that the declaration of invalidity should be suspended for one year, and so order."

OSPCA CONTRACT WITH THE GOVERNMENT

OSPCA contract came to an end March 31, 2019

OSPCA and Government agree to extend the contract for 3 months

OSPCA enforcement role ends June 28, 2019

Animal Enforcement rests with Police

The OSPCA Act only permits OSPCA agents and police to enforce the Act.

Enforcement is complaint driven

OSPCA only covered 1/3 of the Province

Police have always enforced the Act.

Transition Period

Government says new legislation will be tabled by the end of the year.

In transition period best model is to have police investigate and the Ontario SPCA and other humane societies provide support services to police.

Transition model will provide useful information for the drafting of new animal protection legislation