

Eastern Ontario Farmer confirms that an OSPCA search of his farm constituted a breach of his Charter rights

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In a decision rendered in Cornwall, Ontario, on February 23, 2011, Justice of the Peace Marchand found that, on June 22, 2009, OSPCA investigator Bonnie Bishop violated Mr. Ralph Hunter's section 8 Charter rights – “to be secure against unreasonable search or seizure” – when she entered his beef and horse farm located in Iroquois, Ontario, without any legal authority to do so. The Court also found that Mrs. Bishop's visit to Mr. Hunter's farm two weeks later, with a warrant, and several other later visits, were all extensions of the initial illegal search.

The Court found that the breach of Mr. Hunter's rights were so serious that, to condone the illegal actions of the OSPCA, it would “bring the administration into disrepute”. The Court also determined that none of Mr. Hunter's animals were in any “immediate distress”, and there is an expectation of privacy in a barnyard area of a farm. As a result, the Court threw out the Crown's evidence and the Crown agreed to stay all charges against Mr. Hunter.

In his oral reasons, His Worship Marchand explained his decision as follows:

The society as a whole holds the privacy concerns to its highest regards. There's no question about that. Just about every case law that was provided to me would not deny that the public in general would hold that privacy is an important part of the Charter of Rights and to allow an illegal search to be conducted and to proceed with not throwing out the evidence collected, in my view, would result to the public being very concerned about the effectiveness of section 8 of the Charter of Rights. It is not enough to say that we are free, protected from unlawful search if the effect of an illegal search would prompt the public to be scared of being illegally searched

The above statement is consistent with well established case law and confirms the law. A new precedent that was set, however, involved His Worship's determination that OSPCA Orders resulting from a Charter breach may be deemed invalid as a “domino effect” of an illegal search.

This is a significant victory which may benefit any farmer enduring ongoing visits from the OSPCA pursuant to Orders which followed a warrantless and otherwise illegal search of property.

There is no doubt that animal cruelty is a very serious and deplorable offence. Fortunately, we have laws which provide officers with generous powers to investigate offenders – including

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powers to enter property without a warrant when serious and immediate action is required. What is unfortunate, however, is when the very officers who are trusted to administer the law do not abide by the law themselves. Such acts by the OSPCA not only damage their own reputation and trust of the public, but such behaviour also diminishes the reputation and trust of all police officers and justice system as a whole. Hopefully the OSPCA takes this heart, and takes steps to ensure that its officers all take the necessary steps to treat farmers with due dignity and respect.

How to avoid trouble with the OSPCA

1. Keep good care of your animals. The most serious charges under the OSPCA Act carry a maximum penalty of a \$60,000 fine, plus two years in prison. The OSPCA may also charge animal owners under the Criminal Code, which may result in a criminal record plus substantial fines and prison time. A conviction can also be career ending for a livestock farmer, given that the OSPCA may pursue an Order prohibiting an individual from possessing animals. These are serious offences with serious penalties.
2. The most serious charges under the OSPCA Act generally involve failure to provide adequate food, water, shelter, medical attention, etc. Excuses rarely matter and be aware that determination of what is “adequate” may not be what you think it is. In other words, to avoid trouble, provide a high standard of care and avoid allowing your animals to endure any degree of distress.
3. Keep your farm clean and tidy. It is not a legal requirement insofar as the OSPCA is concerned, but appearances can matter. For example, OSPCA investigations generally stem from a complaint of the public – so try not to tick off your neighbours by keeping a messy farm. Excessive manure, mud and junk may also be deemed to cause undue “distress” to an animal.
4. Beware of keeping geriatric animals. Few things look worse to the untrained eye than an old, thin, spiny and ribby animal. It may not be illegal – but it may raise the ire of the OSPCA.
5. If you are issued OSPCA Orders, comply and request confirmation from the OSPCA, in writing, that the Order has been complied with. However, take note that there is a very short 5 day appeal period. If you do not agree with the Order, TAKE THE OPPORTUNITY TO APPEAL. If an Order is outstanding, the OSPCA may enter your

property without a warrant. Some officers consider this right to carry on indefinitely – so it is worth disputing an Order on legitimate grounds.

6. Contact a lawyer, in advance of any problems, to advise you of your rights.

What to do if the OSPCA wants to enter your property

1. If possible, request enough time to contact your lawyer and seek advice.
2. The decision to consent to an inspection rests with the property owner. However, NEVER attempt to physically or otherwise obstruct the actions of an OSPCA officer. Note that OSPCA officers have police powers, and any effort to obstruct their actions may result in serious charges – regardless of whether or not the actions of the officer are lawful.
3. Take note that, with respect to most farms, an OSPCA officer is not entitled to enter the property, except:
 - a. To enquire if anyone is home (i.e. approach and knock on the door);
 - b. With a legally obtained warrant to enter areas beyond where someone must go to enquire if anyone is home;
 - c. When there are “reasonable” grounds to believe there may be an animal in “immediate distress” (i.e. a life-threatening situation), or;
 - d. To check compliance with an outstanding OSPCA Order.
4. Quasi public farms, such as boarding, entertainment, “hire or sale” and “exhibit” establishments (probably also pick-your-own and trail-riding farms) are treated differently under the law. An OSPCA officer may enter such properties without a warrant in order to determine whether or not standards of care are being provided to animals there.
5. If the OSPCA does enter your property to conduct an investigation (to take notes, pictures, etc.), be sure to request that your own veterinarian and other witnesses also be present. You need to try to collect evidence (i.e. testimony of witnesses) the same day as the OSPCA is collecting their evidence. Keep in mind that if the investigation leads to charges, you may have a difficult time collecting admissible evidence after the OSPCA is finished investigating. OSPCA charges will be specific to a given day(s) – and compliance with the law before or after that day may have no bearing on the outcome of the matter.