

The Animal Rights Legal Advocacy Network Report

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AUCKLAND LAW CONFERENCE BREAKS NEW GROUND BRINGING TOGETHER ANIMAL WELFARE EXPERTS FROM ACROSS NEW ZEALAND

by Peter Sankoff (with assistance from Libby Schultz)

Saturday, March 13, 2004 was an important day for animal welfare law in New Zealand. On that day in Auckland, ARLAN and the Unitec School of Natural Sciences co-hosted 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**. The conference was a true success, attracting over ninety participants and exceeding organizers' and participants' expectations in every way.

The conference began with a hearty welcome to all in attendance from Jane Harman, Head of the School of Natural Sciences at Unitec and Peter Sankoff, Co-Chair of ARLAN's Executive Committee. Mr. Sankoff opened the conference by acknowledging the diverse paths that brought the participants together.

"We come from many different backgrounds: SPCA Inspectors, lawyers, legal academics, MAF investigators, law students, UNITEC students, advocates from animal welfare interest groups", said Mr. Sankoff. "We all have our different jobs, and we approach animal welfare issues in different ways. The truth is, we don't always agree on the best approach to animal welfare. But what we do share, through our presence here today, is a real concern for the animals themselves, and a recognition that we can do better in aggressively protecting their interests."



District Court Judge David Harvey explains how the principles of sentencing apply to an animal welfare case.

The conference began with an interesting introductory session from Mark Neeson, a Principal Advisor with the Ministry of Agriculture and Forestry (MAF Policy Group) with responsibility for animal welfare policy. Mr. Neeson was the project leader on the team that drafted the Animal Welfare Act 1999, and he explained the purpose of the Act, how it developed and what Parliament intended in its enactment. The conference continued with six workshops spread out throughout the day, on a range of topics including: preparing a prosecution file, the best use of experts, and making a sentencing submission under the AWA. **[Continued on page 2]**

ARLAN REPORT

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ANIMAL WELFARE LAW CONFERENCE REVIEW

The impressive list of speakers made for an extremely successful day, according to the participants.

"It was a very educational day", said David Richardson, auxiliary officer, SPCA Waiheke Island. "I found especially useful the explanation of the legal processes that in the past have seemed rather ambiguous to me."

This sentiment was shared by Earl Culham, MAF Senior Animal Welfare Investigator, who noted that "the organisers have put together a conference with an excellent cross-section of speakers, who have offered good variety and depth. It was an excellent day."

While learning was the primary theme of the day, the conference was also useful in bringing together a wide range of participants with different experience and expertise. "It was a really informative day with excellent speakers, and the networking has also been great. It's good to be part of a group that are all interested in the same thing", said Stephanie Saunders, a senior inspector with the SPCA in Otago.

The feedback from the conference has been overwhelmingly positive, and as a first effort, it has surpassed even the organizers' expectations. The conference proposal hoped to have 40-60 people in attendance, but the interest in animal welfare quickly made these projections obsolete. The enthusiastic gathering made for a wonderful learning atmosphere, and the speakers responded in kind.

The April ARLAN Report will feature a full review of the conference, with special reports on each of the seminars presented. You can also check out the ARLAN Website (www.arlan.org.nz) which will provide updates about how you can obtain materials – including videotaped copies – that emerged from the conference.

PRIVATE MEMBER'S BILL AIMS TO ABOLISH THE UNNECESSARY "TAIL DOCKING" OF DOGS

By Catherine Green

Hamilton Labour MP Diane Yates has launched an attack on one of the more controversial procedures utilized on animals – the cosmetic docking of dogs' tails – with a Private Member's Bill that would amend the Animal Welfare Act 1999 and effectively abolish the practice. The Bill, which has the support of the RNZSPCA as well as the New Zealand Veterinary Association, was submitted to Parliament in early February, though, as is the case with all Private Member's Bills, it cannot be predicted when the proposed legislation might come before the legislature.

