

# The Animal Rights Legal Advocacy Network Report

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Vol.3 No.1

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## ARLAN/UNITEC ANIMAL WELFARE LAW CONFERENCE TO BE HELD IN MARCH 2004 – A FIRST FOR NEW ZEALAND

*by Peter Sankoff*

By now, March 13, 2004 should be marked in red letters on the calendars of all those who work with animal welfare law in New Zealand. On that day, ARLAN and the Unitec School of Natural Sciences will co-host New Zealand's first ever conference devoted to animal welfare law, entitled: **Five Years of the "New" Animal Welfare Regime - How We Can Improve in the Investigation and Prosecution of Offences Under the Animal Welfare Act 1999**. A great deal of work has gone into planning this ambitious endeavour, and we are extremely excited about the prospects for a productive day of expanding our knowledge on this issue.

The conference is the highlight of ARLAN's 2004 calendar and fulfills a vital role in relation to our mission statement: to help elevate the practice and study of animal welfare law in New Zealand. It emerged out of discussions between the Unitec Faculty and ARLAN's Executive Committee, both of whom believe that bringing together experts and practitioners in animal welfare law would reap considerable benefits in the prosecution of these cases.

The conference coincides with the fifth year of the Animal Welfare Act 1999 – the piece of legislation that revolutionized New Zealand law towards animals. It is no overstatement to say that the Animal Welfare Act dramatically altered the manner in which New Zealanders were permitted to treat animals in their care. It is probably also fair to say **[Continued on page 2]**

### The ARLAN Report

Welcome to our redesigned ARLAN Report. This is our third year of providing informative, up-to-date New Zealand articles, opinion and insight into the world of Animal Law. Formerly the ARLAN Newsletter, the ARLAN Report is our way of: a) communicating with members and supporters, b) getting people to think about animal law issues, and c) a way of increasing animal law scholarship in New Zealand.

We hope you enjoy reading it and keeping up to date with our ongoing activities. **A major goal for us in 2004 is to increase our circulation numbers!** From 15 ARLAN members, our circulation rose to 50 with our first issue, and has steadily risen to over 400 readers as of this writing. We hope to reach 500 subscribers by the end of the year. Think of someone who might enjoy this newsletter and urge them to subscribe. Please pass it on! We'd also like to hear your comments about how we are doing. Comments to: [newsletter@arlan.org.nz](mailto:newsletter@arlan.org.nz)

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**ANIMAL WELFARE LAW CONFERENCE IN  
AUCKLAND TO FOCUS ON INVESTIGATION AND  
PROSECUTIONS**

that the legislation, which was enacted within a relatively short time period after its first reading in Parliament, caught those responsible for prosecuting animal welfare offences off-guard. Once the Act came into force, a great deal of conduct that had previously been legal was suddenly adjudged illegal.

The legislation also changed the manner in which investigations and prosecutions took place. Much more complex than its predecessor – the brief Animal Protection Act 1960 - the Act provides investigators and prosecutors with a more sophisticated array of “weapons” with which to go after those who deliberately harm animals.

Unfortunately – and this is hardly intended as a rebuke against those who administer it - it is not clear that we are doing the best we can at utilizing this Act to deter and punish the criminals who target animals for harm or neglect. The increased complexity of this new legislation brought with it a need for greater legal training for the people who make these prosecutions go forward.

To a certain degree, this has occurred. Still, until this conference, there has yet to be an event that has brought together the many groups that have an interest and passion in fighting for a better system of animal welfare.

Now we need your help to make it a success. We are targeting you – the readers of this newsletter – to attend this important event. It will be a chance to learn a great deal about the Animal Welfare Act 1999, how it operates, how it should operate and more. We have gathered an impressive group of professionals to speak on these matters.

If you are an animal welfare investigator, this conference is essential for you. If you are a lawyer, judge or law student, the conference offers a unique opportunity to learn about the world of animal welfare law. We hope this is one amongst many steps to make New Zealand a place where people learn that hurting animals is a crime – one that will be punished.

# ANIMAL WELFARE LAW CONFERENCE PROSPECTUS

*by Anna Cowperthwaite*

## ***Why have this Conference?***

The Animal Welfare Act 1999 ("the Act") has now been in force for nearly five years. It represents a major step forward for the protection of animals within the legal system, and has provided New Zealand with a considerable starting point for the advancement of animal welfare.

However, in the years since the Act was passed it has rapidly become apparent from media reports and personal accounts that, as a tool, it may not be being utilised to its full potential. Furthermore, concerns have arisen about many specific issues such as sentencing, forfeiture, etc.

## ***Focus of the Conference***

While there are a number of areas in animal welfare deserving attention, the purpose of this Conference is to focus on two key areas where the potential of the Act is currently being under-realised - prosecutions and sentencing.

For example, the SPCA newsletter, *Animal Advocate*, reported that in 2002 SPCA inspectors investigated 11,783 complaints. 126 charges were laid due to these investigations, and yet only 52 convictions resulted. These figures suggest that there is a great deal of room for improvement, and reason to be concerned about issues of animal welfare.

Of further concern are the penalties resulting from sentencing. The Act introduced far tougher penalties than previously existed under the Animals Protection Act 1960, but this has yet to be reflected in penalties handed down by the judiciary. To date, most sentences, even in clear cases of intentional cruelty, have not come anywhere close to the maximums provided by the Act. Serious instances of cruelty tend to be reprimanded with fines of under \$500, and often the offender is discharged, with only an order to repay the SPCA for court costs.

