



## **Issues and Challenges in the Protection of Animals from Cruelty: The Singapore Experience**

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### **ABSTRACT:**

This paper discusses a number of animal welfare issues that presently spark public interest in Singapore and explains the challenges in enforcing the applicable laws. The aim is to assess the extent to which animals are actually protected and to identify ways in which animal protection could be further improved.

**Keywords:** Animal law, history, statutory interpretation, cruelty, enforcement

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# 有關「如何保護動物免於受虐」的探討與挑戰

## ——新加坡經驗分享

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### 摘要

本文將討論當前引發新加坡社會關注的多項有關動物福利議題，以及這些議題在立法上的諸多挑戰。透過本文，期待能使動物保護更加落實，並找出能讓動物保護運動更前進的方法。

**關鍵字：**動物法、歷史、法規釋義、殘酷、執法

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## 1. Introduction

In light of the increasing awareness and concern about animal welfare issues by the Singapore public, this article seizes the opportunity to address some of these issues that currently spark interests. The discussion is divided into a number of parts. The first part sets out the animal protection laws of Singapore. The second part looks at the extent to which such laws are enforced. Both parts contain substantial historical information to show the development of animal protection efforts over the past 100 years. Readers are invited to form their own views as to whether we have progressed or regressed in this regard. This article also explains the importance of a proper understanding of what may amount to cruelty at law, which has a direct impact on the extent to which animals are protected. A number of cases studies will be used to illustrate this point. It is hoped that the comments offered here would contribute, directly or indirectly, to the development of animal protection laws and their enforcements in Singapore.

## 2. Animal protection laws of Singapore

The British acquired full sovereignty over the island of Singapore in 1824. In 1825, the English Parliament passed a statute empowering the Crown to make provisions for the administration of justice in Singapore.<sup>1</sup> In 1826, the Crown exercised this power by way of Letters Patent.<sup>2</sup> The legal document, more famously known as the Second Charter of Justice, provided for the establishment of local courts and the reception of English law into the Straits Settlements, of which Singapore was made a part.<sup>3</sup> Importantly, it is the generally accepted view that only English law up to the date of the Second Charter of

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<sup>1</sup> 6 Geo IV, c 85.

<sup>2</sup> Letters Patent establishing the Court of Judicature at Prince of Wales Island, Singapore and Malacca, 27 November 1826.

<sup>3</sup> See generally GW Bartholomew, “English Statutes in Singapore Courts” (1991) 3 SAclJ 1; Andrew Phang Boon Leong, “English Law in Singapore: Precedent, Construction and Reality or the Reception That Had To Be” [1986] 2 Malayan LJ civ; Valerie Ong Choo Lin and Ho Kin San, “The Reception that Never Was” (1984) 5 Sing L Rev 257.

Justice was received into Singapore, and none thereafter.<sup>4</sup> Fortunately, about four years prior to that, the English Parliament had passed the first modern animal protection statute, the Cruel and Improper Treatment of Cattle Act 1822 (also known as the Martin Act), which made it an offence to “wantonly and cruelly beat, abuse, or ill-treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep, or other Cattle”.<sup>5</sup> It is therefore historically accurate to say that Singapore had an animal protection law merely four years after England had its first. However, it is not known whether the Martin Act 1822 was ever enforced in Singapore during those early days.

The earliest reported prosecution for animal cruelty was in 1876. It was not a coincidence that the same year saw the establishment of the local branch of the Society for the Prevention of Cruelty to Animals (SPCA). It is most likely that the animal protection laws only began to be enforced thereafter. In the 13 July 1878 issue of *The Straits Times* newspaper, it was reported that in the second half of 1876, successful prosecutions of animal cruelty resulted in imposition of fines in 107 cases and imprisonment in 2 cases.<sup>6</sup> As to whether those fines were imposed informally or by a judicial body, the answer lies in a report in the 5 October 1878 issue of the same newspaper:

*THE number of cases brought under the notice of the Singapore Society for the prevention of cruelty to animals during the quarter ending 30th September 1878, was 84. Of these 3 were for cruelty to omnibus horses, 60 for cruelty to hack ponies, 17 for ill-treatment of oxen while landing them from the “Tongkangs” & c, and 4 for causing suffering to birds by shooting them with “sumpitans.” In 10 cases the offenders were cautioned and discharged by the Magistrate; 16 were convicted and fined; and the remainder were visited by the Agent, who in every case verified that wounded animals and those unfit for labor were not made to*

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<sup>4</sup> See Andrew Phang Boon Leong, “Reception of English Law in Singapore: Problems and Proposed Solutions (1990) 2 SAclJ 20; Andrew Phang Boon Leong, “Of ‘Cut-Off’ Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore” (1986) 28 Malaya L Rev 242.

<sup>5</sup> 3 Geo IV, c 71.

<sup>6</sup> “The S.P.C.A.” *The Straits Times*, 13 July 1878, p 1.

*work until their condition was improved.*<sup>7</sup>

What we can be sure is that in this period the applicable law was not the Martin Act, but two other locally enacted laws. In 1871, the Legislative Council of the Straits Settlements enacted the Penal Code.<sup>8</sup> Section 428 made it an offence to kill, poison, maim, or render useless any animal or animals of the value of five dollars or more, and section 429 made it an offence to do the same to an elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of twenty-five dollars or more. Clearly, protection was afforded only to animals of some economic value.

More importantly, in 1872, the Legislative Council passed the Summary Criminal Jurisdiction Ordinance 1872, which contained two important sections:<sup>9</sup>

37. *Whoever cruelly beats, ill-treats, abuses, or tortures, or causes or procures to be cruelly beaten, ill-treated, abused, or tortured, any animal, shall, for every such offence, be liable to a fine not exceeding fifty dollars, or to the imprisonment of either description, for any term not exceeding three months.*<sup>10</sup>

38. *Whoever causes or permits cocks to fight, or is present as a spectator of such fighting, shall be liable to a penalty not exceeding twenty-five dollars, or to imprisonment of either description for any term not exceeding three months.*

The Municipal Ordinance 1896 also empowered the Commissioner to make by-laws for the “suppression of cruelty to animals”.<sup>11</sup> Although the use of this power was contemplated, there is no record to show that it was actually exercised.<sup>12</sup>

It was only in 1902 that a more formal animal protection law was passed.<sup>13</sup> On 20

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<sup>7</sup> *The Straits Times*, 5 October 1878, p 4.

<sup>8</sup> Ordinance IV of 1871.

<sup>9</sup> Ordinance XIII of 1872.

<sup>10</sup> This was derived from the English Cruelty to Animals Act 1849 (12 & 13 Vict, c 92), s 2.

<sup>11</sup> Municipal Ordinance 1896 (Ordinance XV of 1896), s 85(1)(s).

<sup>12</sup> “The S.P.C.A.”, *The Straits Times*, 13 August 1901, p 3.

<sup>13</sup> I thank Charlotte Gill, Senior Research Librarian (Law) at SMU for helping me obtain copies of

June 1902, the Legislative Council enacted the Cruelty to Animals Prevention Ordinance 1902.<sup>14</sup> This was a notable development in two ways. First, a dedicated animal protection statute has a greater effect in signaling the government's attitude towards addressing the problem of animal cruelty. This was to be contrasted with sections 37 and 38 of the Municipal Ordinance 1896, which were buried among other unrelated provisions and could have been easily missed by the unwary. Second, the number of prohibited conducts was increased. The general offence of cruel ill-treatment was extended to include the acts of overdriving and overloading an animal.<sup>15</sup> The animal fighting offence now included fighting involving animals generally, and not just cocks.<sup>16</sup> Notably, a new offence of employing an unfit animal for work was introduced, addressing a major concern at that time.<sup>17</sup> Also significant was the provision which required the setting up of infirmaries for the treatment of animals. This was likely to be in response to the suggestion by John Walter Nappier, an Unofficial Member of the Legislative Council of the Straits Settlements who would soon become the Attorney-General of Singapore.<sup>18</sup> Curiously, seven days later on 27th June 1902, the Cruelty to Animals Ordinance 1902 was passed to replace the original Ordinance.<sup>19</sup> This new Ordinance made minor changes to the original Ordinance but the cruelty offences set out remained the same.

The next significant year was 1930. The Prevention of Cruelty to Animals Ordinance

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these old Ordinances.

<sup>14</sup> Ordinance XIV of 1902.

<sup>15</sup> Cruelty to Animals Prevention Ordinance 1902, s 4 (cf Summary Criminal Jurisdiction Ordinance 1872, s 37).

<sup>16</sup> *Ibid.*, s 5.

<sup>17</sup> *Ibid.*, s 6.

<sup>18</sup> "Legislative Council: Cruelty to Animals", *The Straits Times*, 17 May 1902, p 5: "He considered there was room in Singapore for an infirmary or pound for injured animals. A considerable sum of money had been handed over to Government by the now defunct local branch of the Society for the Prevention of Animals, and that money he thought might very well be utilized in the direction indicated. In fact, he thought in justice to the subscribers of the money ought to be used in some such way".

<sup>19</sup> Ordinance XIV of 1902.

1930 was passed.<sup>20</sup> This was likely to be in response to the call by Tan Cheng Lock, Unofficial Member of the Legislative Council of the Straits Settlements (who would become a founder of the Malaysian Chinese Association in about twenty years' time), to increase the comprehensiveness of the 1902 Ordinance.<sup>21</sup> The content of the 1930 Ordinance was essentially the same as its predecessors but with a longer list of cruelty offences, almost mirroring what we have today.<sup>22</sup> The general cruelty offence was phrased more broadly to include wanton or unreasonable act or omission that causes unnecessary suffering to an animal.<sup>23</sup> Two specific conducts were also added to the list of offences: neglect by an owner to supply sufficient food or water to his animal;<sup>24</sup> and conveying or carrying an animal in a manner which causes it unnecessary suffering.<sup>25</sup>

Post independence, in 1965, the Parliament of Singapore passed the Animals and Birds Ordinance 1965,<sup>26</sup> which closely followed the Animals Ordinance 1953 of Malaysia (now Animals Act 1953).<sup>27</sup> The 1965 Ordinance was later reenacted as the Animals and Birds Act 1970 (hereinafter *ABA*). In its latest form,<sup>28</sup> the animal cruelty offences are set out in section 42, which shall be set out in full here for convenient reference:<sup>29</sup>

(1) Any person who—

- (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal;
- (b) causes or procures or, being the owner, permits any animal to be so used;

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<sup>20</sup> Ordinance X of 1930.

<sup>21</sup> “Cruelty to Animals: Appeal to Bring Old Ordinance Up to Date”, *The Straits Times*, 8 October 1929, p. 17.

<sup>22</sup> See Animals and Birds Act, s 42(1) (below).

<sup>23</sup> Prevention of Cruelty to Animals Ordinance 1930, s 3(1)(a).

<sup>24</sup> *Ibid.*, s 3(1)(b).

<sup>25</sup> *Ibid.*, s 3(1)(c).

<sup>26</sup> Ordinance 3 of 1965.

<sup>27</sup> Singapore joined the Federation of Malaysia in 1963 and left in 1965.

<sup>28</sup> c 7, Rev Ed 2002.

<sup>29</sup> For a detailed analysis of the offences, see Alvin W-L See, “Animal Protection Laws of Singapore and Malaysia” [2013] SJLS 125.

- (c) being in charge of any animal in confinement or in the course of transport from one place to another neglects to supply the animal with sufficient food and water;
  - (d) by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering or, being the owner, permits any unnecessary pain or suffering to any animal;
  - (e) causes, procures or, being the owner, permits to be confined, conveyed, lifted or carried any animal in such a manner or position as to subject it to unnecessary pain or suffering;
  - (f) being the owner of any animal, abandons the animal without reasonable cause or excuse, whether permanently or not, in circumstances likely to cause the animal any unnecessary suffering or distress, or causes or permits the animal to be so abandoned;<sup>30</sup>
  - (g) employs or causes or procures or, being the owner, permits to be employed in any work of labour, any animal which in consequence of any disease, infirmity, wound or sore, or otherwise is unfit to be so employed; or
  - (h) causes, procures or assists at the fighting or baiting of any animal, or keeps, uses, manages, or acts or assists in the management of any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or permits any premises or place to be so kept, managed or used, or receives or causes or procures any person to receive money for the admission of any person to the premises or place,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both ...

The cruelty offence in the Penal Code has remained essentially the same, except that since 2007 there is no longer any reference to the economic value of animals. The latest version of section 428 reads:

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<sup>30</sup> This offence was added in 2002: Animals and Birds (Amendment) Act 2002 (No 10 of 2002).

*Whoever commits mischief by killing, poisoning, maiming or rendering useless, any animal shall be punished with imprisonment for a term which may extend to 5 years, or with fine, or with both.*

Up to this point, the purpose of the animal protection laws of Singapore has remained the same: the prevention of cruelty to animals. This is achieved by punishing cruelty offenders, in which case the animal has already suffered from cruelty. The only element of prevention lies in the deterrence effect of the laws and their enforcements. Most modern jurisdictions have gone a step further in an effort to *improve* the welfare of animals. For example, the UK's Animal Welfare Act 2006 imposes a positive duty on a person responsible for an animal to “take such steps as are reasonable in all the circumstances to ensure that the needs of [the] animal... are met to the extent required by good practice”.<sup>31</sup> Since this provision could be triggered without the need to prove that an animal has unnecessarily suffered, it would allow enforcement actions to be taken to prevent any suffering that may, or is destined to, occur later. Singapore, of course, would not allow itself to be left behind. After a rather comprehensive survey, on 1 March 2013, the Animal Welfare Legislation Review Committee made a number of recommendations to improve the welfare of animals in Singapore.<sup>32</sup> Of particular significance is the recommendation to add a welfare provision into the *ABA* to impose a duty of care on persons in charge of animals to meet the needs of the animals. On 26 April 2013, the Ministry of National Development accepted all recommendations made by the Committee. The new law is likely to be passed in the second half of 2014.

We shall conclude this part with a small comment. The point of tracing the legislative history of animal protection laws in Singapore is to show that Singapore has always kept up with the development of animal protection laws elsewhere, particularly in the UK. The common conception that Asia lags behind in animal protection laws must therefore be displaced in so far as Singapore is concerned.

### **3. Enforcement efforts**

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<sup>31</sup> Animal Welfare Act 2006 (c 45) (UK), s 9.

<sup>32</sup> AWLRC, “Recommendations from Animal Welfare Legislation Review Committee” (March 2013), online: Ministry of National Development <<http://www.mnd.gov.sg/AWLRCreport/#/1/>>.

The fact that a country has strong animal protection laws only tells us half the story. Like Singapore, many other former British colonies have also inherited English animal protection laws. While it is generally accepted that these are strong animal protection laws, there are notorious examples where these laws were simply ignored for a myriad of reasons.<sup>33</sup> How, then, does Singapore fare in this regard?

As mentioned at the outset, the enforcement of animal protection laws most likely began only after the establishment of the SPCA. Founded on 27 March 1876, its main object, among others, was to address the deplorable conditions of working animals:

*Every one who has had the smallest experience of daily life here in Singapore and the treatment to which hack ponies and bullocks etc. are subjected must acknowledge that there were ample cause and scope for the institution and existence of such a Society.*<sup>34</sup>

In reference to the rampant acts of abandoning injured or ill animals and leaving them to die a lingering death, the society also complained that “[n]atives do not seem to feel the cruelty of such a course, and until they find our European view of the subject is backed by the power of the law they are not likely to defer to it”.<sup>35</sup> At that time the SPCA’s members consisted of mainly (if not wholly) Englishmen. Well aware of the conflicts in customs and values, enforcement actions were initially cautious. The Agent (inspector) of the SPCA was instructed to “proceed in all the lighter cases by way of warning at first rather than prosecuting, and avoid anything like harshness in enforcing the law too strictly at the outset”.<sup>36</sup>

Although there were many reports of prosecutions by the SPCA, it is unclear if it had a legal power to prosecute. It is likely that some form of enforcement power was delegated

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<sup>33</sup> See Neil Trent, Stephanie Edwards, Jennifer Felt, and Kelly O’Meara, “International Animal Law, with a Concentration on Latin America, Asia, and Africa” in Deborah J Salem and Andrew N Rowan (ed), *The State of Animals III* (Human Society Press, 2005) ch 6; Bruce A Wagman and Matthew Liebman, *A World View of Animal Law* (Carolina Academic Press, 2011).

<sup>34</sup> “The S.P.C.A.”, *The Straits Times*, 13 July 1878, p. 1.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

to it. The government was also extremely supportive of the SPCA's efforts. As was reported: "The Inspector-General of Police kindly undertook to issue instructions to the Police, to keep an active look-out and warn all offenders as a primary step".<sup>37</sup> There were also reports of prosecution by the police. Also significant was the fact that on 30 May 1877 the government agreed that all fines collected from prosecutions of animal cruelty were to be given to the SPCA to aid its subsistence.<sup>38</sup>

The SPCA was active in combating animal cruelty between 1876 and 1901. Between 1st January and 31st January of 1901 alone, the society instituted 151 prosecutions and imposed fines amounting to \$1,083.50.<sup>39</sup> On 12 August 1901, however, a resolution was passed at a general meeting to dissolve the society as it was thought that the task of suppressing cruelty to animals is best undertaken by the Municipal Commissioners.<sup>40</sup> The Municipal Commissioners agreed to receive the baton and thus the Department of Prevention of Cruelty to Animals was established.<sup>41</sup> In 1902, the Department claimed to have procured 616 prosecutions!<sup>42</sup>

Let us fast-forward about a century. At the turn of the millennium, on 1 April 2000, the Agri-Food & Veterinary Authority (AVA) was established.<sup>43</sup> One of the AVA's missions is to promote and regulate the welfare of animals.<sup>44</sup> The task of enforcing animal cruelty laws fell on the AVA. For the sake of completeness, it should be noted that the police also has the power to prosecute, and there were at least three reported instances where this

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> "The S.P.C.A.", *The Straits Times*, 13 August 1901, p. 3.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid. See also notices placed in *The Straits Times*, 2 January 1902, p 2; *The Straits Times*, 4 June 1902, p 1; *The Straits Times*, 7 June 1902, p 1; *The Straits Times*, 23 April 1902, p 1; *The Straits Times*, 16 July 1902, p 1; *The Straits Times*, 13 September 1902, p 1; *The Straits Times*, 3 September 1903, p 2. See further "Legislative Council: Cruelty to Animals", *The Straits Times*, 17 May 1902, p 5; "Municipal Commission", *The Straits Times*, 5 July 1902, p. 5.

<sup>42</sup> *The Straits Times*, 3 September 1903, p. 2.

<sup>43</sup> Its predecessor was the Primary Production Department.

<sup>44</sup> Agri-Food and Veterinary Authority Act (c 5), s 11(1)(b).

power was exercised.<sup>45</sup>

Unlike its predecessor a century ago, the present-day SPCA has only a passive role in the enforcement of the animal protection laws.<sup>46</sup> With no power to prosecute, its function is mainly to persuade the AVA to prosecute and supply relevant data for the purposes of investigation and prosecution. While the AVA and the SPCA have worked closely in combating animal cruelty, there were, unfortunately, many occasions where the two could not come to agreement in terms of prosecution policies.

Since the AVA's inception, there have been only about 35 prosecutions for animal cruelty.<sup>47</sup> However, the AVA also issues warnings and compound fines in the majority of cases, which it considers to be less serious.<sup>48</sup> In comparison, the SPCA received and investigated 1017 alleged cruelty complaints during 2011–12<sup>49</sup> and 803 of the same during 2012–2013.<sup>50</sup> A significant number of these cases were concerned with neglect by owners and many were considered to be serious enough to warrant enforcement actions. To understand such disparity, it is necessary to look past mere numbers and examine more closely the kind of cases in which the AVA has been reluctant to prosecute. Out of the 35 reported prosecutions, 5 were concerned with neglected animals, which were found in very poor conditions (dead, injured, sick, emaciated, etc). The rest involved blatant acts of cruelty such as abuse and killing. But how about the numerous complaints about animals being neglected or improperly confined? Prior to Hugo's case (below), such cases will normally escape prosecution. This is especially true where the animal does not appear to

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<sup>45</sup> AWLRC, "Recommendations from Animal Welfare Legislation Review Committee" (March 2013), online: Ministry of National Development <<http://www.mnd.gov.sg/AWLRCreport/#/1/>> p. 13.

<sup>46</sup> The SPCA was reestablished in the 1950s, after the Japanese Occupation.

<sup>47</sup> I thank Deirdre Moss (previously Animal Welfare Director of SPCA (Singapore)) for these statistics, which were derived from her personal records. These unofficial statistics appear to be more complete than those provided in the AVA's annual reports.

<sup>48</sup> See AWLRC, "Recommendations from Animal Welfare Legislation Review Committee" (March 2013), online: Ministry of National Development <<http://www.mnd.gov.sg/AWLRCreport/#/1/>> pp 13, 67. See also statistics provided in the AVA's annual reports: <http://www.ava.gov.sg/Publications/ListOfPublications/>.

<sup>49</sup> SPCA (Singapore), *Annual Report: July 2011 to June 2012*, pp. 10-13.

<sup>50</sup> SPCA (Singapore), *Annual Report: July 2012 to June 2013*, pp. 14-16.

have suffered physically. In contrast, the SPCA takes a very serious view of such “borderline cases”.<sup>51</sup>

What, then, is the reason for the AVA’s refusal to prosecute in these borderline cases? There are two possibilities. First, although these cases fall within the definition of cruelty, they are not serious enough to warrant prosecution. Second, these cases do not fall within the definition of cruelty in the first place, in which case even the imposition of a fine is unwarranted. The AVA’s annual reports appear to shed some light on the matter. In its 2010–11 annual report, for example, it was stated: “In FY 2010, AVA investigated 410 cases of alleged animal cruelty/abuse. The majority of cases did not involve animal cruelty. Instead, they involved welfare issues, for which counseling was provided or warnings issued”. The AVA appeared to have taken the position that the borderline cases do not fall within the definition of cruelty and therefore no cruelty offence was committed.

How, then, did the AVA arrive at the conclusion that no cruelty was committed in these cases? The concern here is that the question of what *may* amount to cruelty at law has not been sufficiently considered. Despite their varied wordings, the numerous cruelty offences found in section 42 of the *ABA* are essentially underpinned by the concept of unnecessary suffering. As has been argued elsewhere, the concept of unnecessary suffering imports a test of objective reasonableness, relying on the hypothetical reasonable person to supply the acceptable standard of conduct.<sup>52</sup> To state in very general terms, the legal test for cruelty is whether a reasonable person in the accused’s position would regard the conduct in question as unacceptable.<sup>53</sup> The attributes of this hypothetical reasonable person will necessarily depend upon society’s attitude towards animal cruelty. Admittedly, not every person would have directed his or her mind to the issue of animal cruelty. There would also be persons who are aware of this issue but deem it unimportant. But the same can be said of public opinion concerning other moral issues. Thus, it is arguable that the opinions of persons who are genuinely interested in the matter should be afforded the most attention. The AVA’s narrow view of what amounts (or may amount) to cruelty may

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<sup>51</sup> See generally the SPCA’s annual reports, monthly bulletins, newsletters, and etc:  
<http://www.sPCA.org.sg/publication.asp>.

<sup>52</sup> Alvin W-L See, “Animal Protection Laws of Singapore and Malaysia” [2013] SJLS 125.

<sup>53</sup> As to why it is preferable to adopt such an objective test, see discussion on Hugo’s case below.

therefore be criticized for its insufficient sensitivity to public opinion.

To better illustrate the points made in this part, we shall proceed to look at a number of recent animal cruelty cases and see how they have been dealt with. Readers are invited to consider, as a reasonable person, whether cruelty has arisen in each of these cases.

#### 4. Hugo's case<sup>54</sup>

Hugo's case is a happy ending to a series of unfortunate events. Let us first look at two such unfortunate events before addressing Hugo's case. The first case concerns a dog named Butters.<sup>55</sup> In a video recording uploaded onto the Internet in 2010, Butters was seen being beaten repeatedly by one of its owners using a bundle of thin wooden sticks. Despite considerable public outrage, the AVA decided not to prosecute or fine the owner. Instead, a warning was issued. The AVA gave two reasons for its decision. First, Butters was found to be "healthy and in good condition". Second, it was satisfied that the owners had "no ill intention to hurt their pet dog while attempting to discipline it" and therefore "this case was different from one of animal cruelty, which involves deliberate intent to inflict harm and severe pain on an animal". The second case concerns a dog named Dimples.<sup>56</sup> In 2009, Dimples was found chained and confined on a balcony with minimal shelter to the elements. Dimples' snouts and front legs were also bound with masking tapes, resulting in abrasions. The SPCA referred the complaint to the AVA, expecting prosecution. To the SPCA's disappointment, the AVA decided not to prosecute but instead imposed a composition fine. These two cases are good illustrations of the passive stance adopted by the AVA with regards to its prosecution policy.

We now turn to Hugo's case. Hugo is a Border Collie dog. For over a period of six month, Hugo was kept on the balcony of its owner's flat. It was seen to be there most of

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<sup>54</sup> *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, noted Alvin W-L See, "Milestones for Animal Welfare" [2014] SJLS, forthcoming.

<sup>55</sup> "'Dog abuse' duo let off with stern warning", *The Straits Times*, 23 July 2010, p. A3.

<sup>56</sup> *SPCA Bulletin*, October 2009, p 5; *SPCA Newsletter*, January 2010; SPCA (Singapore), "Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore" (2011), online: SPCA (Singapore)<[http://www.sPCA.org.sg/documents/sPCA\\_proposalforlegislativereform.pdf](http://www.sPCA.org.sg/documents/sPCA_proposalforlegislativereform.pdf)> [30].

the time, day and night. The balcony, measuring about 3m x 1.5m, had no proper shelter hence exposing Hugo to the sun and rain. A plastic pet carrier measuring 0.76m x 0.61m x 0.61m, which was not much larger than Hugo, was subsequently added to the balcony but this too did not sufficiently protect Hugo from the elements. Hugo was also not provided with sufficient food and water. Its bowls were usually empty and on several occasions it was seen kicking and flipping the bowls. Hugo's incessant barking attracted the attentions of the neighbours. Concerned about Hugo's ordeal, they reported the matter to the SPCA, which sent an inspector to investigate. The SPCA later referred the matter to the AVA as the owner did not heed its advice to improve Hugo's living condition. Due to the perceived inaction of the AVA, the SPCA proceeded to lodge a Magistrate's complaint.<sup>57</sup> Eventually, the AVA took over the case and decided to commence prosecution against the owner. The owner was charged and eventually found guilty under section 42(1)(e) of the *ABA* for confining Hugo in such manner as to cause it unnecessary suffering. He was fined \$5,000.

Hugo's case is important for several reasons. First, in determining whether Hugo has suffered, the court rejected the owner's argument that Hugo was neither ill nor injured as a result of the ordeal. The court accepted the opinion of an expert witness that Hugo could suffer stress due to its prolonged exposure to the elements.<sup>58</sup> In doing so, the court has recognised that mental suffering is relevant for the purposes of the cruelty offence. This must be correct. The relevance of mental suffering is also reflected in two other cruelty offences under the *ABA*. It is an offence under section 42(1)(a) for a person to cruelly ill-treat an animal by *infuriating* or *terrifying* it, and an offence under section 42(1)(f) for an animal owner to abandon his animal in circumstances likely to cause it unnecessary suffering or *distress*. Moreover, the holding is consistent with the prevailing position under UK law. In the Scottish case of *Patchett v Macdougall*, the court explained that the concept of unnecessary suffering "imports the idea of the animal undergoing, for however brief a period, unnecessary pain, distress or tribulation".<sup>59</sup> This aspect of the court's decision has important implication. It addressed one of the SPCA's complaints:

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<sup>57</sup> SPCA, *Annual Report: July 2011 to June 2012*, p. 10.

<sup>58</sup> *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, [59].

<sup>59</sup> 1983 JC 63, 67.

*A number of cases that have come under the SPCA's purview have escaped prosecution by the Agri-Food & Veterinary Authority of Singapore ("AVA") or the police precisely due to the uncertainty with respect to whether the law covers an animal's mental/emotional suffering and also due to the difficulties of proving such mental suffering where there is no palpable physical injury.*<sup>60</sup>

Butters' case was a good example. The SPCA took the view that Butters had suffered mentally from the ordeal.<sup>61</sup>

The fact that it is more difficult to determine mental suffering as compared to physical suffering is a weak reason to reject the former as a form of suffering. In fact, the argument that it is difficult to prove mental suffering is an overplayed one. Given the rapid advancements in animal science, mental suffering could now be determined with some degree of precision.<sup>62</sup> Inferences of mental suffering could be drawn from the behavioural and physiological responses of the animal to its environment. In many cases, especially concerning common animals, the matter may even be determined by common sense, or what the SPCA calls a "logical approach".<sup>63</sup> In Hugo's case, for example, it is possible to infer stress and frustration from its incessant barking and its action of kicking its empty bowl around. These are not normal behaviours of a happy and comfortable dog. The prosecution's witnesses, a number of whom are veterinarians and experts on dogs, were

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<sup>60</sup> SPCA (Singapore), "Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore" (2011), online: SPCA (Singapore) <[http://www.sPCA.org.sg/documents/spca\\_proposalforlegislativereform.pdf](http://www.sPCA.org.sg/documents/spca_proposalforlegislativereform.pdf)> [14].

<sup>61</sup> Ibid., [29].

<sup>62</sup> See mainly Marian Stamp Dawkins, *Animal Suffering: The Science of Animal Welfare* (Chapman and Hall, 1980); Bernard E Rollin, *The Unheeded Cry: Animal Consciousness, Animal Pain and Science* (Oxford University Press, 1989); Caroline E Manser, *The Assessment of Stress in Laboratory Animals* (RSPCA, 1992); and the collection of essays in Franklin D McMillan (eds), *Mental Health and Well-Being in Animals* (Blackwell, 2005).

<sup>63</sup> SPCA (Singapore), "Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore" (2011), online: SPCA (Singapore) <[http://www.sPCA.org.sg/documents/spca\\_proposalforlegislativereform.pdf](http://www.sPCA.org.sg/documents/spca_proposalforlegislativereform.pdf)> [20]–[33].

unanimous in their views that Hugo must have suffered in the condition it was kept.<sup>64</sup>

The second important aspect of Hugo's case is the court's implicit acceptance of the objective reasonableness test. Agreeing with the views of several witnesses, it held that "any reasonable person would no doubt conclude that [what Hugo has experienced] constitutes suffering and it is unnecessary".<sup>65</sup> Clearly, a reasonably caring and competent dog owner would not have subjected his dog to prolonged exposure to the elements and to deprive it of sufficient food and water. One significant implication of adopting the objective reasonableness test is that it implicitly rejects the requirement of *mens rea*, eg intention to cause suffering or knowledge that suffering has been caused. While this may seem like an obvious point, especially since section 42(1)(e) makes no reference to such requirement, it is worth stressing again because such requirement is often assumed. Butters' case is again a good example.

Although prevalent in nineteenth century England and Scotland, the view that *mens rea* is required has since been rejected for good reasons.<sup>66</sup> In the Scottish case of *Duncan v Pope*, the court emphasised that the only question is whether there was "cruelty in fact" and "the intention of the [accused] in doing this does not matter".<sup>67</sup> Similarly, in the English case of *Ford v Wiley*, the court rejected the view that an accused could escape liability by pleading ignorance, for to allow so will render many animals "suffering victims of gross ignorance and cupidity".<sup>68</sup> Clearly, the concept of cruelty is wide enough to also include situations where animal suffering is caused by negligence or indifference. Imposing a requirement of *mens rea* would unduly restrict the scope of the cruelty offences and hence reduces the extent of protection afforded to animals. In Hugo's case, the owner argued that he was unaware of how much rain and water would cause suffering to Hugo

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<sup>64</sup> *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, [21]–[31].

<sup>65</sup> *Ibid.*, [59].

<sup>66</sup> For the nineteenth century English and Scottish cases that insisted on the requirement of *mens rea*, see Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press, 2001), pp. 224–26.

<sup>67</sup> (1899) 63 JP 217.

<sup>68</sup> *Ford v Wiley* (1899) LR 23 QBD 203, 225 (per Hawkins J).

and he was also not sure what would constitute suffering to Hugo.<sup>69</sup> This implicitly asserts a requirement of *mens rea*. Although the court did not address this argument, the finding of guilt must imply that the argument was rejected.

Given the court's decision in Hugo's case, one would expect that if Dimples' case were brought before a court, the sentence imposed on Dimples' owner would have been much heavier. The AVA's decision not to prosecute was therefore unfortunate. Nonetheless, Hugo's case may be seen as representing an increased willingness on the part of the AVA to depart from a more passive stance towards a more proactive approach in enforcing animal cruelty laws. This change is most warmly welcomed.

## 5. Tammy's case<sup>70</sup>

Tammy was a 7-month-old rescued puppy. In 2013, Tammy's rescuer managed to find Tammy an adopter. The happy event, however, took an unfortunate turn. Tammy's adopter complained that Tammy's aggressive behaviour was a danger to her children. Tammy was eventually sent to a veterinarian to be put down. This event caused the outrage of animal lovers, particularly Tammy's rescuer. The general sentiments were that the adopter's conduct was wrongful and that Tammy should have been returned to its rescuer for further rehoming efforts.

The AVA looked into the matter and decided not to prosecute. It gave a number of reasons for its decision.<sup>71</sup> First, the veterinarian has followed the relevant protocol by satisfying himself or herself that putting Tammy to sleep was a reasonable option. The main factor that justified this course of action was the veterinarian's finding that Tammy was aggressive. Second, the adopter's interest has to be taken into account, particularly the safety of her family members. More controversially, the AVA said that the decision to put an animal to sleep is ultimately the responsibility and right of the pet owner.

Since the AVA considered the matter to be closed, this article does not seek to address

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<sup>69</sup> *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, [35].

<sup>70</sup> "Death of 'aggressive' puppy draws online flak", *The Straits Times*, 15 October 2013.

<sup>71</sup> AVA, "AVA explains euthanasia guidelines", 22 October 2013: online, Agri-Food & Veterinary Authority<[http://www.ava.gov.sg/NR/rdonlyres/9253E7B2-E57D-4992-982C1304E73748D6/26948/PressRelease\\_AVAexplainseuthanasiaguidelines.pdf](http://www.ava.gov.sg/NR/rdonlyres/9253E7B2-E57D-4992-982C1304E73748D6/26948/PressRelease_AVAexplainseuthanasiaguidelines.pdf)>.

the question of guilt (if any) of any party. Rather, it wishes to raise a number of issues that perhaps the AVA should have given more consideration.<sup>72</sup> The most important issue is determining the law with regards to the killing of an animal. The general rule appears to be that unless authorized by law, the killing of an animal for whatever reason amounts to an offence under section 428 of the Penal Code. There are, of course, a number of instances where the killing of an animal is lawful. The clearest example is the killing of animals for food carried out in a licensed slaughterhouse.<sup>73</sup>

Another example is authorized euthanasia. The power to euthanise an animal is found in the ABA itself. Section 45 allows an authorized officer or police officer to order the destruction of an animal if he or she is satisfied that “(a) [the] animal is diseased or injured and that the disease or injury from which the animal is suffering is incurable or that it is cruel to keep the animal alive; or (b) [the] animal is so diseased or so severely injured or in such a physical condition that, in his opinion, having regard to the means available for removing the animal there is no possibility of removing it without cruelty and that it is cruel to keep it alive”. Also, under section 44, the court may, upon convicting a person for cruelty, order that the animal be destroyed if it is satisfied that the animal is “incurably diseased or injured”. Clearly, under these two sections, the power to euthanize is vested in the courts and authorized public officers. Importantly, the power could only be exercised in very specific situations for the benefit of the animal.

If the killing of an animal was unauthorized, it is then important to consider whether the defence of necessity under section 81 of the Penal Code applies. The section states:

*Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.*

Essentially, section 81 imposes a requirement of proportionality between the gravity of the harm and the accused’s response in avoiding the harm.<sup>74</sup> This is to prevent the defence

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<sup>72</sup> See also Andy Ho, “Ensuring Tammy did not die in vain”, *The Straits Times*, 25 October 2013.

<sup>73</sup> See Wholesome Meat and Fish Act (c 349A, 2002 Rev Ed).

<sup>74</sup> Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore*, 2nd

from operating too widely.

Having examined the law, it is clear that the AVA was incorrect in saying that the decision to put down an animal is ultimately the right of its owner. There is no doubt that under the law animals are capable of being the subject of ownership. However, while an owner of defective goods is free to throw it away or destroy it, the same cannot be said with regards to an owned animal. The law has accepted a compromise whereby animals are recognised as a special kind of property deserving protection.<sup>75</sup> The owner's freedom to deal with his or her animal, a living property, is necessarily constrained by the law.

There are, of course, situations where the law may turn a blind eye. Owners of aged and/or ill animals, who could not bear to see the suffering of the animals, often decide to put the animals to sleep. While this is technically illegal, it is generally regarded as acceptable by society since it is clearly in the best interest of the animals. It is therefore not surprising that no one has ever been prosecuted for euthanizing an animal.

We now return to Tammy's case. This was a case of unauthorized killing. It was also not a case of euthanasia since Tammy was a healthy puppy. The real legal issue is whether the defence of necessity under section 81 of the Penal Code applies. It would be inappropriate to infer too much without the benefit of the full facts of the case, which is best determined by a full trial. But the adopter's argument that Tammy's aggressiveness endangered her children raises a curious point: could a 7-month-old puppy, in normal circumstances, pose such a threat to property or human safety so as to justify putting it down? Moreover, although the reports suggest that the adopter has made some effort to rehome Tammy, the ultimate question is whether she has done enough in finding a practicable solution. Tammy's rescuer, it seemed, would have taken Tammy back if made known that the alternative was to put Tammy to sleep.

On a separate but related note, one cannot help but wonder how the AVA's treatment of Tammy's case is consistent with its "Responsible Pet Ownership" programme, one of the key messages of which is "A pet is a lifetime commitment".<sup>76</sup> The AVA claims to have

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ed. (Lexis Nexis, 2012) [23.18], [23.21], [23.24].

<sup>75</sup> See David Favre, "Living Property: A New Status for Animals Within the Legal System" (2010) 93 Marquette L Rev 1021.

<sup>76</sup> For the "Responsible Pet Ownership" programme, see online, Agri-Food & Veterinary Authority

been “actively promoting responsible pet ownership to equip existing and potential owners with knowledge on the care and responsibility that comes with owning a pet”. A potential animal owner is surely expected to understand the responsibilities and risks inherent in owning an animal. It is unrealistic to expect all newly acquired animals to be trouble-free. Many animals come to their new owners with some behavioral issues due to young age or past negative experiences. With proper training and care, the animal will most likely improve in its interaction with humans. Bonds and trusts are to be forged with time and effort. These are surely the basic responsibilities that the said programme seeks to instill. It is therefore not at all unfair to say that the AVA’s treatment of Tammy’s case does not sit well with the said programme. The AVA must walk the talk by showing that irresponsible pet ownership has legal consequences.

## 6. Law and enforcement

The questions of “what amounts to cruelty at law?” and “is the law being properly enforced?” are sometimes thought to be independent inquiries. One concerns the substance of the law while the other concerns the practical issue of implementation. There is, in truth, a close relationship between the two. As we have seen earlier, the AVA has on several occasions justified its decision not to commence prosecution by saying that the complained conduct does not amount to cruelty, notwithstanding public disapproval of the conduct. As explained earlier, public opinion is a necessary consideration in deciding what amounts to cruelty at law. The AVA may be criticised as having erred in its interpretation of the law by disregarding such public opinion. The result is an unsound prosecution policy. The AVA is therefore implored, in so far as it is reasonable to do so, to align its definition of cruelty with public opinion.

In case of doubt, or where the public has expressed strong disapproval over the conduct in question, it is suggested that the case is best put before a legal tribunal for consideration. Manned by personnel specifically trained in the law, the court is in a better position to resolve difficult or unclear legal issues. Here are some examples. In *Crane v Paglar*, the Straits Settlements Supreme Court held that for the secondary offence of

procuring, assisting or permitting cruelty to an animal, it is a legal requirement that the accused has knowledge of the cruelty, although the statutory wording was silent.<sup>77</sup> In *R v Banjoor*, the same court interpreted the word “ill-treatment” as being wide enough to include cruelty by omission:

*I have not the slightest doubt in my mind that ill-treatment can occur by omission as well as by action. If a woman suffers her child to die for want of feeding, who on earth could say she had not ill treated the child? And so with the owner of an animal.*<sup>78</sup>

Similarly, in Hugo’s case, the court has laid many uncertainties to rest, taking a wide view of what amounts to animal cruelty at law.

Obviously, the main method by which the court’s aid could be sought is through prosecution. The court’s clarifications of the law would in turn affect the enforcement policies, whether directly or indirectly. The decision not to prosecute in Tammy’s case was therefore unfortunate for it represents a missed opportunity to seek the court’s clarification on the legality of putting a healthy animal to sleep.

## 7. Conclusion

While the AVA has shown some improvement in the enforcement of animal cruelty laws, as demonstrated by Hugo’s case, its prosecution policy lacks consistency, as illustrated by Tammy’s case. The problem, as suggested, lies in the insufficient understanding of what may amount to cruelty at law. The legal requirement that public opinion be taken into account in determining the meaning of cruelty has been overlooked. This owes in no small part to the fact that animal law, as a legal discipline, is practically non-existent in Singapore. It is hoped that this paper will convince readers of the importance of animal law, enhance understanding of it, and attract interest in its study. For now, one could only hope for the return of the good old days when the government and the SPCA were in full cooperation in the efforts to combat animal cruelty.

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<sup>77</sup> [1888] 1 Straits LJ 72.

<sup>78</sup> [1930] Straits Settlements L Rep 31.