Tail docking is a procedure that is carried out on dogs as well as other animals, such as horses, cattle and sheep. On dogs the procedure involves amputating the tail, typically at two to five days of age, using scissors or a rubber band. This procedure is often done without any anesthesia despite the fact that the docking involves cutting through muscle, tendons and nerves.

Docking a dog's tail can lead to various complications for the animal. These include blood loss, infection, fecal incontinence as well as urinary incontinence, improper development of muscles found at the base of the tail, reduced support for the rectum and anus and rectal dilation. Additionally, the tail stump may become painful because of nerve tissue scars forming in the stump, and in extreme cases the procedure may also result in the death of the dog.



WHICH DOG LOOKS "NORMAL" TO YOU?
New legislation will help change attitudes about how certain dogs "should" look, eliminating the need for a painful and unnecessary procedure.

The practice of docking dogs' tails has a long and coloured history. It originated historically for a variety of reasons, including: to prevent rabies, strengthen the back and increase running speed, and to prevent damage to the tail. In the U.K., many farmers docked their dogs to be exempted from a tax directed at working dogs. Though, this tax was repealed over 200 years ago in 1796, the practice of docking has persisted into modern times.

Groups in favour of tail docking argue that it is necessary, in particular for working breeds, because it prevents damage to the tail. This argument is violently contested by opponents of the procedure. Indeed, research in the United Kingdom has shown that the proportion of the dogs which are actual working dogs is relatively tiny; nonetheless, tail docking is still performed on dogs belonging to the traditional working dog breeds despite the high proportion of those dogs which are not in fact working dogs.

Peter Blomkamp, the Royal New Zealand SPCA's Chief Executive, has commented that "tradition was never a good enough reason for continuing practices [**Continued on page 4**]

TAIL DOCKING EXPOSES DOGS TO UNNECESSARY PAIN, CONFLICTING WITH BASIC NOTIONS OF ANIMAL WELFARE

[Continued from page 3]

which are painful and cruel.” Like many others, he disputes the medical arguments put forward by proponents of the procedure. According to them, tail injuries that could arise from the refusal to tail dock do not normally require amputation. Instead, basic first aid would more often than not, suffice to heal an injury to the tail. Furthermore, although cases which require surgical amputation do occur, this is hardly a justification to routinely perform tail docking as a preventative measure.

In any event, the focus of the Bill is not to prohibit all tail docking and it would allow the procedure to take place where it is demonstrably beneficial for the animal, restricting the legality of tail docking to circumstances where it is necessary for the welfare of the dog owing to injury or disease. Additionally, only veterinarians, or veterinary science students under the supervision of a registered veterinarian, will be able to perform the procedure.

The Bill makes two important amendments. In Clause 3 the words “or a dog” is inserted into section 2(1) of the Animal Welfare Act 1999, which currently makes the docking of a horse’s tail a “restricted surgical procedure”, that can only be performed by trained professionals. Restricted surgical procedures, according to s 17(2), can only be performed when the veterinarian is convinced the procedure is in the “interests of the animal”. A second proposed amendment would add the words, “which, in the case of tail docking, is based on an informed veterinary opinion that the procedure is necessary for the welfare of the animal where the tail has been damaged by injury or disease, and is not being performed for cosmetic or prophylactic purposes”.

Principles Behind the Bill

The basic underlying principles of the Bill are both salutary and important. It rests upon the notion that animals should not be subjected to unnecessary and painful procedures solely to satisfy the personal preferences and cosmetic desires of humans. As the New Zealand Veterinary Association (NZVA) has recently stated, breeders ought not to have the right to “perform an unnecessary and painful procedure on an animal that has no choice.”

Indeed, most tail docking proceeds upon the antiquated notion that animals either do not feel pain, or that this pain does not matter. Modern science, however, refutes this notion. The type of pain that is inflicted upon dogs subjected to tail docking is severe and by no means would it be sanctioned to be inflicted upon humans. Moreover, the argument put forward that puppies are incapable of feeling such intense pain because of their lack of motor skills is seriously flawed. These skills are governed by a different component of their nervous system than their sensory skills. Therefore, the fact that puppies are incapable of controlling their movement properly does not infer that they do not feel pain. In fact, puppies lack inhibitory pathways, which reduce the cruelty of the pain, and therefore it is more likely that the puppies would actually feel more pain than fully grown dogs. **[Continued on page 5]**

International Comparisons

In Australia, intense lobbying against tail docking has had a slow start, but a remarkable impact. Though Australian animal welfare groups only began voicing objections to the procedure far later than their compatriots in England and Canada, Australia is poised to become the first English-speaking country to impose a nationwide ban on cosmetic dog tail docking. The reforms legislate for a tail docking ban which is timetabled to be in effect by April 1, 2004. Like the New Zealand Bill, the ban will not prevent all tail docking. Licensed veterinarians may continue to dock dogs' tails for the individual animal's welfare or medical purposes. Offenders face a maximum penalty of a \$7,500 fine, or up to \$37,500 for corporations. The foundation of the legislation is based on the awareness that it is; "inappropriate to dock a healthy tail on the basis of a possible future event, such as the chance of injury."

In the United Kingdom, there is no universal ban on tail docking, but since July 1993, tail docking can only be performed by registered veterinarians. Since 1996, The Royal College of Veterinary Surgeons has instructed veterinary surgeons not to dock dogs' tails, although this dictate is not universally followed. Indeed, a number of veterinarians do this to prevent it being done by lay people; others continue to insist, however, that it is still a justifiable prophylactic procedure.

Europe has gone considerably farther. The European Convention for the Protection of Pet Animals (ECPA) was open for signature on 13 November 1987 and came into force on 1 May 1992 and a number of nations have since ratified it. The Convention provided for the following:-

Article 10 – Surgical operations

- (1) Surgical procedures for the purpose of modifying the appearance of a pet animal or for other non-curative purposes shall be prohibited and, in particular (a) the docking of tails etc;
- (2) Exceptions to these prohibitions shall be permitted only: (a) if a veterinarian considers non-curative procedures necessary either for veterinary medical reasons or for the benefit of any particular animal;
- (3) Operations in which the animal will or is likely to experience severe pain shall be carried out under anesthesia only by a veterinarian or under his supervision.

[Continued on page 14]

The Animal Welfare (Restriction on Docking of Dog's Tails) Bill

Section 2(1) of the Act would be amended by inserting the words "or a dog" to the definition of a restricted surgical procedure. The new section would make "the docking of the tail of a horse or a dog", a restricted surgical procedure, subject to the requirements of s6 and 15-18 of the Act.

Section 17(2) would also be amended to provide added protection for dogs. This section currently forbids the practice of restricted surgical procedures unless they are "in the interests of the animal." For clarity, the new Bill would add: "which, in the case of tail docking, is based on an informed veterinary opinion that the procedure is necessary for the welfare of the animal where the tail has been damaged by injury or disease, and is not being performed for cosmetic or prophylactic purposes".

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

by Asa Lind

The first part of this article reviewed the background of live sheep export, whether breaches of animal welfare standards could be prosecuted by New Zealand authorities, and the need for a certificate before export. This part addresses the types of offences that might occur during an overseas export of sheep. The practice of live sheep exports is governed primarily by the Animal Welfare Act 1999 (the Act) but it also requires consideration of the Code of Recommendations and Minimum Standards for the Sea Transport of Sheep from New Zealand 1991 (AWAC) and, to a lesser extent, the Maritime Safety Authority Rules.

The Animal Welfare Act 1999

Animal welfare standards involving the transportation of animals are governed by sections **22 – 25** of the Act.

S 22 requires that every person in charge of a ship on which an animal is transported, must ensure that the welfare of the animal is ‘properly attended to’, and that each particular animal is provided with ‘reasonably comfortable and secure accommodation’, and is ‘supplied with sufficient food and water’. Any person commits an offence who fails, without reasonable excuse, to comply with any of the above requirements, as per s22(2).

When one applies this section to a situation, such as the recent Cormo Express disaster, it is difficult to see how live sheep export allows this section would be complied with as the welfare of the animals is clearly jeopardized and therefore ‘not properly attended to’. When sheep are made to endure weeks of suffering on board a ship in cramped conditions and sweltering heat, it cannot be said that they are provided with ‘reasonably comfortable and secure accommodation’. Furthermore, when sheep die of heat exhaustion, none of the above requirements are complied with, and it is always questionable in such circumstances whether ‘sufficient water has been supplied’.

Under **s23** a person commits an offence who, without reasonable excuse, confines or transports an animal ‘in a manner or position that causes the animal unreasonable or unnecessary pain or distress’. This section goes on to add that it is an offence if the owner [**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 (the first part was included in the February 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.

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or the person in charge of the animal permits it to be transported on a ship while the ‘condition or health of that animal is such as to render it unfit to be so transported’ (s23(2)(c)).

Evidence demonstrates that sheep are often packed onto a ship into pens at a density of three to a square meter. Temperatures often reach highs of 34C despite ventilation, and the animals often starve because they stop eating, are killed by salmonella bacteria, or die from trauma.¹ It would seem that virtually as a rule, it can be said that sheep exporters confine and transport the animal ‘in a manner or position that causes the animal unreasonable or unnecessary pain or distress’.

It can further be assumed that the second part of the section would also be breached, as the biological nature and physicality of a sheep makes it in a ‘condition such as to render it unfit to be transported’ on a ship. Sheep are ‘wool-covered ruminants that evolved within a mountain grassland habitat’² and they are ‘particularly at risk of heat stress, as they cannot readily lose heat, especially if they are in full wool.’³

The maximum penalties imposed for a breach of the above sections are laid down in s25 as: for an individual; a term of imprisonment not exceeding 6 months or a fine of maximum \$25,000. For a body corporate; a fine of maximum \$125,000.

The foregoing analysis indicates that sheep export is a risky proposition that would almost inevitably conflict with the welfare provisions of the Act. Still, s24 of the Act goes on to provide a defence to a person in breach of the above sections, if the minimum requirements of an established code of welfare have been complied with. Unfortunately for exporters, no such Code exists. In 1991, the ***Code of Recommendations and Minimum Standards for the Sea Transport of Sheep from New Zealand 1991 (AWAC) Code of Animal Welfare No. 2*** was enacted, but this Code no longer has legal force in New Zealand. While the Code might be useful in determining whether a particular practice was “unreasonable” or “unnecessary”, it has not been subjected to public consultation, and it has not been measured against the principles of the Animal Welfare Act. There is no immediate plan to enact this Code as a Code of Welfare.

General care of animals

The transportation provisions are arguably not the only aspects of the Act that may give rise to concern. Transporters also qualify as “persons in charge” of animals, and they must accord with the general obligations imposed upon these individuals in Part 1 of the Act. S10 of the Act requires owners and persons in charge of animals to take all reasonable steps to ensure that the physical, health and behavioural needs of the animals are met [**Continued on page 8**]

¹ New Zealand Herald – Sept 27 2003.

² Code of Recommendations and Minimum Standards for the Sea Transport of Sheep from New Zealand 1991 (AWAC) (Code of Animal Welfare No. 2).

³ Ministry of Agriculture, Media Release – 20 Feb 1998. <<http://www.maf.govt.nz/mafnet/press/archive>>

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in accordance with good practice and scientific knowledge. ‘Physical, health, and behavioural needs’ are defined in s4 of the Act as including: sufficient water, adequate shelter, opportunity to display normal patterns of behaviour and further ‘physical handling which minimizes the likelihood of unreasonable or unnecessary pain or distress’.

To place sheep on ships where the conditions are cramped and temperatures are high *cannot be said to* constitute handling ‘which minimizes the likelihood of unreasonable or unnecessary pain or distress’. The historical evidence shows that transport of this nature almost inevitably results in these conditions. S11 creates a further obligation, to alleviate pain or distress of ill or injured animals. When read in conjunction with s4(e), which refers to protection from, and rapid diagnosis of injury or disease, it appears that the conditions present on board a live sheep export ship, would not easily meet the Act’s requirements here.

Under s14, an owner or person in charge of an animal further commits an offence who, without reasonable excuse, keeps the animal alive when it is in such condition that it is suffering unreasonable or unnecessary pain or distress, or deserts the animal. In a situation as the recent Cormo Express tragedy, s14 would be breached as the animals were kept alive in conditions where they were ‘suffering unreasonably’ or from ‘unnecessary pain or distress’, and such conduct would amount to an offence under this section.

In addition to the Animal Welfare Act and the Code, further requirements for the shipment of livestock is provided by *the Maritime Safety Authority Rules*. Under Part 2.1, sheep are specifically dealt with, and particular requirements are set out for the number of sheep that can be held in specific pens. Part 24C.18 gives particular requirements for ships carrying live stock, which are set out in detail. These Rules are mainly directed to the suitability of the ship and of its equipment.

The power to inspect ships

An inspector intending to inspect a ship, or other vessel, may enter, without a warrant, that ship at any reasonable time or times at which the ship is stationary, for the purposes of inspecting any animal on board, as per s127 of the Act. Where an inspector has reasonable grounds to believe, in respect of any animal found on...a ship, that the animal has been wilfully ill-treated contrary to s28, or the physical, health or behavioural needs of the animal or the need for an animal to receive treatment from a veterinarian make it necessary or desirable to remove the animal, the inspector may take possession of the animal/s (s127(5)).

Under s130, where an inspector, either in the course of exercising a power under s127 or at any other time, has reasonable grounds to believe that an animal is suffering *or is likely to suffer* unreasonable or unnecessary pain or distress, the inspector may take all such steps as the inspector considers are necessary or desirable to prevent or **[Continued on page 9]**

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mitigate the suffering of the animal. This means that not only can the inspector interfere if he or she suspects that an animal *is* suffering, but if the inspector has reason to believe that there is even a risk that sheep onboard ship *will* suffer at a future date, the inspector can also take action. The inspector may also, by notice in writing to the owner or person in charge, require the person to ‘take all such steps as the inspector considers necessary or desirable to prevent or mitigate the suffering of the animal (s130(1)(b)).

The powers under s130 are however circumscribed in the case of a ship that is neither a ship registered⁴ nor entitled to be registered as a New Zealand ship, s127(4). A foreign ship can thus only be searched if the ship is in a port, harbour, roadstead, or anchorage in New Zealand; or if it is within the internal waters of New Zealand.⁵ The same limitation regarding the power to inspect foreign ships arises under s131, when a search warrant has been obtained. The search warrant entitles the inspector to use force as is reasonable in the circumstances for the purpose of effecting entry and also to seize an animal (s.133).

Conclusion

As has been seen, the practice of live sheep exports has had a troublesome and tragic history and although attempts have been made at improving the practice, it still presents numerous animal welfare questions that have not been properly addressed. In New Zealand the Animal Welfare Act 1999 specifically covers the care and transportation of live animals and it is the author’s opinion that several sections of the Act are likely being breached when sheep are exported under the current conditions. Moreover, it is disturbing that no Code of Welfare actually addresses this particular practice.

Equally troubling is the difficult issues of jurisdiction and enforcement that can arise in situations where a breach occurs on a ship not registered in New Zealand and which is outside New Zealand territorial waters. As these shipments originate in New Zealand, this country’s government must retain the ability to supervise every aspect of the shipping process. Indeed, the inability to properly do so, given the historical evidence of welfare issues, is a large point in favour of halting the shipments entirely.