If the Act is to be treated seriously, there needs to be strengthening of the penalties imposed. The current treatment sends a strong message to the public that crimes against animals will not be taken seriously in New Zealand. **[Continued on page 4]**

### **ARLAN and the Unitec Faculty of Natural Science**

**"Five Years of the "New"  
Animal Welfare Regime -  
How We Can Improve in the  
Investigation and Prosecution  
of Offences Under the Animal  
Welfare Act 1999"**

**Location: Unitec**

**Date: Saturday, March 13, 2004**

**Time: 9:00 am -5:15 pm**

**Cost: \$80 (after March 1)  
\$30 – students**

**Entry includes a vegetarian  
lunch, coffee and materials.**

**SCHEDULE, REGISTRATION  
FORM AND SPEAKER LIST  
AVAILABLE ON OUR WEBSITE:  
[WWW.ARLAN.ORG.NZ](http://WWW.ARLAN.ORG.NZ)**

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# ANIMAL WELFARE LAW CONFERENCE PROSPECTUS

## ***Aim of the Conference***

The problems with prosecutions and sentencing are compounded by the lack of resources provided to the agencies responsible for enforcing the Act. In setting up the regime under the Act, Parliament appears to have forgotten a key rule of governance - that a legislative decree is only as good as the enforcement tools that exist to give it teeth.

In recognition of the problems discussed above, the aims of the Conference are to:

- conduct a practical and visionary assessment of the Animal Welfare Act 1999 as it relates to prosecutions and sentencing;
- provide practical advice to those involved in administering animal welfare law;
- provide an opportunity for education, where those working with the Act can develop skills that will enable them to utilise it more fully;
- provide a forum in which the need for legislative reform can be examined; and
- bring together experts in the field to utilise their experience.

## ***Conference Format***

The Conference will comprise a mixture of plenary and workshop sessions, with presentations from people experienced in relevant fields. The idea is to create a context in which people can discuss the theoretical side of the Act, while at the same time providing practical workshop sessions to help with the development of the skills necessary to utilise the Act.

Briefly, the topics will include:

- The successes and shortcomings of the Act in deterring cruelty;
- An examination of why prosecutions are failing;
- What is wrong with sentencing under the Act - How do we raise the bar?
- Tips and tactics for a successful prosecution;
- Obtaining the maximum - how to draft a sentencing submission.

The Conference will also host a vegetarian lunch for attendees. We consider this an essential part of achieving our overall goal. It will allow the members of various groups working towards a better system of animal welfare to meet and discuss matters informally, setting the groundwork for future gatherings.

## ***Who should attend?***

Anyone with an interest in animal welfare is welcome to attend. However, as outlined above, the focus will be on utilising the Act to minimise animal cruelty and neglect. As such, it is ideally suited to all those who work with the Act – for example: SPCA, MAF, territorial authorities and lawyers.

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**Five Years of the "New" Animal Welfare Regime -  
How We Can Improve in the Investigation and Prosecution of Offences  
Under the Animal Welfare Act 1999**

- 9:00-9:15           **WELCOME AND INTRODUCTION**  
*Deidre Bourke*, Co-Chair of ARLAN Executive Committee  
*Jane Harman*, Head of UNITEC School of Natural Sciences
- 9:15-10:45       **PLENARY: PROSECUTIONS: Are We Succeeding or Failing and Why?**  
Chair: *Peter Sankoff*, Lecturer, University of Auckland  
Panelists:     *Neil Wells*, UNITEC, *Jim Boyd*, SPCA Investigator (Bay of Islands)  
                  *MAF Lawyer* – (Name to Be Confirmed)
- 10:45-11:00      **MORNING TEA**
- 11:00-11:45      **WORKSHOP #1 - Legislative History and the Animal Welfare Act – Using the  
“Purpose” of the Act for a Purpose**  
*Mark Neeson*, Principal Adviser, MAF Policy, Biosecurity and Science Policy
- WORKSHOP #2 - Relevant Factors in Sentencing for Animal Welfare Act  
Offences**  
*Judge David Harvey*, Manukau District Court
- 11:45-12:30      **WORKSHOP #3 - Forfeiture under the AWA**  
*Gina de Graaff*, Crown Law (Wellington)
- WORKSHOP #4 - Expert Evidence – How, When and Why?**  
*Jacqui Pate*, MAF Solicitor
- 12:30-1:45       **LUNCH**
- 1:45-2:30         **KEYNOTE SPEAKER - International Standards of Animal Welfare and their  
Impact on the Animal Welfare Act 1999**  
*Associate Professor Al Gillespie*, University of Waikato
- 2:30-3:45         **PLENARY: Sentencing under the AWA – What’s Missing and How do we  
Raise the Bar?**  
Chair: *Neil Wells*, UNITEC  
Panelists:     *Peter Sankoff*, Lecturer, University of Auckland  
                  *Tiana Ipati*, Meredith Connell
- 3:45-4:10         **AFTERNOON TEA**
- 4:10-5:00         **WORKSHOP #5 - Sentencing Submissions from the Prosecution Perspective**  
*Annabel Markham*, Crown Law (Wellington)
- WORKSHOP #6 - Search and Seizure under the AWA**  
*Scott Optican*, Senior Lecturer, University of Auckland

# LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I

*by Asa Lind*

“In behavioural terms, sheep can be described as defenceless, vigilant, visually alert, tight flocking, follower responsive, wool-covered ruminants that evolved within a mountain grassland habitat.”

-AWAC Code of Animal Welfare No. 2

“On board they are packed into pens at a density of three to a square metre...in temperatures reaching 34C despite ventilation, sheep starve because they stop eating, are killed by salmonella bacteria, or die from trauma, frequently caused when the hind legs splay, dislocating hips and tearing pelvic muscle.”

-New Zealand Herald, September 27 2003

## Introduction

The following is an examination of the current practice of exporting live sheep, and the law which governs this type of trade. In this part of the article, the history of the practice and the particular conditions that sheep endure on board an export ship are first outlined. Subsequently, the issues of jurisdiction to prosecute and the authority to grant export permits is considered. In next month's report, the legal requirements that govern the care and transport of live animals will be analysed. In particular the Animal Welfare Act 1999 and the Code of Recommendations and Minimum Standards for the Sea Transport of Sheep from New Zealand 1991 (AWAC) (Code of Animal Welfare No. 2) will be covered.

## Background

The export of live sheep has had a troublesome and violent history. Between 1981 and 1985, over 600,000 sheep died in transit.<sup>1</sup> Within the first 20 years of the practice, it is estimated that more than 2 million animals died, this in spite of industry moves to use new ship designs and techniques to improve conditions.

Importers of live sheep are mainly Muslim populated countries in the Middle East, for the requirements for the killing of animals under Islamic law are not usually met in New Zealand. Islamic requirements for halal killing involve severing a sheep's throat with a single cut through to the spinal column. This could be carried out in New Zealand but, **[Continued on page 7]**

In late 2003, the world followed the fate of thousands of sheep condemned to float from port to port in the Middle East. Close to four thousand sheep died on the Cormo Express before the remaining animals were finally unloaded. While the ship was an Australian vessel, live sheep exports – in smaller numbers – also leave from New Zealand, though they have been temporarily halted. In this two part series (to be completed in the March ARLAN Report), we examine the legality of this practice in New Zealand. ARLAN concludes that live sheep export is fundamentally incompatible with the principles of the Animal Welfare Act 1999.

<sup>1</sup> Greg Anlevy, The New Zealand Herald, Sep 27 2003

## **LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I**

it has been argued, only to a limited degree as there is a lack of refrigerated storage in some countries, and therefore carcass trade is not always possible.<sup>2</sup>

Life for sheep on board a ship entails the boredom of cramped metal pens where the animals stand or lie down in sawdust, often in their own muck.<sup>3</sup> “On board they are packed into pens at a density of three to a square metre...in temperatures reaching 34C despite ventilation, sheep starve because they stop eating, are killed by salmonella bacteria, or die from trauma, frequently caused when the hind legs splay, dislocating hips and tearing pelvic muscle.”<sup>4</sup>

“Sheep are particularly at risk of heat stress, as they cannot readily lose heat, especially if they are in full wool.”<sup>5</sup> When the animals get very hot, they pant in order to cool down, and consequently saliva evaporates from the tongue. The fluid that is lost must therefore be replaced and thus an increased water supply becomes necessary. When they are crowded together with little ventilation in hot conditions they rapidly become stressed, and if unattended to, they thereafter suffer heat stroke which can result in collapse and death. At feeding times the animals are subjected to intense competition in order to get fed, and this can result in “...plunging and pushing episodes, loss of footing...and suffocation of some animals.”<sup>6</sup>

The end of the journey does not necessarily mean the end of suffering, as the surviving animals face a further risk of being killed during their unloading. Furthermore it has been estimated that at least 3% of sheep die while awaiting slaughter in the Middle East.<sup>7</sup>

### *Historical journeys*

There have been countless tragedies involving sheep shipped live to the Middle East. For example, in 1980, 40,600 sheep died in a fire on board the ship Farid Fares. The death of a further 15,000 sheep followed in 1983, owing to heat exhaustion. In 1990, the Cormo Express, sailing from New Zealand, lost 10,000 sheep to death from various causes. Also in 1990, thousands of sheep were stranded on board the Mawashi Al Gasseem for 16 weeks, after it was rejected by Saudi Arabia. That incident ended New Zealand trade in live sheep with the kingdom, although not with other nations.

Recently the world experienced the tragedy on board the Cormo Express, an 11 deck converted ferry, that departed from Fremantle, Australia, on August 5 of this year, with 57,937 sheep aboard. The journey was to take 16 days and unloading was to take place at Jeddah, Saudi Arabia, in the heat of summer. However, the ship was prevented from **[Continued on page 8]**

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<sup>2</sup> *Ibid.*

<sup>3</sup> According to David Marshall, veterinarian and supervisor of sheep ships in Australia. Noted in The Sydney Morning Herald, Sep 25 2003.

<sup>4</sup> Emphasis author's own. *Supra* at note 1.

<sup>5</sup> Ministry of Agriculture, Media Release – 20 Feb 1998. <<http://www.maf.govt.nz/mafnet/press/archive>>

<sup>6</sup> As reported in a 1994 New Zealand Veterinary Journal and as noted in the New Zealand Herald, *supra* at note 1.

<sup>7</sup> <<http://www.greens.org.au/policy/other/sheep>>

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## **LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I**

unloading its live cargo when a Saudi vet claimed he had found a skin problem called ‘scabby mouth’ among the animals. Although the condition does not affect the meat, Saudi Arabian importers require the sheep’s *appearance* to be perfect in order to suit their ritual slaughter – and therefore the sheep were declined entry. Over the 11 weeks that followed, disaster ensued as the sheep began to suffer from heat exhaustion and die in the extreme temperatures. According to the ship’s Dutch manager, Vroon B.V, by September 20, 3777 sheep had died on the ship.<sup>8</sup>

### **The practice in New Zealand today**

Although New Zealand no longer exports large volumes of live sheep, it still carries on the practice. In 1996 eight shipments went to the Middle East whilst in the year 2002 there was one shipment, containing 32,000 sheep. The number of shipments has dropped drastically since 1997, when a regulation change saw the banning of live exports of lambs.<sup>9</sup> Since the beginning of 2003, at least 43,000 sheep have been exported for slaughter from New Zealand.<sup>10</sup>

On the 24<sup>th</sup> of September, the Ministry of Agriculture and Forestry delayed the export of 60 thousand sheep to the Middle East owing to growing concerns over the Australian shipment on board the Cormo Express.

The practice of live sheep exports is governed primarily by the Animal Welfare Act 1999, the Code of Recommendations and Minimum Standards for the Sea Transport of Sheep from New Zealand 1991 (AWAC) (Code of Animal Welfare No. 2) and, to a lesser extent, the Maritime Safety Authority Rules.

### **Sheep Exports and The Animal Welfare Act**

The treatment of animals exported from New Zealand is clearly captured by the Animal Welfare Act 1999. As noted above, several parts of the Act deal explicitly with this issue, and as we shall see, animals cannot be exported from New Zealand without permission of the government.

A more difficult legal issue, however, is whether offenders who commit Animal Welfare offences outside of New Zealand waters are liable to be prosecuted for those offences in New Zealand. It is an important question that needs to be addressed. The truth is, in almost every case, the harm done to the sheep tends to occur only after the animals have left New Zealand, and are well on their way to the Middle East.

While ARLAN believes that transgressions of the Animal Welfare Act 1999 that commence in New Zealand (through the export of the sheep) can be prosecuted, **[Continued on page 9]**

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<sup>8</sup> *Supra* at note 3.

<sup>9</sup> The New Zealand Herald, Sep 29 2003.

<sup>10</sup> <<http://www.greens.org.nz/searchdocs>>

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## LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I

it is not absolutely certain that this is the case. This legal uncertainty is another strong reason for banning live sheep export altogether.

### **Jurisdiction to Prosecute**

The general principle is that acts and omissions occurring outside New Zealand are not within the jurisdiction of the New Zealand Courts, as stated in s6 of the Crimes Act 1961 (hereafter the Crimes Act), but this is subject to s7 of the Crimes Act<sup>11</sup> which holds that for the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary for the completion of any offence occurs in New Zealand, the offence shall be deemed to be committed in New Zealand, whether or not the person charged with the offence was in New Zealand or not at the time of the act, omission or event.

Adams on Criminal Law<sup>12</sup> writes that this provision can resolve a situation where an entire offence is not completed within the territorial jurisdiction of the Court. The problem is thus solved through the technique of deeming the whole offence to occur within New Zealand. This is however only possible if either: 1, any act or omission forming part of the offence occurs in New Zealand; or 2, any event necessary for the completion of the offence occurs in New Zealand.<sup>13</sup>

Adams further notes that “if the only act occurring in New Zealand was merely preparatory to the commission of an offence, and did not form part of the actus reus of the offence itself, the deeming effect of s7 would not be brought into play...”<sup>14</sup>

For an ‘event’ to be ‘necessary to the completion of any offence’, under the second s7 test, the inquiry goes towards the event and not the conduct of the defendant.<sup>15</sup> Here the offence must be a “result crime”, meaning that a particular result must follow on from the defendant’s conduct before it amounts to a completed offence.<sup>16</sup> To establish jurisdiction under this part, the Court has to ascertain whether or not the offence requires an event to occur in New Zealand as part of the offence. In *Tipple v Pain*, the arrival of goods in New Zealand was an event necessary for the completion of the offence and its occurrence was sufficient to give the New Zealand courts jurisdiction.<sup>17</sup> **[Continued on page 10]**

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<sup>11</sup> The Animal Welfare Act is subject to the same interpretation, as S11 of the Crimes Act holds that ‘every Act shall be read and construed as if any offence therein mentioned for which the offender may be prosecuted were described or referred to as a crime; and all provisions of this Act relating to crimes generally shall apply to every such offence’.

<sup>12</sup> *Adams on Criminal Law*, Wellington, Brooker’s, 1992.

<sup>13</sup> This is confirmed in *Solicitor-General v Reid* [1997] 3 NZLR 617.

<sup>14</sup> *Supra* at note 26 at 7.12.

<sup>15</sup> *Supra* note 26 at 7.07A.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Supra* at note 28

## LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I

### *Common law approach to jurisdiction*

Common law decisions of the courts also inform decisions on jurisdiction. In recent years English Courts have asserted jurisdiction on the basis of the “last act” done to complete an offence approach<sup>18</sup>, but at other times a less strict method has been applied, and the Court has asserted jurisdiction because of *the gist* of the offence or *some event* necessary for the offence took place within the jurisdiction, *and* international and the comity of nations did not prevent it.<sup>19</sup> Adams upholds this last approach as ‘having practical attraction’, and it was further upheld by the Privy Council in *Liangsiriprasert*.<sup>20</sup> Australia has since followed this approach in *Wong v R*.

The Canadian courts use an even lower threshold for asserting jurisdiction, as in that country a prosecution can occur if the ‘defendant’s conduct has harmful consequences within Canada even if the conduct occurs outside Canada’.<sup>21</sup> The Canadian case of *Libman v The Queen*<sup>22</sup> further holds that there must be a “real and substantial link” between the offence and the country, and whether there are any facts that legitimately gives the country an interest in prosecuting the offence must be taken into consideration. The Court must then consider whether there is anything in those facts that offends international comity

In New Zealand, Paterson J stated in *Solicitor-General v Reid* that ‘the real and substantial link principle...seems an appropriate test at a time when modern communications and travel transcends borders’.<sup>23</sup> While this decision was only obiter dicta, it is still approving of the more liberal Canadian approach in *Libman*. The issue is not entirely resolved, as Paterson J’s statements appear contrary to views expressed in earlier New Zealand decisions.<sup>24</sup> In particular, Adams notes that New Zealand courts have generally resolved jurisdictional issues through statutory interpretation (see above discussion on s7).

While there are encouraging signs, the matter is not entirely resolved. Under a strict approach to s7 of the Crimes Act, a welfare offence occurring on a transport ship would not fall under New Zealand’s prosecutorial discretion. Still, legal developments consistently indicate that a narrow approach should not be adopted. Given that live sheep export is a commercial activity that takes place in New Zealand, with New Zealand animals, there is clearly a “real and substantial link” with activity in New Zealand. In light of international legal developments on issues of transnational crime, it is highly likely that a New Zealand would have jurisdiction to try animal welfare offences arising out of live sheep export. **[Continued on page 11]**

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<sup>18</sup> *R v Manning* [1998] 2 Cr App R 461.

<sup>19</sup> Supra note 26 at 7.05. and

<sup>20</sup> Supra note 28.

<sup>21</sup> *Libman v the Queen* (1985) 21 CCC (3<sup>rd</sup>) 206.

<sup>22</sup> (1985) 21 CCC (3<sup>rd</sup>) 206 and as noted in *Solicitor-General v Reid* at 631. The Privy Council in *Liangsiriprasert v Government of the USA* [1991] 1 AC 225 upheld the statement from *Libman*.

<sup>23</sup> Supra note 27 at 632.

<sup>24</sup> Adams see supra note 26 at 7.05-7.06

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## LIVE SHEEP EXPORTS AND ANIMAL WELFARE: AN IMPOSSIBLE MATCH – PART I

### *Animal Exports*

Exports from New Zealand are explicitly covered under Part 3 of the Animal Welfare Act 1999. Section 38 of states that the purpose of this part is to *protect the welfare* of animals which are being exported from New Zealand and which are being transported by ship or aircraft by ensuring that the risk faced by such animals are minimized.

The Act has a number of mechanisms to prevent unauthorized sheep export. First, section 40 makes it an offence to export an animal other than under the authority, and in accordance with the conditions of an animal welfare certificate. A person who commits an offence under s40 faces a hefty penalty; in the case of an individual, to imprisonment for a term not exceeding 6 months or to a maximum fine of &25,000; in the case of a body corporate, to a maximum fine of \$125,000. A member of the police may arrest a person and take possession of the ship under **s137** if an offence is committed against s40.

Animal Welfare certificates are designed to ensure that New Zealand animal welfare standards are adhered to during the export of animals. Generally, these certificates require exporters to meet with a number of standards set out by the Director-General of ... These are set out in Guidelines, as per the Act. Any guidelines published may relate to a specific type of animal or animals generally (s41(5)(a)), to the export of animals (s41(5)(b)) and also to particular animals in particular circumstances (s41(5)(c)).

**S42** sets out the requirements for application for animal export certificates and **s43** stipulates the matters to be taken into consideration when issuing such a certificate. Such matters include, amongst others; the manner in which the welfare of any animal previously exported by the applicant was attended to, the species of animal, the mode of transport and the length and nature of the journey proposed, the susceptibility of the animal to harm and distress under the conditions of transport proposed and *any New Zealand requirements* in relation to exportation of animals.

Where an animal that is to be exported is loaded onto a ship *other than under* authority and in accordance with the prescribed terms of a certificate, the Director-General or other authorized person may under **s53** seize the animal, take any steps to prevent any suffering of an animal, direct the owner to take steps to prevent suffering or keep the animal for a period of time. It is furthermore an offence if a person refuses to comply with any requirement of an inspector under s53, as per **s54**. An individual who commits an offence against s54, is liable to a maximum fine of \$5,000; a body corporate to a maximum fine of \$25,000.

**Part 2 of this Article appears in the March 2004 edition of the ARLAN Report.**

## **FIRST ANIMAL WELFARE ACT SENTENCING CASE IN COURT OF APPEAL RESULTS IN WIN FOR BAY OF ISLANDS SPCA**

*by Sabrina Muck*

On 19<sup>th</sup> December 2003, the first Animal Welfare Act 1999 decision to reach the Court of Appeal resulted in a victory for the Bay of Islands SPCA. A three judge panel of Justices Keith, Tipping and Anderson rejected the appeal against sentence brought by George Albert. This important judgment should be an extremely useful precedent for animal welfare prosecutions.

### **History of the Case:**

*SPCA v Albert* was a case about the willful ill-treatment of animals, regarding the horses on George Albert's farm at Mangamuka, north of Kaitaia. The case arose after the Bay of Islands SPCA received information from a MAF inspector about the poor condition of the horses on Albert's farm. When SPCA inspector Gail Boyd went to investigate, she found one horse emaciated and on the verge of collapse; the veterinarian she consulted with concluded that the horse would have to be put down. When she returned to the property, some 43 horses were seen in poor to average condition, and 12 horses were identified as being below acceptable condition, emaciated or bordering on emaciation. Veterinary opinion was that the property could support no more than 20 horses.

Albert was convicted following a jury trial in the District Court at Kaikohe on one count of failing to meet his obligations as owner or person in charge of 12 horses in relation to their physical, health and behavioural needs under s12(a) of the Animal Welfare Act, and one count of willful ill-treatment of an animal under s28(1)(b). The District Court Judge imposed a fine of \$5,000 in respect of the first count, and \$8,000 in respect of the second. Albert was also prohibited from having custody of any horses for a period of 18 months.

Albert then appealed against his sentence at the Court of Appeal on the ground that the sentence imposed was manifestly excessive, on the ground that he had no previous convictions for animal cruelty, though he had been convicted of other criminal offences. However, the Court of Appeal decided that the sentencing Judge was correct in his approach to any previous convictions the appellant may have had. Justice Keith stated:

“although the appellant has no previous convictions for similar offending that could be regarded as an aggravating factor under s9(1)(j) of the Sentencing Act 2002, the Judge was entitled to conclude that the appellant could not claim previous good character in mitigation. The appellant has a number of convictions including firearms charges, threatening, contravening a protection order and assault.”

He went on to say:

“this was a serious case of mistreatment of a number of animals over a period of time by a person whose experience with horses meant that... **[Continued on page 13]**

he ought to have known better. Given the significant increases in maximum sentences available for offences against animals under the Animal Welfare Act, the fines imposed cannot be said to be manifestly excessive”

The Court of Appeal also recognized that the penalties were justified in light of the fact that Parliament had specifically increased maximum penalties for animal mistreatment when it enacted the Animal Welfare Act 1999, as was submitted by Crown Solicitor Annabel Markham for the respondent. The court agreed that these increases could be seen as a legislative effort to give effect to the purpose of the Act, which, as stated in the Act’s long title, is to reform the law relating to the welfare of animals, and require persons in charge of those animals to attend properly to them.

The purpose of the Act seems to have been recognised in the Court of Appeal decision: the Act was intended to reform the law and increased penalties contained in the Act evidence this intention. When considered in light of all the facts, and the legislative intention, the fines of \$5,000 and \$8,000 could not be said to be manifestly excessive for an owner of animals who neglected his legal duty to attend properly to the welfare of those animals.

“This was a serious case of mistreatment of a number of animals over a period of time by a person whose experience with horses meant that, in the words of the sentencing judge, he ought to have known better. Given the significant increases in maximum sentences available for offences against animals under the Animal Welfare Act, the fines imposed cannot be said to be manifestly excessive.”

-Justice Keith

The Court of Appeal also upheld the order imposed on the appellant prohibiting him from having custody of horses for a period of 18 months. In this regard, Justice Keith stated:

“the imposition falls to be considered as part of the overall sentencing determination in accordance with the purposes and principles of sentencing set out in ss7 and 8 of the Sentencing Act. The judge clearly had such purposes, particularly those in paras 7(1)(f) [deterrence from committing the same, or a similar, offence] and (g) [protecting the community from the offender] in mind when imposing the order.”

The Court of Appeal held that the evidence before the sentencing Judge showed that the mistreatment of animals by the appellant was not an isolated occurrence. Taken together with the lack of remorse shown by the appellant, it entitled the sentencing Judge to decide to impose a deterrent sentence.

The appellant’s argument as to the Judge’s consideration of references provided on behalf of the appellant was also considered by the Court of Appeal against the background of the Sentencing Act and its purposes. **[Continued on page 16]**

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## **ANIMAL LAW IN THE NEWS**

*by Kathy Wilson*

### **DOG CONTROL AMENDMENTS NOW IN FORCE**

The majority of the provisions in the Dog Control Amendment Act 2003 came into force on 1 December 2003. The two exceptions are the provisions relating to the microchipping of dangerous or menacing dogs, which take effect from 1 July 2006, and the provision requiring control of a dog on the owner's property, which comes into force on 1 June 2004.

The law now prohibits importation of the following breeds and types listed in Schedule 4; Brazilian Fila, Dogo Argentino, Japanese Tosa, and American Pit Bull Terrier. These dogs are also deemed to be menacing dogs, and must be muzzled in public. Owners of these dogs will also be required to produce a certificate certifying that the dog is or has been neutered, within one month of receiving a classification notice from the territorial authority.

Territorial Authorities also have the power to classify a dog as menacing, if the dog is considered to pose a threat to any person, stock, poultry, domestic animal, or protected wildlife. Dogs that are deemed menacing will also have to be muzzled in public.

Graham Miller, director of environmental services at the Upper Hutt City Council has described the new provisions as being "fraught with difficulties". The large number and variety of cross-breeds makes it difficult to identify the dogs listed in schedule 4, and is likely to lead to serious inconsistencies in the classification of dogs as menacing. An owner may object if they disagree with a classification, but again this is likely to highlight the difficulty in accurately identifying certain cross-breeds. [For more on this issue, see: K. Pollock, "Dog Control Act Amendments Bite! Many Dogs Still Likely to Suffer Unnecessarily Under New Law" [2003] 8 ARLAN R. 1]

The penalty for failing to muzzle a 'menacing' dog is a fine of up to \$3,000. The penalty for making a false statement in regards to an application for registration has also been increased and owners who make a false statement about the breed of their dog potentially face a fine of up to \$3,000.

### **BEEF AND LAMB AD APPEAL UNSUCCESSFUL**

The New Zealand Beef and Lamb Marketing Bureau has failed in its bid to have the original decision of the Advertising Standards Complaints Board overturned.

As previously reported [see: P. Sankoff, *Animal Law in the News* [2003] 3 ARLAN R. 7], the original decision of the Complaints Board concluded that the red meat advertisement, which featured dancing and chanting butchers, would be likely to cause serious or widespread offence on the grounds of religious or ethical belief, mainly to members of the Hare Krishna religion, who are devout vegetarians. **[Continued on page 15]**

On February 9, the Appeal Board dismissed the Bureau's appeal, and reiterated that the advertisement was "extremely derogatory and insulting to Hare Krishnas". The New Zealand Beef and Lamb Marketing Bureau said that it had challenged the decision as a matter of principle, claiming that the Board had placed too much weight on the large number of complaints it had received, and that its advertisement came within the category of "humorous and satirical treatment of groups within the community". The Appeal Board rejected the Bureau's appeal and held that the ad was "not saved by humour".

## **MCDONALDS ADVERTISEMENT UNDER FIRE**

A complaint has also been lodged with the Advertising Standards Complaints Board, against McDonalds recent 'Farm Fresh' advertising campaign. Animal Rights Organisation SAFE has lodged the complaint, alleging that the advertisements are misleading and deceiving consumers. In the advertisements, McDonalds claims that they only ever use 'Farm Fresh' eggs. Hans Kriek, Safe Campaign Director, states that by using the term 'Farm Fresh', McDonalds "misleads consumers into believing that the eggs they consume are free range, where in fact these eggs are produced under cruel battery cage conditions". SAFE is aiming for immediate action from the Advertising Standards Complaints Board, which it hopes will force McDonalds to withdraw the ads.

## **CAMBRIDGE LAB CHALLENGE OVER BEFORE IT BEGAN**

Early in January 2004, Animal Aid and the National Anti-Vivisection Society lodged a High Court challenge to a UK Government decision allowing Cambridge University to build a primate brain research centre. The proposed laboratory would have undertaken research into neurological conditions, using primates as test subjects. Cambridge University stated that the laboratory was vital for the development of research into diseases such as Alzheimer's, Parkinson's, and Huntington's.

At the public planning hearing, Animal Aid and NAVS presented scientific evidence to show that the research centre would not produce any benefits for human medicine. A local planning inspector rejected the research centre proposal, and the South Cambridgeshire District Council refused planning authority, even after Tony Blair had made public statements supporting the proposal. Deputy Prime Minister John Prescott subsequently chose to overrule these findings and approved the building of the research centre.

Animal Aid and NAVS were appealing Prescott's decision on the grounds of an abuse of the planning process and predetermination of the decision, claiming that Prescott's decision was "perverse, unreasonable and unfair". However, on 27 January 2004, the University announced that it had withdrawn its proposal for the new research centre, eliminating the need for any court action. The University has cited increasing financial costs as the main factor in the decision, in particular the increased security costs that would be required to protect the centre.

Animal welfare groups are now concerned that the Government will simply build the primate lab in a more secret location, and that animal testing in the UK will become even more shrouded in secrecy than it currently is.

## **SPCA THE VICTORS IN COURT OF APPEAL CHALLENGE**

[continued from page 13]

The Court held that the Judge was entitled to place very limited weight on the references provided by the appellant, especially in light of the other evidence as to the appellant's actions. An interesting point to note in this regard is that in an earlier ARLAN interview, Bay of Islands SPCA Chief Inspector Jim Boyd expressed that prior to this case, George Albert's conduct towards animals has set the standard for other people's treatment of farm animals, as he is somewhat of a leading community figure. This suggests that references in favour of Albert's upstanding character would not necessarily relate to the extent of his mistreatment of animals, if this type of behaviour has come to be accepted as the norm.

In March 2003, Jim Boyd expressed his hope that the case of *SPCA v Albert* would set a precedent for what constitutes acceptable treatment of animals, both in domestic and agricultural circumstances. Now that the District Court decision has been upheld on both counts in the New Zealand Court of Appeal, there has been a precedent set with regards to penalties and sentencing under the Animal Welfare Act. Hopefully Courts will continue to recognise the seriousness of mistreatment of animals and extend to them the legal protection contained in legislation.

The appeal was defended by the Crown Law Office in Wellington, and the excellent submissions for the respondent were prepared by ARLAN member Annabel Markham.

## **ANIMAL LAW WEB SITE OF THE MONTH**

This month's review, by *Cindy Leung*, is <http://www.animalrightslaw.info/>

This is an Australian based website, designed and maintained by George Seymour. The website has been divided into six different sections – **Cases, Legislations, Treaties, Links, Journals Articles and My Writing.**

The 'Cases' section is particularly useful to people researching for animal rights related issues. It is displayed in two ways, by topic and by jurisdiction. If you choose to display the materials according to topic, it will link you to a page of keywords, for example unreasonable and cruelty; click on the keyword that you are interested in, and you will find a summary of facts and findings of a case that rule of the meaning of the word.

The 'Legislation' section is also very helpful. It is sorted according to jurisdiction for easy reference. It contains a comprehensive list of animal related legislation in Australia and provides a full version of the legislation so it makes it very easy for the reader to get access to what they are interested in.

The 'Links' section provides very useful links to various animal law and welfare organizations in Australia, America and New Zealand. An interesting feature of this website is that it also provides links to lawyers who are interested in animal welfare issues.

The 'Journal Article' section is a little imperfection of this site, it is very brief and does not provide a lot of information. It just contains citation and a small abstract of a few Australian journal articles.

## **ARLAN ACTIVITIES UPDATE**

### **EXECUTIVE COMMITTEE – DEVELOPMENTS**

The end of 2003 saw several new developments on the ARLAN Executive Committee. First, at our December meeting, there was general consensus for a continuation of a movement towards a more formal board structure. As ARLAN continues to grow, and as we expand from a small grassroots organization to a larger, more dispersed one, the Committee expressed support for ensuring that decisions made by it are visible and accountable to our members and supporters.

In 2003, we took the first steps in this direction, formalizing the Executive Committee appointment process, and setting term limits on each member's appointment. We hope to expand upon this process in 2004, setting out formal motion and decision making procedures. Members are also reviewing tentative workload guidelines, to ensure every member pulls their weight.

More important was our welcoming of a new Executive Committee member on board. ARLAN is absolutely delighted to announce that **Cherie Gum** has accepted an offer to join the Executive Committee. Cherie was an extremely active member of ARLAN in 2003. Newsletter readers will have undoubtedly seen her name splashed across our pages several times last year. Cherie wrote several interesting articles as a student member of ARLAN. She also attended ARLAN functions and helped out with numerous projects.

Cherie recently completed her LLB degree at Auckland University, but has a lengthy background in legal practice, having formerly worked as a legal secretary/executive for 18 years for medium to large sized law firms in Auckland. Her legal experience has predominantly been in civil/commercial litigation but her real passion is animal law and she sees ARLAN as being the vehicle for improving animal rights. She has a scruffy SPCA special (terrierX) named Bazil (who can do no wrong!) and two cats. Welcome aboard Cherie!



### **LEGAL ADVICE**

The holiday season was hardly a time for rest for several of our lawyers with several research projects underway. First, three ARLAN members collaborated on a complicated opinion involving the Animal Welfare Act and its application to a cruel killing perpetrated at a Safari Park. Whether the Act applies to acts committed by hunters is an issue that is of great concern to ARLAN. Sections 175 & 176 of the Act address the issue of hunting but it is unclear whether these sections act as a complete or partial exemption. ARLAN has commissioned a legal opinion on this point.

Another area of interest in December/January was live sheep export, and readers can see the first fruits of this labour in this month's newsletter. Asa Lind, an ARLAN [**Continued on page 18**]

member and graduating student from the University of Auckland, spent a week working with ARLAN producing an opinion on the legal validity of live sheep export. ARLAN believes this is an important welfare issue that needs to be addressed by the New Zealand government.

Work is also underway in scrutinizing the latest Code of Welfare under the Animal Welfare Act – the Draft Code for Zoos. Executive Co-Chair Deidre Bourke and a number of ARLAN members are hard at work scrutinizing the draft Code and preparing submissions upon it.

### **ARLAN CHRISTMAS PARTY**



Thankfully, December wasn't all about work! In between organizing conferences, preparing for 2004 and writing legal opinions, ARLAN's Executive Committee found time to hold its first Christmas party in Auckland. The evening provided a welcome opportunity for members to meet, eat and exchange gifts. We are pleased to report that a lovely time was had by all!

### **2004 SEMINAR SERIES**

**EXECUTIVE COMMITTEE MEMBERS  
ENJOYING HOLIDAY GATHERING (FROM L):  
Louise Brown, Deidre Bourke, Peter Sankoff,  
Anna Cowperthwaite, Kerry Pollock.**

With the University of Auckland school year just around the corner, it is an appropriate time to set out our plans for this year's seminar series at the Faculty of Law. As announced in our End of Year Review, we

have decided – owing to time constraints – to cut back the number of proposed seminars from six to four. There should be no reduction in quality, however. This year's line-up looks extremely promising.

The very first seminar is right around the corner. ARLAN Executive Committee Member Peter Sankoff – Lecturer in the Faculty of Law – will present a special seminar on Dog Fighting in New Zealand on **Wednesday, March 12**. This seminar will use a disturbing recent TV 3 special on Dog Fighting, entitled "Jaws", as a springboard for discussion on animal welfare issues.

Our second seminar, being held May 5, will feature ARLAN Member Asa Lind, who will speak about the topic of her forthcoming Honours dissertation, entitled "Animal Welfare and the International Transport of Animals from New Zealand", focusing upon Live Sheep Export.

Two more seminars in the second semester will feature Hans Kriek, SAFE Campaign Director and formerly of the Wellington SPCA, speaking on the subject of Animal Welfare Act Code reform, and Gretel Fairbrother, barrister, speaking on sentencing for Animal Welfare Act offences.

## **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](mailto: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.

## **LETTER OF THE MONTH**

Hello Good Folks at ARLAN,

I am not a lawyer or law student but I'd like to thank you for the work you are all doing. I am a horticulturist, bush regenerator and wildlife carer in Gosford, near Sydney Australia. I specialise, on the critter front, in Grey-headed Flying-foxes, a species much-maligned in this country, despite the fact that they pollinate about half of our Eucalypt species and grow our rainforests by spreading the seed of food trees.

I only heard about your organisation this year and have been receiving your newsletters for the last 3 months. Thank you for all your hard work. It's hard to persuade people that animals are so much more aware and intelligent than many people think they are. It's even harder to create laws that support that principle! ...Anyway, I am so happy that your organisation exists, that this year, I've decided to name one of the little GH Flying-foxes for whom I am caring, after you!

"Arlan" is a 110gram baby found by a rescuer on the ground in a Ff colony site, cold and hungry, having lost his mum. Perhaps she was electrocuted on electricity wires or shot by fruit growers; we don't know. He was, however, one of the lucky ones found by our team of volunteer rescuers. Grey-headed Flying-foxes have been listed as "Vulnerable" under the NSW Threatened Species Act for 2.5 years now. A "Recovery Plan" is supposedly being worked on for this species, but our National Parks and Wildlife Service are still issuing licences to orchardists to kill them.

"Arlan" is very cute, has a bit of a problem with sibling rivalry, (Flying-foxes only have one baby at a time; as his surrogate mum, I have two - he doesn't like it!) and is currently downing 4 x 20ml bottles of milk a day. On his (and other animals who can't speak our language) behalf, thank you for all the wonderful work you all do and I hope your Christmas and New Year are happy.

Yours very sincerely, Jessi Grace.

**ARLAN WELCOMES YOUR COMMENTS ON THE ARLAN REPORT OR ON ANY OF OUR OTHER ENDEAVOURS. PLEASE E-MAIL COMMENTS TO: [newsletter@arlan.org.nz](mailto:newsletter@arlan.org.nz), OR BY "SNAIL" MAIL TO: ARLAN LETTERS PO BOX 6065, WELLESLEY ST., AUCKLAND.**

# 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](mailto:contact@arlan.org.nz) to join in. Also, check out our web page: [www.arlan.org.nz](http://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 Report** 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](mailto: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](mailto: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](mailto:betterlaws@arlan.org.nz)
  - support ARLAN and learn about Animal Law by attending one 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](mailto:contributions@arlan.org.nz), or simply send a cheque made out to ARLAN to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand.