

the Animal Rights Legal Advocacy Network Newsletter

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DANGEROUS DOGS OR A DANGEROUS LAW? ARLAN SEMINAR EXPLORES THE PROBLEMS WITH PARLIAMENT'S NEW DOG CONTROL ACT

by Libby Schultz

The proposed changes to NZ's dog control laws have arisen from a moral panic - and if introduced, would be contrary to natural justice and arbitrary to enforce. While allegedly designed to combat "dangerous" dogs, it seems evident that it is the law that is the greatest danger of all.

Speaking at an ARLAN seminar on July 30, Manukau Institute of Technology law lecturer Jill Jones told the audience that the law changes grew from a media frenzy that began early in 2003.

"From the media reports one would think that dogs had taken over the streets, attacking people at random," she said. "I believe the proposed legislation - and particularly its breed-specific provisions - is a response to what sociologists call 'moral panic'."

Ms. Jones said similar "knee-jerk" legislation has been introduced overseas in the past - including in Germany, some states in the U.S., and in the U.K. where the government went so far as to name its legislation the Dangerous Dogs Act.

"The legislation in the UK was an absolute legal minefield, and it probably will be here as well," she said. "I believe [the amendments] would lead to legislation which is inherently unfair, discriminatory and arbitrary."

The primary problem with the changes proposed in our Local Government Reform Bill (No 2), according to Jill Jones, are the breed-specific provisions. Under s33C, a territorial authority must classify as potentially dangerous any dog that the authority has "reasonable grounds" to believe belongs "wholly or predominantly" to one or more breeds listed in Schedule 4 (which are currently pit bulls, Dogos Argentinos, Japanese Tosa and Brazilian Filas). These dogs must be muzzled in public, and the sanctions include a \$3000 fine and possible destruction of the dog. "But proving whether a dog is a member of a particular breed, or predominantly of that breed, raises insuperable difficulties," said Ms. Jones. **[Continued on page 2]**



Jill Jones discussing some of the weaknesses of Parliament's proposed new Dog Control legislation

ARLAN NEWSLETTER

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MORAL PANIC LEADS TO FLAWED DOG CONTROL LAW

“There is no blood test, no DNA testing, nothing at all that indicates whether a dog is or is not a member of a particular breed. Determination is based on appearance alone.”

Classifying whether or not a dog is subject to the Act would therefore be “at the whim of dog control officers” – and would lead to arbitrary law enforcement. There would be further problems arising from the breed-specific provisions. Dog owners themselves have no way of knowing whether their dog is of a type listed in Schedule 4, and the legislation imposes burdens upon them and they may even face a prosecution if they fail to act when they “know” their dog is of such a type.

“In the absence of any standard, it would be extremely difficult to prove that an owner “knows” that a dog is pit bull,” she said.

Ms. Jones said the only way to prove a dog is a pit bull would be if the dog has been registered as a pit bull in terms of the territorial authority’s registration procedures. This would only serve to penalise those who *do* register their dogs, and discourage people from registering pit bulls.

“If they do not register the dog they will have the option of claiming they did not know the dog was a pit bull. Who would be silly enough to register their dog as a pit bull, knowing that it will have to be muzzled in public? The prosecution will experience considerable difficulties in discharging the burden of proving such knowledge.”

The manner in which the legislation currently construes the burden of proof is also contrary to the principles of natural justice, believes Ms. Jones.

“The onus of proving that the dog is not a type of breed listed in Schedule 4 is on the owner. This violates the presumption of innocence that underlies the criminal law, because it will be impossible for an owner to provide evidence that the dog is not of the particular breed or type.”

The entire premise of the breed restrictions is also questionable. Evidence indicates that there is no rational basis for restricting particular breeds – as there is no empirical way of proving that one breed is more likely to bite than others. **[Continued on page 12]**

ARLAN LAUNCHES ITS FIRST FUNDRAISING DRIVE – WE NEED YOUR HELP!

We hope you have been enjoying the ARLAN newsletter and following the growth of the Animal Rights Legal Advocacy Network in New Zealand. Thanks to the support of its members and newsletter subscribers, ARLAN is growing bigger and better all the time.