In order to best provide for the welfare of sheep, it is therefore submitted that *no live sheep exports* should take place from New Zealand, as it cannot be guaranteed that such sheep will be transported in a manner which will not cause them to ‘suffer unreasonable or unnecessary pain or distress’. Nor can it be said that each animal will be ‘properly attended to’, or provided ‘reasonably comfortable and secure accommodation’ for the purpose of ‘maintaining acceptable welfare standards’.

⁴ Under the Ship Registration Act 1992.

⁵ As defined by s4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

ANIMAL WELFARE CONFERENCE IN AUCKLAND “THE EARLY REVIEWS”

Participants in the Animal Welfare Law Conference on 13 March 2004, were asked to provide anonymous comments about the conference. Here is a sampling of their reviews. If you unable to be there, you can see that you missed something worthwhile.

- Most impressed with (a) organization, (b) quality of speakers, (c) clear focus of conference. May you have many more seminars of this type: one day – intensive – and focused.
- Excellent organization and great selection of topics, focus a fantastic beginning for a more cohesive response to problems.
- Very interesting day. I thoroughly enjoyed the experience.
- Great conference. Good mix of speakers, workshops. Superb food. Good time keeping. Interaction between attendees and speakers was dynamic.
- Excellent and informative day. Would also have enjoyed attending the other workshops – difficult decisions to make. Terrific organization – one of the few conferences I have attended that ran to time and still managed to cover so much. Congratulations to all the speakers for this.
- Excellent. Well worthwhile. Hope it becomes a regular (annual) fixture. Thanks.
- Excellent speakers. Excellent gathering. Top marks. Many thanks.
- A wonderful and informative conference. Thank you ARLAN.
- Excellent and enjoyable day. I was impressed by the amount of useful knowledge and expertise that was able to be imparted in such a short focused time frame, Especially enjoyed Dr Al Gillespie & Scott Optican
- I found each of the workshops that I attended were excellently presented. I feel that I came away with a lot of significant information required in the work that I do as a RNZSPCA Inspector.
- Very informative and useful information relayed. Pleasantly surprised at how informative and interesting the day was. Have acquired something useful from each subject. Hope there will be further days of this type of material.

THANKS FOR MAKING IT ALL HAPPEN!

No undertaking of this nature would be possible without the generous support of countless dedicated volunteers. The ARLAN Executive Committee wishes to thank the people who made the first Animal Welfare Law Conference in New Zealand come together:

- **Anna Cowperthwaite, Peter Sankoff** of ARLAN and **Jeannette Aldridge**, of UNITEC, the Conference Organizing Committee, for all their efforts.
- **Neil Wells** and **Arjna Dale** of UNITEC, for their support and initiative in pushing this idea.
- **The Ministry of Agriculture and Forestry**, for financially assisting the attendance of SPCA inspectors
- The **John Duncan McGuire Estate**, for its generous financial contribution to conference expenses.
- **Deidre Bourke**, for creating and maintaining the conference website
- **Louise and Pat Brown**, for organizing the lovely commemorative gifts presented to speakers
- **Aaron Koolen**, for coordinating the video recording of this endeavour
- **Amanda Sorenson**, for her outstanding morning tea, lunch and afternoon tea.
- The fantastic speakers: **Mark Neeson, Tiana Epati, Judge David Harvey, Jacqui Pate, Gina de Graaff, Dr. Al Gillespie, Annabel Markham, Peter Sankoff, Neil Wells, Jim Boyd, Scott Optican.**
- **UNITEC**, for providing a first-class venue
- **Debbie Matthews, Joe Lloyd and Andrew Stephens**, our volunteer camera people
- **Libby Schultz, Anna Cowperthwaite, Louise Brown, Deidre Bourke and Cherie Gum**, our conference reporters.
- The tremendous volunteer set-up, registration and cleaning staff on the day of the conference: **Jeannette Aldridge, Gesa Balster, Peter Sankoff, Anna Cowperthwaite, Louise Brown, Neil Wells, Arjna Dale, Shivaun Statham, Sara Elliott.**
- The participants who helped make it such a memorable day.

ANIMAL LAW IN THE NEWS

by Kathy Wilson

CHARGES LAID IN DOG DRAGGING CASE

The Bay of Islands SPCA has laid charges of wilful ill-treatment and failing to provide treatment to an injured animal against the man accused of dragging a dog behind a car in Northland. The SPCA is currently trying to find the owner of the German Shepherd-Huntaway cross, but they believe the man has gone into hiding. The charges were laid despite the fact that the man cannot be located.

The case is an extremely serious one. The dog was brought into the SPCA with serious injuries, including broken bones and skin scraped off his body and legs which had in places left the bone exposed. It is alleged that the injuries occurred after the dog was tied to a car and dragged behind it at speeds of up to 80km/h. The SPCA has not yet spoken to the owner, but the cruelty is thought to have been a form of punishment for the dog after the dog had managed to get free from his chain and had wandered. Bay of Islands spokeswoman Gail Boyd said that, "how a dog is supposed to understand this is punishment is beyond comprehension".

This case has received media attention and has brought the issue of animal abuse squarely into the public arena by illustrating that serious and atrocious acts of animal cruelty continue to occur. This will be an important case to follow in terms of sentencing, as it provides an example of cruelty at the upper levels of seriousness, and would justify a tough response, including imprisonment. The maximum penalty for wilful ill-treatment is a term of imprisonment of three years, or a fine of up to \$50,000, or both.

REPTILE SMUGGLER GIVEN 3 YEARS IN PRISON

In the United States a man has recently received a 41 month sentence in a federal prison, after pleading guilty to charges of conspiracy to smuggle exotic animals. The smuggling plot was uncovered in January 2003, after U.S. Fish and Wildlife officials uncovered dozens of tiny reptiles hidden inside packages being sent via Federal Express courier. Some of the species found in the boxes were not legally allowed into the U.S. due to their rarity, and the threat to native animals. Amongst the reptiles were species such as Indian Star Tortoises and Chinese Water Dragons. After discovering the first package authorities uncovered another nine packages, which contained at least 175 animals. Some of the reptiles died on the journey from Thailand to the United States.

One other man, a pet store owner from Waukesha, has also pleaded guilty to the charge of conspiracy to smuggle animals, and is scheduled to be sentenced in early April. The maximum sentence for this charge is five years.

BYLAW BANS BOILING OF LIVE LOBSTERS

A local council in the Italian town of Reggio Emilia, has come under fire for passing a bylaw designed to promote animal rights, and provide for better treatment of animals. The bylaw was passed with 22 councillors voting in favour and only one against. The town of Reggio Emilia is reported to have one of the highest standards of living in Italy, and the town administrators say that residents can afford to take care of their pets.

The bylaw includes the following rules: It prohibits the practice of boiling lobsters while they are still alive. Dog owners are required to provide spacious dog-houses in sufficient shade. All pet owners are prohibited from dyeing the fur of their pets. Sociable birds such as parrots must be kept in pairs. The requisite size of birdcages is prescribed, and the bylaws make it illegal to keep a goldfish in a round glass bowl. The fines for breaching the bylaw are reported to be up to a maximum of 500 euros, or \$930.

**DOG TAIL DOCKING:
ILLEGAL IN MUCH OF
EUROPE**

[continued from page 5]

Tail docking is now banned in the following European countries: Norway, Sweden, Cyprus, Greece, Luxembourg, Netherlands, Denmark, Germany, Austria and Switzerland. Israel is another country which has banned the docking and cropping of dogs since December 2000. India has taken the same approach, as “[m]aiming or injuring an animal in any way and any surgical or invasive procedure without anesthesia, including ear- and tail-docking” is illegal under Sections 428 and 429 of the Indian Penal Code. The penalty for these offences is a fine and up to five years in jail.

Summary

International opinion seems to be slowly concluding that the tail docking of dogs is usually an unnecessary and cruel procedure. If Ms. Yates’ Bill reaches Parliament, New Zealand would finally be in a position to end cosmetic and prophylactic tail docking for dogs. It would follow the common international standard in allowing the procedure to be performed only when it is deemed to be necessary for therapeutic purposes and the animal’s welfare.

ANIMAL LAW WEB SITE OF THE MONTH

This month’s review, by *Cindy Leung*, is the In Defense of Animals (IDA) website at www.idausa.org/index.

Veterinarian Dr. Elliot Katz founded In Defence of Animals (IDA) in 1983. Over the years, this non-profit organization has been involved in advocating for animal rights throughout the world. The mission of IDA is to ‘end the exploitation and abuse of animals by raising the status of animals beyond that of mere property, and by defending their rights, welfare and habitat’. IDA engages itself heavily in public education as well as in campaigns and projects that aim to improve the status of animals.

This web site is not specifically designed for legal advocates in animal rights, so readers will not be able to find a lot of legal opinions or journals articles here. Nevertheless, through the ‘Pico’ search at the bottom of the first page, readers will be able to get links to numerous reports on campaigns and projects that IDA has run or are still running now. Many of them are related to the Animal Welfare Act of the U.S..

The online resources center contains an impressive list of fact sheets on issues that affecting animals worldwide, such as factory farming, fox hunting and puppy mills. This section also contains links that help activists to start their own animal rights group and to prepare and write animal rights related press release.

A must see part of this site is the now famous "The Meatrix" video cartoon clip that explains the downsides of factory farming in a very interesting way. This clip is an ideal starting point for people who are not familiar with animal rights related issues.

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.

Barks, Meows and Squawks

A collection of notable quotes on animals and the law.

“The offences here are unusual, in that we are dealing here with animals, not with people, not with children, not with women, we are not dealing with violence towards people or attacks on people, or a person’s property such as their house which the Court frequently deals with, or with people selling illegal substances such as drugs and the like. This is an animal case, and I think sight cannot be lost of that, although for Mr. Boyd, the SPCA and supporters, the prime motivation in life as far as their work goes, is the welfare and well-being of animals, and that is not to be in any way denigrated, but they see things from a different perspective. I have to see things from an objective basis, not standing on one side or the other of a dispute. And I bear in mind that we are dealing here with animals...”

-Judge Everitt of the Kaihoke District Court in the case of *SPCA v. Berryman and Murphy*, 11 November 2003, sharing a rare moment of judicial candor and stating what many animal welfare advocates already knew – that in spite of the express intention of Parliament in raising the penalties for animal abuse in the Animal Welfare Act, judges do not believe crimes against animals need to be taken seriously. In this case, which involved the serious charge of causing dogs to fight, Judge Everitt rejected the SPCA’s submission that the offenders be incarcerated. Instead, he imposed a sentence of 200 hours community service, costs orders of \$1000, and forfeiture of the dogs to the SPCA against each defendant. The offenders were also prohibited from owning dogs for a period of three years.

“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.”

-Keith J. for a unanimous Court of Appeal, dismissing the defendant’s appeal from sentence in *R v Albert*, CA 126/03, 19 December 2003. The appellant was seeking a reduction of the \$13,000 in fines imposed for his cruel treatment of twelve horses. While not as clear as one might like, the judgment is the first signal from the Court of Appeal that harsher penalties against offenders is in accordance with Parliament’s intention in raising the maximum penalties with its enactment of the Animal Welfare Act 1999.

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 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
 - 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 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, or simply send a cheque made out to ARLAN to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand.