

The Animal Rights Legal Advocacy Network Report

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ARLAN LAUNCHES ITS SECOND FUNDRAISING DRIVE - WE (AND THE ANIMALS) NEED YOUR HELP!

ARLAN is excited to kick off our second annual fundraising drive with a plea for your support. Thanks to your generosity, our 2003 fundraising drive was a real success, and the contributions helped fuel our continued growth throughout the year. This year we hope to match and even improve upon the amount received in 2003. As you are probably aware, ARLAN receives no government funding or sponsorship and relies primarily on donations from its members in order to be able to achieve its objectives. We cannot thank you enough for your continuing support!



With another year under its belt, ARLAN has grown to nearly 150 members nationwide and further entrenched its own unique niche within the animal welfare fraternity. Your donations were invaluable in helping ARLAN move forward and improve the legal conditions of animals in New Zealand. The funding provided in 2003 allowed us to take huge steps forward, and here are highlights of ARLAN's achievements since the last fundraising campaign:

Just two of our "clients"

- Sponsoring, organising and co-hosting (with Unitec's Faculty of Animal Health and Welfare) New Zealand's first ever Animal Law Conference in 2004 which brought together animal welfare experts from across New Zealand and allowed animal welfare inspectors to enhance their legal knowledge. The conference was universally hailed as a huge success, and incredibly useful;
- The ARLAN Newsletter became the ARLAN Report recognising that the newsletter does more than simply relate the "news". We have already expanded our coverage of animal law related issues;
- Continuing to provide a 'breaking news' Report, including Animal Law in the News, up-to-date political status of animal welfare issues and comprehensive book and animal law website reviews;
- Enhancing our website as a major resource tool on Animal Law, with helpful indices allowing the reader to find the information they need;
- Providing pro-bono legal opinions to the NZCAC, SPCA and several other animal welfare organisations including submissions on the Code of Welfare for Zoos in New Zealand and its deficiencies;

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- * **Animal Law Developments in Canada**
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- * **Animal Law in the News**
- * **Website of the Month**

ARLAN REPORT

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We are only able to produce this informational report because of the generosity of our members and friends. If you enjoy the Report and would like to contribute to its continued existence, please contact us at: contributions@arlan.org.nz or simply send a cheque made out to ARLAN to the PO Box listed below.

We welcome your feedback and any constructive criticism you may have. If you have any comments, please let us know by e-mail at: newsletter@arlan.org.nz or: ARLAN PO Box 6065 Wellesley St. Auckland, New Zealand

BUT THERE'S SO MUCH MORE WE WANT TO DO!

- Preparing legal research on a number of topics that formed the basis of a number of campaigns in 2004, including research on live sheep export, and an analysis of the Animal Welfare Act and its relationship to wildlife, and research on how to obtain offender's criminal records for animal welfare prosecutions; and
- Providing representation at the Australian and New Zealand Council for the Care of Animals in Research and Teaching conference, and also consulting on other legal issues with various organisations, including the First Strike campaign, which examines the links between animal abuse and domestic violence.

Consider what we have already achieved on a tiny budget. We've shown that a small group of dedicated people can make big changes. We have so much more we want to achieve!

When you donate to ARLAN you will be directly helping us to support our existing projects and help launch several new ones. A sampling of some of our proposed projects for 2004-2005 include:

- Providing legal research on a host of issues that urgently need attention from an "animal-friendly" perspective, including: safari-park hunting, dog control and more...;
- Establishing a **Battery Hen working group** that is meeting to address the serious problems faced by cage raised hens in New Zealand. We hope to combat the anticipated Code of Welfare that will attempt to bury the battery hen issue by making most cages lawful.
- Compiling a database of animal law. New Zealand desperately needs a place to access case law relating to animals;
- Expanding our base of operations by communicating with interested parties across New Zealand who wish to join our cause;
- Your funding will help us maintain and expand our website, which has become the best place to find information about New Zealand law relating to animals, and receives thousands of visitors a year; and
- You'll also be helping us maintain a 'fighting fund' which enables us to assist with prosecutions as they arise.

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ONE STEP FORWARD, TWO STEPS BACK

A Letter from Canada

by Peter Sankoff

In most respects, it is always a pleasure to come home. For me, “home” – or at least my original home - means Canada, where I am currently on sabbatical from the University of Auckland. Coming home means a chance to reunite with family and friends. Unfortunately, it has also given me the opportunity to get a first-hand look at the disappointing state of the law for animals in this vast country located North of the United States border.

As it is in New Zealand, the struggle here to modernise the law relating to animals is ongoing, fought on numerous fronts by a small band of committed activists. In Canada, this movement is a particularly challenging one, and three recent events demonstrate that the hope to begin achieving a minimum of “two steps forward and one step back” appears remote. Instead, we seem to be facing a legal landscape in which two steps backward for every advance is the leading trend.

Without a doubt, the most disappointing legal “development” relating to animals is the consistent inability (or refusal) of the Canadian government to modernize its legislation designed to protect animal welfare and impose reasonable standards of care upon owners and those who deal with animals. Canada’s animal cruelty laws have not been reformed for decades, and the existing legislation provides a hodge-podge of convoluted standards that have proved almost impossible to enforce. Unlike the current New Zealand law, but much like New Zealand’s situation prior to the enactment of the Animal Welfare Act 1999, Canadian law still requires a high standard of willfulness to be demonstrated before a criminal conviction for cruelty to animals will be entered. Almost as importantly, the legislation contains multiple anachronisms that make the prosecution of animal cruelty cases an extremely difficult undertaking.

An unfortunate series of political events have inhibited efforts to reform the legislation. To its credit, the Canadian Department of Justice has been pursuing reform for the past five years. Recognising that the current legislation was arbitrary, inaccurate and largely useless in protecting animal interests, the Department began consulting relevant industries about changes that it intended to package into a new Bill. After an ambitious beginning, which would have created truly revolutionary legislation, some of the proposals were scaled back in the face of ferocious lobbying to protect industries that continue to depend on the exploitation and suffering of animals. Nonetheless, what remained would still have been a massive improvement over the current provisions.

Sadly, passage of the new Bill, which was first brought before Parliament in early 2003, was stalled by a conflict between Canada’s lower (House of Commons – the equivalent of the New Zealand Parliament) and upper (the Senate – made of appointed members) house. After the House of Commons passed the Bill, it moved into the Senate which was quickly bogged down over a number of issues that were – at best – peripheral to the legislation. For reasons that remain unclear, a majority of the Senate became obsessed with ensuring that the defences set out in the legislation were as broad as possible. It proposed amendments to add several defences and “clarify” instances in which ill-treatment of animals was mitigated by some “customary” or “traditional” practices. **[Continued on page 4]**

CANADIAN ANIMAL CRUELTY BILL STALLED AND EVENTUALLY DIED

While it accepted a few of the amendments, the House of Commons refused to adopt all of them, contending that the Senate proposals were both unnecessary - as the proposed amendments were already addressed by the legislation - and unwise, as broadening the defences as requested would cause confusion and lead to acquittals in unwarranted situations.

The result was deadlock. While the Senate cannot “kill” legislation, it can refuse to pass it and suggest amendments, forcing it back to the House of Commons for reconsideration. Not surprisingly, this takes a considerable amount of time, as both the Senate and the House of Commons have a large number of Bills requiring examination, and every delay can suddenly turn days of waiting into months, and even years. Despite support from the government and the House of Commons, the Animal Cruelty Bill stalled and eventually died when the government decided to call a new election in July.

Chances for a revival of the Bill are not strong, and have been affected by the election itself. While the governing Liberal party who had first put forward the Bill was re-elected, it went from a sizeable majority to a minority government, and is no longer able to pass legislation on its own. Not surprisingly, the government is expected to concentrate on “uncontroversial” legislation, and revisions to Canada’s animal cruelty laws are not expected anytime soon

This is truly disappointing, and my disappointment has been exacerbated by the state of Canada’s animal law movement (or lack thereof). Despite sitting geographically next to the jurisdiction with the largest animal law organisation in the world (the Animal Legal Defence Fund), Canada’s legal community remains inert. There seems little impetus or organized will to move forward and aside from a lone student chapter of the ALDF at the University of Victoria, and occasional seminar courses on animal law (at Alberta and McGill), the issue remains largely on the legal backburner. As in New Zealand, it is frustrating to watch, as there is so much to be done, and good reason to believe that a few strong voices can make a real difference.

Even where legislative victories have occurred, they face challenges from unexpected sources. For example, over the past few years, Canadian animal welfare advocates have had some success in persuading local municipalities to enact by-laws forbidding the operation of circuses that use animals. New Zealand animal advocates are well aware of the problems with circuses (see: D. Bourke “Code of Circuses Up for Review and It Needs Work!” (2003) 4 ARLAN R. 12) and the dangers they pose for animal welfare. Thankfully, some enlightened Canadian municipal officials have agreed, and bans have been imposed barring circuses from performing in a number of cities across Canada. Unfortunately, the cities were not always so careful in setting out the reasons for the bans themselves. In Windsor, a city in southern Ontario, the city council stressed that the ban was for the purpose of protecting the citizens of the city from animal attacks.

Of course, animal lovers might argue that the purpose of the by-law is irrelevant, so long as it removed the circuses from the city! Not so in Canada, where all legislation is subject to review by the Charter of Rights and Freedoms, and any law found to be inconsistent with the Charter must be struck down as invalid. This month, an Ontario Court **[Continued on page 5]**

CANADIAN SAFARI PARK HUNTS ON THE BRINK OF EXTINCTION

ruling on an application brought by a circus operator – in *Xentel DM Inc. v. Windsor (City)*, September 7, 2004 (Ont. S.C.J.) (ruling available on-line at: <http://www.canlii.org/on/cas/onsc/2004/2004onsc12120.html>) – determined that the city by-law violated the circus' right to freedom of expression and was not a justified limitation. The latter ruling relied primarily on the city's purported objective for enacting the law: the safety of city residents. The Court had little trouble determining that the objective was not a "pressing and substantial" one, as required by Canada's Charter of Rights jurisprudence. The trial judge noted that "in North America in 1999 approximately 30,000,000 people attended circuses with no reported incidents of injury to any patrons". Sad as the decision was, the judge was correct in noting that the "by-law has been based on irrational considerations."

The case would have been of considerably more interest if it had been premised upon the most convincing reason for banning these "exhibitions": the harm they cause to the animals who are forced to travel and perform in the circus. For reasons that are not entirely clear, but are likely related to a lack of political courage, the city of Windsor chose not to rely upon this reason for banning the circuses. As a result, the circuses are back in business, at least for now. In the next ARLAN Report, I intend to fully review this judgment, and consider how best to address this pressing problem.

Still, in spite of these troublesome moments, the odd bright light occasionally emerges from the darkness, often illustrating that determining whether one country is "ahead" of another in the area of animal welfare will almost inevitably depend on the issue one is considering at the time. While Canada lags behind New Zealand in terms of modernising its animal welfare standards, it seems to be making far greater progress in ridding itself of one of the greatest affronts to animals: the "canned" or "safari park" hunt (the horror of these sorts of hunts can be seen in a disturbing video at: <http://www.hsus.org/ace/12017>). These abominations allow "hunters" to track animals in a penned area. The animals have no chance of escape, and many are often hurt when they become tangled in the fence, and are shot in the process (See, for greater detail: L. Ireland, "Canning Canned Hunts: Using State and Federal Legislation to Eliminate the Unethical Practice of Canned "Hunting"" (2001) 8 Animal L.J. 223).

Ontario's Environmental Bill of Rights Registry

The Ministry of Natural Resources is proposing to amend Ontario Regulation 665/98 under the Fish and Wildlife Conservation Act 1997 to further prohibit the hunting of wildlife in captivity... Section 41(1) [currently] provides a general prohibition on hunting of farmed animals...[but] the definition of farmed animals [only] includes native wildlife... Species such as (but not limited to) red deer, fallow deer... and wild boar can still be hunted in captivity... This proposal would provide for more equitable treatment of native and non-native wildlife by prohibiting the hunting in captivity of all wildlife. This proposal is likely to become effective January 1, 2005.

In New Zealand, all aspects of the hunt – irregardless of the particular cruelty in the way in which the animals are hunted (bow and arrows and crossbows are often used) – are exempted from the protections of the Animal Welfare Act 1999 through s.178 which provides a special exemption for hunting in a "safari park". It is a provision that ARLAN is desperate to change, as we have received numerous complaints (as has the SPCA) about practices in these parks that are essentially immune from oversight or regulation. **[Continued on page 6]**

WITH ANIMALS, CANADA STEPPING OCCASIONALLY FORWARD AND OFTEN BACK

In Canada, these once widespread hunts are now on the brink of extinction. In late August, Ontario – Canada’s most populous province, containing over 40% of the country’s entire population – rejected calls from certain hunting groups and announced its intention to ban the practice, a move that will exterminate the 20 odd “parks” that profit from this gruesome activity. Regulations are currently being drafted that will make canned hunts illegal throughout the province. Natural Resources Minister David Ramsay, stating the obvious, said that game farms were “unethical” and “unfit for the province”. He noted that “it’s always hunter one, animal nil when it comes to this. The animal has no chance. In the end, it runs into a fence.”

When Ontario adopts its new regulation, it will bring to eight the number of jurisdictions that have banned all forms of canned hunts. Furious lobbying in the remaining two provinces – Quebec and Saskatchewan – will hopefully make Canada a “canned hunt-free” country within the next five years. As always, certain elements of the hunting lobby are fighting against this change, but the resistance in Ontario shows that the days of this practice are hopefully numbered in Canada. Now if only the New Zealand government would heed this example!

The move to ban this activity shows that governments in Canada are slowly coming to recognize that limits imposed to protect animals need to be premised on welfare concerns. Of course, application of the principles that motivated change to the hunting laws – that animals deserve a natural habitat, the ability to demonstrate natural forms of behaviour, and to be free from unnecessary harm, with a chance to exist – would force a reconsideration of the laws regarding circuses. As evidence worldwide has shown, for these unfortunate performers, it is almost always circuses one, animals nil.

In the end, my experience to date shows that like New Zealand, Canada’s approach to animal welfare generally lacks a coherent basis in principle or policy. Changes are spasmodic, arbitrary, granted to certain animals while refused to others, mostly at the whim of the government in place at the time. Canned hunts are “unethical”, while the use of circus animals remains “ethical”. The law lurches along, sometimes forward, often backward. Until the treatment of animals is grounded in principles that eliminate exceptions based on nothing more than “tradition” or self-interest, this uneven treatment will inevitably continue, and the law relating to animal welfare will remain in its erratic and unprincipled state, stepping occasionally forward and often back.

Tired of seeing low sentences handed out for crimes against animals? So are we! Peter Sankoff explores the problem with the judicial approach to sentencing animal abusers in a recent article entitled “Flawed Logic Impedes Animal Welfare Act Sentencing”, published at [2004] New Zealand Law Journal 357. It focuses primarily on the dog-fighting conviction in Northland from early 2004, but addresses judicial errors in sentencing generally that have led to low sentences for animal welfare act convictions. This is a ‘must read’.

ANIMAL EXPERIMENTS IN NEW ZEALAND – AN UPDATE ON RECENT DEVELOPMENTS AND ISSUES

by Deidre Bourke

In June 2004 the National Animal Ethics Advisory Committee (NAEAC) released its Annual Report for the year 2003. The NAEAC Report provides information on the use of animals for research, testing and teaching purposes in New Zealand and a summary of the core issues arising. The Report raises several matters of concern. The aim of this article is to give a general overview of animal experiments in New Zealand in 2003, and canvas some of the more significant issues, including many matters discussed in the NAEAC Report.

Animal Use for Research, Testing and Teaching on the Increase

There has been a steady rise in the numbers of animals used in experiments over recent years. A total of 320,911 animals were 'manipulated' in New Zealand in 2003. This figure represents the second highest number of animals recorded since annual reporting began in this country. In fact, the three highest years of animal use have been 2000, 2001 and 2003, reflecting the recent growth in the use of animals for research. Correspondingly the number of institutions using animals has also risen from 63 institutions ten years ago to 96 today.

The increase in use is across the spectrum, with more amphibians, cats, cattle, deer, dogs, fish, goats, guinea pigs, horses, marine mammals, mice, possums, rabbits, rats and sheep being used in 2003 than were used in 2002.



Use of Dogs in Research

Of the increases shown, there was a 378% increase in the number of dogs used from 231 in 2002 to 873 in 2003, with a total of 140 dogs being killed. The major user of dogs in New Zealand is Massey University in Palmerston North and they appear to be the primary contributor to this increase in use. Figures released under the Official Information Act show that Massey University used 582 dogs for research, testing and teaching purposes in 2003, compared to just 93 in the previous year. And while no dogs were killed in 2002, last year 124 dogs were killed at Massey. Dogs were also killed at AgResearch, Landcare Research and Pest Tech Limited. ARLAN will continue to monitor and undertake follow up research on this issue as we believe it is an area that would be of particular concern to the general public.

Genetically Modified Animals

There has also been a large increase in the number of transgenic animals being used in New Zealand. In 2003 the largest number of transgenic animals ever, were used in New Zealand - 6,711 genetically modified animals. Compare this to just 1,510 transgenic animals used in 2002. **[Continued on page 8]**

ANIMAL SUFFERING LEVELS IN NEW ZEALAND LABORATORIES STILL TOO HIGH

Information released under the Official Information Act shows that Auckland University was the most significant player in this area, using 4,592 transgenic mice in 2003 - an increase of over 4,500 animals from 2002. AgResearch used around 100 more transgenic animals in 2003, including 104 cattle and 847 mice.

The expansion of the biotechnology industry in New Zealand with the lifting of the moratorium is likely to be responsible for this increase in use. The breeding of genetically modified animals raises a host of welfare issues for animals, as well moral considerations regarding the ethics of breeding and using animals as biological machines.

A related issue is that of xenotransplantation, or the breeding and use of animals for transplant organs and tissues, as animals used for this purpose are often bred to contain human genes. While not yet a large area of animal use in New Zealand this is another area where research could be set to expand. The Bioethics Council is going to be specifically examining the ethical concerns surrounding xenotransplantation early next year, and ARLAN has been approached to participate in discussions and dialogue on this topic. Members with a particular interest in this issue should contact us. We will keep members updated with developments and progress.

Suffering Levels in New Zealand Laboratories

In 2003, 15,549 animals experienced 'severe' or 'very severe' suffering levels. Compared to 2002 this amounted to a slight decrease in animals in the 'very severe suffering' category and a corresponding increase in the severe suffering category.

Animals used in these most painful experiments fell into five main groups: small mammals: 15,106 (mice, guinea pigs, rats, rabbits); introduced species: 277 (possums, ferrets, hedgehogs); fish: 81; farm animals: 50 (sheep and cattle); and birds: 35.

The rationale for such use is variable, from testing shellfish for toxins or developing vaccines, to environmental management, veterinary research, or basic biological research. For example both fish and hedgehogs were used in experiments causing severe suffering which were classified as for "basic biological research".

It is currently unclear what kinds of justification are sufficient to allow highly painful experiments such as these to be approved. As NAEAC does not collect copies of actual experimental protocols only general statistics, and in any case, animal ethics committees are not required to specifically set out their decision making process and their harm-benefit analysis of projects, there are few mechanisms in place to allow assessments or checks as to the necessity of these tests to be made. ARLAN considers there to be inadequate transparency regarding how highly painful experiments are approved and believes some additional auditing process of these most

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INSUFFICIENT CONTROLS ON OBTAINING LABORATORY ANIMALS

controversial experiments would be valuable. We also believe that pain relief should be mandatory.

Agricultural Research

The 2003 NAEAC report shows that 36.2% of animals were used for “basic biological research” and a further 17.5% for “commercial” purposes. Unlike overseas where medical research accounts for a significant proportion of use, the number of animals used for medical research here varies between 5-12% of use. In 2003 a total of 11.5% of animals were used for medical purposes.

There has been much criticism regarding the large number of animals used in agricultural research in New Zealand, especially research aimed to increase animal productivity. Recent newspaper articles suggest agricultural experiments are the most common experiments in this country – accounting for most commercial work and much biological, veterinary and animal husbandry research. This is a concern since such research is inherently less justifiable - or necessary. Overseas surveys have also shown that while the public supports medical research into serious illnesses and diseases, experiments simply to improve productivity are widely opposed.

Correspondingly, although New Zealand uses far less animals than many countries, we use far more farm animals. For example in 2003 we used more horses, goats, deer, sheep or cattle than the United Kingdom. Infact, we used tens of thousands more sheep and cattle. We even use more sheep and cattle than the United States. While farm animals constitute less than 2% of the animals used for research, testing or teaching in the UK, in New Zealand over a third of animals used are farm animals.

Given New Zealand’s large agricultural sector it is perhaps unsurprising that so much research is focused on this area, however we believe that much of this research is ethically questionable and this is an area where our animal use could – and should - be significantly reduced.

Obtaining Animals From ‘Public Sources’

ARLAN is also concerned with the numbers of animals being obtained from “public” sources. While only around 0.7% of animals were obtained from public sources in 2003 these were often the most controversial animals – such as cats and dogs - as these species are less easy to obtain from traditional sources such as breeding units or farms.

For example Massey University obtained 492 dogs from “public sources” in 2003. Pest Tech and the Animal Health Services Centre also obtained dogs from public sources. ARLAN believes there are insufficient controls on how laboratory animals can be obtained in New
[Continued on page 10]

NEW ZEALAND ANIMAL STATISTICS DEFICIENT

Zealand. Overseas some countries require animals used for research to come from registered breeding facilities or have banned certain sources, such as pounds or certain types of animal dealers, in order to ensure animals are ethically sourced. We believe that similar controls should be put in place in New Zealand, and the large number of animals such as dogs, that are currently obtained from public sources in an ongoing concern.

Research on Great Apes

The use of Great Apes for research is highly restricted in New Zealand, and all work must be specifically approved by the Director General under section 85 of the Animal Welfare Act. 2003 was also the first time that the use of non-human hominids was approved under the new Act. Fourteen chimpanzees were used in animal husbandry research – assessing their preference for various environmental enrichment items. The research, which involved chimpanzees at Wellington Zoo caused “no suffering”. One infant was euthanased at 2 months of age but this was completely unrelated to the research.

Animal Use for Dissection

The Animal Welfare Act only regulates *live* animal use for research, testing or teaching purposes, so does not cover the killing of animals for dissection or so that their tissues can be collected and used for research. This is a controversial issue as it means such use does not have to be approved by an animal ethics committee. This also means that New Zealand’s animal use statistics do not include animals used for dissection purposes.

Prior to the Act coming into force NAEAC recommended that killing animals for research, testing or teaching should constitute a ‘manipulation’ under the Animal Welfare Act. The Minister of Agriculture declined to amend the Act, however he indicated that if the issue continued to raise concern after the Act had been in force for a period he would reconsider his decision. Subsequently, in August 2003 NAEAC made a formal recommendation on this issue. The Minister has now asked MAF to undertake a policy analysis of NAEAC’s proposal.

ARLAN believes this is a crucial issue, and that without the inclusion of animals killed for their tissue or for dissection, our animal use statistics do not provide a true and accurate picture of the number of animals used by this sector. Because such use does not require ethical approval, there is also little scope for ensuring that steps are taken to reduce and replace animals in dissection. We continue to follow this issue with interest and will report back on developments as they arise.

A copy of the NAEAC Report is available on the MAF website at:

<http://www.maf.govt.nz/biosecurity/animal-welfare/naeac/annual-report/naeac-ar-03.pdf>

ANIMAL LAW IN THE NEWS

by Kathy Wilson

TAIL DOCKING BILL TO HAVE ITS DAY IN PARLIAMENT

The controversial Private Members Bill aimed at banning the cosmetic docking of dogs' tails, has been drawn out of the parliamentary ballot and will have its chance at being debated in Parliament. Hamilton East Labour MP Dianne Yates, introduced the Bill in February of this year (For a full discussion of the Bill and international approaches to tail docking see: C Green, "Private Member's Bill Aims to Abolish the Unnecessary "Tail Docking" of Dogs" [2004] Volume 3(2) ARLAN Report 3). Amazingly, the Bill was drawn from the ballot on 5 August 2004, a major feat in itself given that Private Members Bills have been known to languish in the ballot box for years. The Bill is now scheduled to have its first reading in late September or early October.

At this stage it is unclear what level of support the Bill will receive in the House. New Zealand First, whose support may be crucial for the Bill to succeed, supports sending the Bill to a select committee for further consideration. New Zealand First Leader Winston Peters, said that while the party had not reached a final position on the Bill "it was important to hear the case for and against the procedure before deciding how to finally vote on the issue". The Bill has the support of the RNZSPCA, and the New Zealand Veterinary Association. The New Zealand Kennel Club opposes the Bill stating that it supports freedom of choice. If passed the Bill would not place a complete ban on docking, a veterinarian or veterinary science student would still be able to dock a dog's tail if it would be demonstrably beneficial for the animal. If the Bill is passed into law it will take effect as an amendment to the Animal Welfare Act 1999. A copy of the Bill is available for viewing at:

[http://www.clerk.parliament.govt.nz/Content/BillsDigest/1135AnimalWelfare\(DogsTails\).pdf](http://www.clerk.parliament.govt.nz/Content/BillsDigest/1135AnimalWelfare(DogsTails).pdf)

ARLAN is a strong supporter of this Bill. We believe that cosmetic docking of dogs tails is nothing short of unnecessary cruelty against animals. There is no health benefit to the procedure, and New Zealand should follow the lead of countries around the world and ban an act that satisfies the ego of the owner, rather than the needs of the animal.

THREE MONTH JAIL SENTENCE FOR CRUELTY

Sentences for animal abusers are finally making headlines, after District Court Judge Phillip Moran sentenced a Christchurch man to three months imprisonment for a shocking and callous act of cruelty to a defenseless dog. On 11 August 2004, Travis Brian Ford 24, was sentenced to three months imprisonment, fined \$2500 and banned from having a pet for five years, after his dog Kimmy was found barely alive on Christchurch's Port Hills in July last year. When she was found, Kimmy was severely malnourished and had her mouth taped shut. She had also been bashed over the head so hard that one eye had come out. Kimmy just barely survived the ordeal, and was placed with a new family. However, she never overcame the trauma of her ordeal and eventually had to be put down. Ford's lawyer argued that jail was unnecessary for her client on a first offence, but Judge Moran disagreed, saying that: "In my judgment holding you accountable and denouncing your cruelty and deterring **[Continued on page 12]**

ANIMAL LAW IN THE NEWS – Cont’d

others cannot be achieved in your case by any sentence other than imprisonment”. The SPCA also told the court how it had found four of Kimmy’s puppies locked inside a faeces-filled car with no food or water, and that an SPCA inspector had earlier given Ford tips on caring for dogs after Kimmy had been found in a badly undernourished state on a previous occasion.

Ford did appeal the sentence to the High Court, but in late September, the appeal was dismissed. The High Court judge reviewing the case found that the sentence was not demonstrably unfit, and lawyer Jonathan Scragg, acting for the SPCA, was successful in persuading the court to uphold both the conviction and sentence.

The sentence is rightfully being hailed as one of the harshest penalties ever imposed for a case of animal cruelty in New Zealand and may well signify a shift in sentencing attitudes that has been desperately needed since the Animal Welfare Act came into force in January 2000, and one that has been consistently propounded by ARLAN. Speaking at a SPCA meeting in Rotorua in August, New Zealand First Leader Winston Peters said that there should be encouragement for near-maximum sentences if offending is at the most serious end of the scale. Mr Peters recognised that the animal abusers of today may be murderers, rapists and child abusers of tomorrow.

NORTHLAND SPCA WELCOMES FIRST EVER ‘LIFETIME’ BAN

The Bay of Islands SPCA has successfully obtained the first ever sentence under the Animal Welfare Act 1999 of what is effectively a lifetime ban on possessing animals,. While it is common for sentences to include disqualifications, the usual length of such a disqualification is for a period of up to five years. In August this year, however, Trevor Joseph Howard, a sickness beneficiary from Northland, was sentenced in the Kaikohe District Court to an ‘indefinite disqualification’ from owning or exercising authority in respect of a dog – effectively a ‘lifetime ban’. Howard was also sentenced to 240 hours community work, ordered to pay expenses of \$243.50 to the SPCA and Court costs of \$130.00.

Howard was charged under section 12(a) of the Animal Welfare Act with failing to ensure that the physical, health and behavioural needs of an animal were met, in accordance with both good practice and scientific knowledge. The maximum penalty for this offence is six months imprisonment, or a \$25,000 fine, or both. The charges arose after Mr Howard allowed his two Pit Bull type dogs to starve, almost to death. The dogs were found in such a weak condition that the SPCA Inspector had to carry the older dog to the



vehicle. The younger dog was also stumbling as it walked. The older dog had to be put down to prevent further suffering. A veterinary examination revealed that the dogs were suffering from malnutrition, and on a body condition chart where 1 is the lowest possible measure, the older

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ANIMAL LAW IN THE NEWS – Cont'd

dog was scored as 1 minus. The SPCA prosecutor on this case, Jim Boyd, welcomed the significant decision by Judge Rota. Mr Boyd considered this decision to be particularly important because, "it could be seen to be raising the standard of animal welfare in New Zealand".

WHO PAYS FOR ROVER WHEN THE RELATIONSHIP ENDS?

Should spousal maintenance include a sum for pet support costs? In light of a recent Canadian decision this may be a question that our family courts will face in the future. In *Boschee v Duncan* 2004 ABQB 447, the Alberta Court of Queen's Bench held that it would not be unreasonable for the wife of a separated couple to receive a sum of CAD\$200.00 per month to maintain, feed, and house the husband's Saint Bernard. The Court granted the order and backdated it to August 2003. The parties had been living in a common-law relationship for six years before separation, and the husband was unable to take the Saint Bernard with him, as he could not find accommodation that would allow him to have such a large dog living with him.

New Zealand legislation classifies household pets as family chattels (section 2 of the Property (Relationships) Act 1976), which at first glance appears to inhibit claims for ongoing maintenance. However, two unreported cases (noted in *Brookers Family Property*) leave the way open for the issue to be raised in New Zealand. In *Pence v Pence* (1978) 2 MPC 146, a case concerning two Chihuahuas, the husband had applied for the dogs to be separated so that the parties could care for one each. The Court applied principles applicable to the custody of children in holding that ownership of the two Chihuahuas would vest in the wife. The Judge noted that the husband had larger dogs visiting his home, which were likely to be inappropriate company for the smaller dogs. In a more recent unreported case, *O'Brien v Tuer* [9 September 2003] DC, Waitakere, FP090/327/03, Judge Mather also held that the principles applicable to the custody of children could apply to possession of household pets. In *O'Brien* the 'welfare' of the pet dog was a 'primary consideration' in deciding who should have the ownership or possession of the pet. New Zealand Courts would likely require a unique set of facts before making the progression from deciding possession to ordering maintenance payments, but it is a possibility.

ARLAN FUNDRAISING EFFORT NEEDS YOUR HELP!

(And, of course, while we try to keep them down, we do have those boring but very necessary operating costs!)

The bottom line is that since 2001, ARLAN has been operating on a shoestring budget to create something that is new and much needed in New Zealand: a group of lawyers dedicated to helping change the legal status of animals in this country. We are consistently bombarded with more requests for assistance than we can handle! The need is there. Our question to you is whether the support is there as well!

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

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

Donations of \$50 or more will receive their choice of: a) one year hard copy colour subscription to our newsletter mailed to your home or office, or, b) DVD/Video copy of 'Prosecutions under the Animal Welfare Act 1999: Are We Succeeding or Failing?' Chaired by Peter Sankoff, Lecturer, University of Auckland. (Please indicate your choice with your donation. If choosing b), please indicate DVD or Video).

ANIMAL LAW WEBSITE OF THE MONTH

This month's review, by *Cindy Leung*, is on the Psychologists for the Ethical Treatment for Animals (**PSYETA**) website – <http://www.psyeta.org>.

This animal rights group different to other groups. While some groups help in prosecuting people who infringe animal welfare legislation, PYSETA focuses predominantly on education. **PSYETA** believes the only way to prevent animal cruelty/mistreatment is by "strengthening the ethical and scientific basis of our attitudes, feelings, behaviors, and interactions".

PYSETA publishes books, journals as well as newsletters. 'Society & Animal' is a journal that 'explores the way in which non human animals figure in human live'. This journal covers a wide range of topics. I read an article in the journal called the "Personality Differences between Pro- and Anti-vivisectionists", based on an animal research survey. It found that animal rights advocates are most likely to be female, supporting vegetarianism, with feeling and intuitive personalities instead of thinking and senate personalities.

The 'Journal of Applied Animal Welfare' Science is another journal published by **PYSETA**. This journal mainly focuses on finding methods to enhance animal welfare in laboratories, schools and the wild. **PYSETA** also publishes its own newsletter. A very outstanding feature of this website is its search engine. A google search engine is placed in every page of the website which makes it much easier to find the articles that you want.

Unfortunately, both journals mentioned above are only available in extract, the full version is only available to **PYSETA** members. Albeit with this disadvantage, this is still a very excellent website. All of the materials are interesting and informative and are arranged in a very organised manner for easy reference.

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

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.