Since its launch in 2001, ARLAN has been attracting more members, getting involved in more projects – and generally working hard to make New Zealand a better place for animals. ARLAN believes that an organization designed to address LEGAL matters involving animals is an extremely worthwhile endeavour. Here are some of the things ARLAN has achieved in New Zealand since 2001:

- It has launched New Zealand's first newsletter devoted to animals and the law, which is read by hundreds of New Zealand lawyers, government officials and policy advocates, as well as by numerous international organizations. The newsletter raises awareness of the need for change and keeps people aware of animal law news and issues both overseas and around the country. It is the ONLY journal of its kind in New Zealand;
- ARLAN has commenced and maintained an active group at Auckland law school helping to raise animal rights issues with law students and within the faculty. ARLAN believes that the best way to sensitize lawyers to animal issues is to begin on the ground floor!;
- Created a seminar series to educate students and lawyers about important legal issues involving animals, promoting academic discussion and debate on animals and the law on campus (and through the pages of our newsletter;
- Made several submissions to Parliament on relevant Codes of Welfare under the Animal Welfare Act 1999, as well as New Zealand's Dog Control legislation;
- Provided pro bono legal advice to animal advocacy organizations and government officials on important matters affecting animals, and
- Directly assisted individuals facing legal action relating to their animals.



**Help us make
New Zealand a
better place
for dogs like
this one!**

But there's so much more we want to do! Consider what it has already achieved on a tiny budget. ARLAN has shown that a small group of dedicated people can make a big change. Please help ARLAN take the next step forward! **[Continued on page 4]**

ARLAN LAUNCHES ITS FIRST FUNDRAISING DRIVE – WE NEED YOUR HELP!

When you donate to ARLAN you will be directly helping to support existing projects and help launch several new ones. A sampling of some of our proposed projects for 2003-2004 include:

- Sponsoring and co-hosting (with Unitec's Faculty of Animal Health and Welfare) New Zealand's first ever **Animal Law Conference** in 2004. The goal is to bring investigators, lawyers and animal law enthusiasts together to discuss common problems and solutions!
- Compiling a database of animal law. New Zealand desperately needs a place to access case law relating to animals.
- Funding will help us maintain and expand our Web Site, which has become the best place to find information about New Zealand law relating to animals, and receives thousands of visitors a year.
- Creating a 'fighting fund' to with animal welfare prosecutions as they arise.

Since 2001, ARLAN has been operating on a shoestring budget to create something that is new and much needed in New Zealand: a group of lawyers dedicated to helping change the legal status of animals in this country. ARLAN is consistently bombarded with more requests for assistance than it can handle!

This fundraising drive, the first time ARLAN has directly requested financial assistance from its members and friends, is essential to our future well being.

If you wish to help, please send a cheque for any amount you wish, made out to ARLAN, to:

**ARLAN
P.O. Box 6065
Wellesley St
Auckland, New Zealand.**

Donations of \$50 or more will receive their choice of: a) one year's hard copy colour subscription to our newsletter mailed to your home or office, or, b) a video copy of the ARLAN Seminars presented so far in 2003. (Please indicate your choice with your donation).

ANZCCART CONFERENCE DISCUSSES THE NEED FOR SECRECY IN ANIMAL RESEARCH

by Deidre Bourke

Last year as part of ARLAN's 2002 seminar series, Green Party MP and Animal Welfare Spokesperson, Sue Kedgley presented a seminar on "Secrecy in Animal Research". The seminar discussed problems with the way New Zealand regulates animal research and criticised how open and accountable our system is. That seminar and the publicity and news articles that followed in the wake of it appear to have kicked up quite a stir [To read a review of this seminar, see L. Schultz, "Veil of Secrecy Surrounds Research on Animals in New Zealand" 1(6) ARLAN Newsletter 1 (October 2002)].

So much so that this year, the Australian and New Zealand Council for the Care of Animals in Research and Teaching (ANZCCART) decided to base the theme of their conference around this issue. The theme of the conference in Christchurch on the 18th and 19th of August, was: "Lifting the Veil: Finding Common Ground". A variety of speakers presented talks on issues such as Official Information Act processes in relation to animal research, our system for recording statistics on animal experiments, and public attitudes to animal welfare, to toxicity testing, laboratory animal diets and standards of care in the commercial production of rodents. The conference was organized and run in conjunction with that of the Australian and New Zealand Society for Laboratory Science, which took place on the 21st and 22nd of August.

Both Sue Kedgley and scientist Michael Morris spoke at ANZCCART. Ms. Kedgley spoke on the need for transparency in animal experimentation arguing that the excessive culture of secrecy in New Zealand is unjustified and in need of urgent reform. She outlined her plans in this regard: a new Private Members Bill that has been drafted [with ARLAN's assistance] in an attempt to address the problems that exist. Michael Morris spoke critically about the welfare issues raised by various agricultural experiments currently taking place in New Zealand, in a talk entitled "Animal Experiments in New Zealand - the three butts"

Animal Advocacy groups also used the theme of the conference as a platform for opening up discussion and debate about animal experiments in New Zealand. An alliance of groups including ARLAN, SAFE, the National Anti-Vivisection Campaign (NAVC), and the Animal Rights Alliance (ARA) organized a report exposing problems with the system, timed to be launched during the week of conferences. Spokespersons from the groups also ran joint media events, public talks and panel discussions throughout the week.

Executive Committee member Deidre Bourke attended the ANZCCART conference and acted as ARLAN spokesperson for the media and public events that ran throughout the week.

For more information on the issue of how New Zealand legislation governs accessibility to research decisions on animals, see: A. Cowperthwaite, "Animal Ethics Committees and Experimentation on Animals: A Need for Reform", 2(2) ARLAN Newsletter 5 (March 2003).

ANIMAL LAW IN THE NEWS

by Kathy Wilson

BIGGIE'S ORDEAL DRAWS A PALTRY \$200 FINE

A case in the Hamilton District Court ended recently with a fine for Hamilton man Kani Jacobs. Mr. Jacobs was fined \$200 and ordered to pay SPCA costs of \$480 and \$130 court costs, after appearing on a charge of ill-treatment of an animal, contrary to s.29(a) of the Animal Welfare Act 1999. The charge carries a maximum penalty of 6 months imprisonment and a \$25,000 fine.

The mistreated animal was Biggie, a sharpie cross who had been beaten and left to die in a creek. Biggie was found bruised, defenceless and unable to walk. Mr Jacobs had earlier alleged that Biggie had bitten his hand, however the SPCA said that while in their care Biggie had not shown any signs of aggressive behavior, and no one saw the alleged dog bite.

Biggie was found in the creek by an SPCA inspector after the Waikato SPCA received a call alerting them to the fact that Mr Jacobs had been beating his dog. When found, Biggie also had bruises and open cuts which had possibly been sustained in an earlier beating.

MAGISTRATE REBUKES ATTEMPTS TO INFLUENCE SENTENCES

In South Africa, two men found guilty of cruelty to baby elephants in April were finally sentenced at the end of July. The two men were charged for their part in the cruel and prolonged mistreatment of baby elephants at a gaming facility just outside of Pretoria.

The charges arose after a video was aired showing young African Elephants being beaten with sticks until they bled. The tape was shown on a pay-per-view channel on M-NET in July 1999. Almost immediately after the screening, WWF South Africa began calling for a quick response and prosecution of the perpetrators, in order to prevent a recurrence of such cruelty.

Riccardo Ghiazza, the director of African Game Services, was found guilty of mistreating the elephants, while Wayne Stockigt an ex-employee was found guilty of contravening the Animal Protection Act. Both received suspended sentences of six months in jail with fines totaling more than \$6800 NZD. Before delivering the sentences, Magistrate Adriaan Bekker took the unusual step of voicing his concerns about some animal welfare organisations and activists, who had attempted to influence his decision. He said that he had received several faxes urging him to impose the maximum penalty, and in his view the demands were "uncalled for" and "inappropriate".

The maximum penalty available was a fine or one year in jail or both. Magistrate Bekker said that he had considered imprisonment, but both men were first time offenders, and since the case had begun both men had been "shamed in public and became marked men". He also stated that the close scrutiny of animal welfare organisations would act as a deterrent. The 30 elephants that were at the African Game Service's facility have since been moved to alternative facilities around Europe and South Africa. **[Continued on page 7]**

KILLING NOT CLASSED AS MANIPULATION

The National Animal Ethics Advisory Committee (NAEAC) recently released its 2002 annual report on animals used in experiments or research in New Zealand, and one of its main concerns was in relation to the definition of manipulation within the Animal Welfare Act 1999.

The definition of manipulation stated in s 3 of the Act specifically excludes the killing of an animal in order to undertake research, testing, or teaching on the dead animal - so long as the animal is killed in such a manner that it does not suffer unreasonable or unnecessary pain or distress. NAEAC's main concern is that this definition of manipulation means that there is no legal requirement to gain approval from an animal ethics committee to undertake such work, so long as the animals are killed humanely. This also leads to distorted research figures, as animals that are killed humanely for research and testing are not included in figures kept by ethics advisers.

The rationale behind the original decision to exclude humanely killed animals was due to the fact that so many animals are killed each year for food, or for being abandoned and homeless, and it was thought that killing them for research was essentially no different.

NAEAC has previously recommended that killing for research, testing and teaching be included in the definition of manipulation, but at the time the Minister of Agriculture declined to seek an amendment. However the NAEAC also stated in its annual report that the Minister had "indicated a willingness to reconsider the matter if the issue continued to generate concern after the Act had been in force for a period", and the NAEAC was expecting to "make a formal recommendation to the Minister on the matter in 2003." ARLAN strongly supports such an amendment. Ignoring animals killed for the purposes of research makes it difficult for anyone to keep close tabs on the degree of experimentation going on in New Zealand, and the number of animals that might be being deliberately killed for this endeavour. The inclusion of humanely killed animals in research statistics would have to be a positive step, enabling New Zealand to be one of the few countries able to produce accurate and detailed data about the total number of animals used in research, testing and teaching.

PETA LOSES PATIENCE WITH KFC – LAUNCHES LEGAL ACTION

On the 7 July, the American advocacy group People for the Ethical Treatment of Animals (PETA) filed a lawsuit in the Superior Court of California against the American division of Kentucky Fried Chicken Corporation (KFC Corporation), alleging that KFC has been spreading false statements about the welfare of its chickens, via its website and consumer information phone lines. PETA is aiming to get an injunction granted against KFC to stop the false statements, which are most likely being made in an effort to increase sales in a market where it is clear that people are becoming more and more concerned about animal welfare.

KFC and Yum! Brands (KFC's parent company in America), require the raising and killing of more than 700 million chickens each year to supply the KFC chain of **[Continued on page 8]**

PETA LOSES PATIENCE WITH KFC – LAUNCHES LEGAL ACTION

restaurants KFC's American website (kfc.com) has a page specifically dedicated to animal welfare. On this page KFC is careful to point out that Yum! Brands, as the owner of restaurant companies, does not actually own, raise, or transport animals. Instead, it purchases animals from farmers worldwide.

The web page concedes that KFC has a responsibility to influence the way animals are treated stating: "We take that responsibility very seriously, and are working with our suppliers on an ongoing basis to make sure the most humane procedures for caring for and handling animals are in place... we only deal with suppliers who maintain the very highest standards and share our commitment to animal welfare." PETA claims that these statements are misleading, for KFC's chickens endure unmitigated misery throughout their entire lives. Unlike other restaurant chains, KFC refused to implement improvements in animal welfare suggested by PETA.

Some of the improvements PETA wishes to see in exchange for dropping the action, include the replacement of the frightening way in which the chickens are killed (currently by electric stunning and throat-slitting), with the more humane method of gas killing. PETA also wants the forced rapid growth of chickens to be phased out. The chickens are currently slaughtered before they reach 2 months of age, out of a natural lifespan of more than 10 years. PETA claims that the chickens are also subjected to many other acts of cruelty, which include being dumped from crates, often breaking wings and legs, having their injured legs snapped into metal shackles, having their beaks seared off at an early age, and living in filthy conditions.

On its website PETA says that prior to launching the action, it attempted to reach a settlement with KFC and held talks with KFC officials. Nonetheless, KFC remains unmoved, especially in terms of finding a humane way of killing the chickens they purchase. "They have refused to address any of the other issues that we've raised as well. They make statements like those above, which are worrisome because they indicate a willingness to delude consumers, rather than improve conditions." If you would like to find out more visit PETA's website: kfccruelty.com

DOG FIGHTING(?) CONVICTIONS LEAD TO COMMUNITY SERVICE

On the 6th of August two men were each sentenced to 120 hours of community service, after pleading guilty to a charge under s 12 of the Animal Welfare Act 1999, of failing to minimise the unnecessary pain or distress suffered by their animals.

The charges arose after police were called to a park in Manurewa, in October last year. When a constable arrived at the park, two dogs resembling pit bull terriers could be seen in a fighting stance with the female dog in the dominant position. A witness who had been very upset by what she saw, said that the dogs were fighting. Both dogs were found to have multiple puncture and tear wounds.

During the case, which was prosecuted in the Manukau District Court, the two men claimed that they were attempting to mate their pitbull dogs. The SPCA veterinarian who inspected the dogs found that the bitch called "Girl" was not on heat. **[Continued on page 14]**

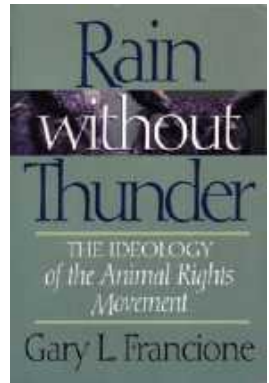
ARLAN BOOK REVIEW

RAIN WITHOUT THUNDER by GARY FRANCIONE

reviewed by Kathy Wilson

In *Rain Without Thunder*, law professor Gary Francione confronts the ideologies behind the two main factions which oppose the mistreatment of animals. Francione's message is clear from the beginning: he is determined to imprint upon the reader that the ideologies behind the animal rights and animal welfare groups are inherently different and lead to two vastly different results for animals.

Francione ensures from the outset that the reader is made familiar with the foundational ideologies of each group. This makes the book suitable for readers at any level of interest in animal rights issues, as no prior background knowledge is required. He clearly explains the differences between the two ideologies and why he believes it is important to distinguish between them. He describes animal welfare theory as being concerned with ensuring that animals are treated as 'humanely' as possible and are not subjected to 'unnecessary' suffering. Francione argues that the welfare position fails to address the underlying problem with animal mistreatment, which is that the exploitation of animals for food, research, entertainment and clothing, occurs as a direct consequence of their status in society as the property of humans.



Francione then explores the rise of animal rights theory, which emerged in the late 1970s, and provided a new language for animals, the language of rights, claims, and duties. The rights view is that animals possess inherent value that must be respected. Francione asserts that this view is far more beneficial for animals, because it is concerned with treating them as 'ends in themselves and not as means to human ends'. He says that a failure to distinguish between the two leads to theoretical inconsistencies and confusion between animal advocates and exploiters, as exploiters will often agree to the humane treatment of animals because it ensures a better quality of research subjects.

Francione is very critical of some major animal advocates for taking what he calls a 'new welfarist' approach to reforms. A new welfarist would still recognise the elimination of all animal exploitation as an end goal, but would find welfare measures acceptable in the meantime. Francione believes that even the most radical advocates have distanced themselves from animal rights and moved towards a new welfarist position. He claims they have become far less radical, and by increasingly centralising their efforts and focusing on celebrities and expensive add campaigns, they have alienated their grassroots supporters. Another consequence of these campaigns is that some advocates end up supporting laws that actually reinforce the property status of animals.

The majority of people would most likely agree with the viewpoint attributed to Ingrid E. Newkirk (of PETA) that, "the 'all or nothing' position of animal rights is 'unrealistic'". But Francione asserts in his conclusion, that the welfare groups are mistaken **[Continued on page 10]**

ARLAN BOOK REVIEW: RAIN WITHOUT THUNDER

for characterising animal rights theory as 'utopian'. He argues that the rights position is realistic, and is the best approach to take. The welfarist reformer, he says, maintains that all interests are tradeable, while the rights advocate believes that some interests cannot be traded. In his view the new welfarist attitude, which favours a "something rather than nothing" approach is actually doing more harm for animals than good.

Francione also discusses the influence of philosophers, examining in particular the theories of Peter Singer in his famous book *Animal Liberation*, and Tom Regan in *The Case for Animal Rights*. He states that Singer's theory "resonates with all of the key features of new welfarism", and attributes much of the confusion surrounding animal rights philosophy to the influence of Singer's theory.

AUTHOR PROFILE

Gary Francione is a Professor of Law at Rutgers University in New Jersey in the United States.

In addition to *Rain without Thunder*, Francione has author-ed two other books: *Animals, Property and the Law* (1995) and *Introduction to Animal Rights: Your Child or Your Dog* (2000). He has also co-authored (with Anna Charlton) *Vivisection and Dissection in the Classroom: A Guide to Conscientious Objection* (1992).

Rain Without Thunder provoked a great deal of debate amongst animal law specialists around the world, especially by those who were implicitly (or explicitly) criticized by the work. Stephen Wise responded to the book ("Thunder Without Rain" (1997) 3 *Animal Law J.* 45), by stating that "alleviat[ing] the suffering of non-human animals... is an entirely laudable goal...Until an unjust system is changed we lawyers must work within it or not work at all."

Singer is described as a utilitarian, and for him the consequences of actions are all important, and he does not argue that animals have rights. He does however believe that the interests of humans and non-humans should be given equal consideration. Francione is very critical of this approach, stating that it is far too close to the traditional welfare approach which advocates a balancing of human interests against animal interests, and that when the balancing is done human interests always seem to be given precedence. It is also possible under Singer's theory to continue to use animals as a food source, so long as free-range sources are used, the animal has a pleasant existence, is killed in a humane way, and the benefit to humans outweighs the benefit to the animal of staying alive. Singer also respects conscientious people who "take care to eat meat that comes only from such animals".

Francione describes Tom Regan's theory as being deontological, because the rightness or wrongness of a person's conduct does not depend on the consequences, but instead relies on an appeal to moral rights. Regan argues that individuals have inherent value, and should not be treated "as means to the end" of maximizing that which is considered valuable. This is a total rejection of utilitarianism. According to Regan animals should also be considered to have 'preference autonomy', because like humans they too have desires, beliefs, and the ability to pursue goals. It follows that

[Continued on page 11]

ARLAN BOOK REVIEW: RAIN WITHOUT THUNDER

animals also have inherent rights, and those rights may not be sacrificed simply because the consequences are considered more desirable for humans.

Francione dismisses Singer's theory outright because it does not endorse animal rights as a 'long-term goal', and instead sides with Regan's non-utilitarian argument. Francione supports Regan's uncompromising position because it condemns the use of animals for any reason, including food, sport, education, testing, or research. That said, it must be recognized that Singer's argument is more likely to appeal to a large number of people, (especially since the majority of people are meat eaters), and has been accredited with raising awareness of the issue and with convincing many people to become vegetarians.

In the end, Francione outlines his own incremental approach towards achieving a complete abolition of institutionalised exploitation. He does so because he understands the desire to put aside the theory and just get something done, but he strongly denies that using welfarist reforms as an interim measure can achieve complete abolition as an end goal. His approach sets out five criteria, which can be used to determine whether or not an interim measure will be consistent with the rights approach, and therefore be an acceptable option.

To demonstrate the failings of welfare based interim measures he uses the example of a law that prohibits the 'unnecessary suffering' of animals. He states that such laws are useless because they do not place people under a corresponding duty to act or refrain from acting. Francione also believes that virtually all acts involving animals can be classified under the heading 'necessary', as all that has to be proven is that the act produces some human benefit. All rights, he says, have corresponding duties attached, and laws protecting those rights should include a prohibition on people to not interfere with those rights. An acceptable incremental approach would be a law that prescribes a standard; for example a law that states that all animals must be supplied with water. Such a law requires that the interest of the animal be observed. While it does not achieve a complete abolition of the property status of animals, Francione thinks it is more consistent with the rights approach because it places animal owners under a duty to act or refrain from acting in a certain way.

Francione clearly expresses both sides of the debate so that the reader is able to form their own opinions about his conclusions. His own conclusions are powerfully argued and very persuasive. It did tend to be repetitive in parts although this is probably due to Francione's desire to get his message across. This book is very well researched and is full of interesting stories about the history behind the large animal advocacy groups, as well as providing intricate detail about the complex ethical issues. Regardless of whether you agree or completely disagree with Francione's point of view, this book certainly makes you confront the theories behind the animal advocacy groups, rather than accepting them at face value.

***Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple University Press, Philadelphia, 1996) can be purchased through www.amazon.com for around \$43 NZD.**

ARLAN SEMINAR EXAMINES DOG CONTROL ACT AMENDMENTS

[Continued from page 2]

“Whether or not a dog is likely to bite depends on a number of interrelated factors such as hereditary temperament, early experience, socialisation, health of the animal as well as victim behaviour,” explained Ms. Jones. “And some breeds may be more likely to be owned by a sector of society that is less likely to pay attention to those factors.”

Other identified problems with the proposed legislation include:

- it ignores the fact that any dog, regardless of breed, can be trained to be aggressive
- breed specific legislation ultimately leads to harassment of dogs and their owners
- law-abiding citizens will shy away from owning certain breeds (and these are the type of owners society needs to encourage, not drive away)
- punitive laws are likely to discourage adoptions and lead to “dog dumping by worried owners”

In summary, Jill Jones said the aim of protecting public safety would be properly addressed by targeting irresponsible dog owners rather than particular breeds.

“Dog problems are generally problems with owner responsibility and are not limited to breeds,” she said. “When breeds are singled out as dangerous or vicious, responsibility is removed from the dog owner where it belongs.”

To this end, Ms. Jones noted a few positive aspects to the proposed legislation. These include increased penalties for infringement, disqualification of ownership rights, and the use of microchip transponders.

ANIMAL LAW WEBSITE OF THE MONTH

This month’s review, by *Amie Wolken*, is the website of the **Centre for the Expansion of Fundamental Rights (CEFR)**, at www.cefr.org

The Centre for the Expansion of Fundamental Rights (CEFR) is a new group whose mandate is to “expand fundamental rights... to non-human animals, beginning with chimpanzees and bonobos, through litigation and education.” The Centre boasts three heavy hitting directors: lawyers Steven and Debbie Wise and Chimpanzee expert Jane Goodall.

Unfortunately, at the moment, the group’s website is hardly worth visiting. It currently consists mainly of advertising for books written by Steven Wise and links to other related websites such as the Chimpanzee and Human Communication Institute. On the plus side, there are downloads available of Steven’s presentation’s and seminar scripts.

While this website does not provide a lot of factual information on animals and the law, it does provide a good introduction to Wise’s important works entitled: *Rattling the Cage* and *Drawing the Line*, which both focus on the fact that the law has criteria for personhood, and by studying and often witnessing the latest research by leading experts in animal intelligence, it is possible to show how at least some creatures clearly meet those criteria.

Perhaps the best feature of the site is links to Amazon.com if you wish to purchase a book. Taking advantage of Amazon, the Centre receives a 15% commission on any book bought through the link.

CALL FOR HELP!

One of ARLAN's central mandates is to improve the understanding and accessibility of the law relating to animal welfare. We have made no secret of our dissatisfaction with the difficulty in accomplishing this. New Zealand law in this area is notoriously hard to research, as most judgments are unreported, and scattered across the country.

Peter Sankoff, Lecturer at Auckland University's Faculty of Law, and member of ARLAN's Executive Committee, has begun research and organization for a short text tentatively entitled Animal Welfare Law in New Zealand. The idea for the text is to provide practitioners, judges and legislators with handy access to the law relating to animals. It will discuss the theoretical underpinnings of Animal Welfare law and make recommendations for improvements.

Unfortunately, we recognize that most of the law in this area is unreported and somewhat difficult to access. As a result, we are hoping to circumvent this problem by calling on you, ARLAN's members and newsletter readers, to assist in any way you can. We urgently require copies of ANY unreported cases with some legal significance decided under:

- The Animal Protection Act 1960
- The Animal Welfare Act 1999
- The Dog Control Act
- The Marine Mammal Protection Act

A database of all the cases in ARLAN's possession has now been compiled. Rather than sending copies of case material, send a list of cases in your possession that can be checked against our database.

Case names can be mailed to:

Peter Sankoff
9 Eden Crescent
Faculty of Law
University of Auckland
Auckland

Case names and numbers can also be e-mailed to: p.sankoff@auckland.ac.nz

The creation of a text on animals will hopefully promote better consistency and accuracy in the law. Your assistance is invaluable to this exercise.

ANIMAL LAW IN THE NEWS – [Continued from page 8]

The two men had originally defended a charge under s 29, of encouraging, aiding, or assisting in the fighting of an animal, however, at the end of the case against them, the charge of encouraging their dogs to fight was withdrawn and they pleaded guilty to the alternate charge.

During sentencing, Judge Singh commented that the maximum penalty for the offence showed its seriousness. The maximum penalty for an offence against s 12, is a fine not exceeding \$25,000, or imprisonment for a term up to 6 months, or both. However, Judge Singh considered that the guilty pleas showed some contrition, and said that he had no doubt that the defendants loved their dogs but that was not the “kind of thing you do if you earnestly love your dogs”.

In addition to community service Michael Vaki, 22, was ordered to pay reparation of approximately \$620, to the Auckland SPCA, and Daniel Takimoana, also 22 was ordered to pay \$565, at a rate of \$10 per week. Judge Singh also banned the men from owning an animal for two years, and ordered that the dogs be forfeited.

ARLAN UPDATE: The ARLAN Executive Committee wishes to extend its best wishes and gratitude to Kate Buchanan who has resigned her position as a member of the Executive. Kate was one of the founding members of the Executive Committee and was an instrumental figure in establishing ARLAN in 2001 and getting us off the ground. She has been a dedicated member of our organization, relentlessly promoting ARLAN in her law school lectures. Kate remains an ARLAN supporter and animal lover, and we look forward to her advice and support in future.

ARLAN SEMINAR VIDEOS NOW AVAILABLE!!

ARLAN has begun producing videotapes of its seminars for members and others who are not able to see the seminars in person.

Seminar #1 - Peter Sankoff (Auckland University) “**Animal Rights vs Animal Welfare**”

Seminar #2 – Neil Wells (UNITEC) “**The Animal Welfare Act and Codes of Welfare**”

Seminar #3 – Jill Jones (Manakau Institute of Technology) “**Dangerous Dogs or a Dangerous Act? A Critique of the Dog Control Act Amendments**” [Not yet available]

**You can purchase video copies of any of these seminars at \$15 each,
or any two for \$20, or all three for \$25.**

All cheques should be made out to ARLAN and sent to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand. For overseas pricing email us at: contact@arlan.org.nz

Naturally, all proceeds help to support ARLAN activities!

Barks, Meows and Squawks

A collection of notable quotes on animals and the law.

"Some people in our community keep dangerous breeds of dogs as a fashion accessory, or as an attack weapon, or to bolster defective egos, or are owners who encourage canine aggression. There is absolutely no evidence that the appellant was such a person. These injuries, had they been combined with that sort of owner, would justify the maximum [penalty]."

Priestly J in the now infamous decision of *Owen v Police*, A 44/02, Auckland High Court (13 June 2003), which addressed the dog attack on Carolina Anderson. Owen was sentenced to two months imprisonment, and his appeal to the High Court was dismissed.

The comments of Priestly J bear on the Dog Control Act 1996, but might ultimately be useful in sentencing on Animal Welfare Act 1999 prosecutions as well, especially in cases involving dog fighting. Referring to the Sentencing Act 2002, Priestly J made it very clear that deliberately provoking aggression in an animal is an aggravating feature to be taken into account on sentence, and his comments should be applied in cases involving dog fighting, where the animals are trained to harm each other.

"There is no apparent spiritual or otherworldly component to plaintiff's beliefs. Rather, plaintiff alleges a moral and ethical creed limited to the single subject of highly valuing animal life and ordering one's life based on that perspective. While veganism compels plaintiff to live in accord with strict dictates of behavior, it reflects a moral and secular, rather than religious, philosophy."

-California Appeal Court Justice Paul Turner in *Friedman v. Southern California Permanente Medical Group et al.*, 102 Cal. App. 4th 39 (Cal. App. 2 Dist., Sept. 2002), rejecting Friedman's claim that he was the subject of discrimination on religious grounds after he was dismissed upon refusing to receive a vaccination produced using chicken embryos. The panel found that Friedman's veganism fell short of a religion for the purposes of the state Fair Employment and Housing Act because it lacked a "spiritual or otherworldly component," holidays or ceremonies. The court found that Friedman, instead, had a "philosophy or way of life," which didn't qualify for religious protection.

Animal Rights Legal Advocacy Network

Improving the law to improve the conditions of animals

ARLAN is an organization of New Zealand lawyers and law students established in 2001, working to improve the law as it affects animals. We need your help to make this a reality.

How you can help?

- **Information** – By joining our e-mail chat group you can learn more about animal law issues in New Zealand. In turn, you can keep us posted about issues arising near you. E-mail: contact@arlan.org.nz to join in. Also, check out our web page: www.arlan.org.nz
- **Become an Active Member of ARLAN** – ARLAN urgently needs dedicated lawyers and law students who care about the plight of animals to join our cause. We succeed only to the extent that we have supporting volunteers who are willing to help. There are a number of ways you can assist, and what we need most is your time and enthusiasm! Several projects are underway and require assistance:
 - the **ARLAN Newsletter** needs volunteers to assist in writing and production. We also require volunteers outside of Auckland to assist in distributing our newsletter. To help out contact: newsletter@arlan.org.nz
 - the **ARLAN Animal Cruelty Committee** needs volunteers to help us ensure that better animal cruelty prosecutions are undertaken where animals are deliberately hurt. This committee is still in the process of being established, but for more information, contact: cruelty@arlan.org.nz
 - the **ARLAN Legislative Review Committee** needs volunteers to assist in reviewing and making submissions on legislative initiatives at different levels of government. To help contact: betterlaws@arlan.org.nz
 - support ARLAN and learn about Animal Law by attending sessions of the **ARLAN Seminar Series**. Watch out for notices in this newsletter.
- There are other ways to help!** If you're not sure what you wish to do, just send us an e-mail at any of the addresses listed above. We'll find a way for you to help!
- **Support ARLAN Financially** – ARLAN is a non-profit organization that exists through the generosity of its members and supporters. While we endeavour to keep costs low, several of our activities require some degree of financial support including the maintenance of our website, and distribution of this newsletter. Any amount you can give would be hugely appreciated. To make a financial contribution, contact: contributions@arlan.org.nz, or simply send a cheque made out to ARLAN to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand.