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Citation

SEE, Alvin W. L.. Challenges in the Enforcement of Animal Protection Laws in Singapore. (2014). 1-14.
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Challenges in the Enforcement of Animal Protection Laws in Singapore

Alvin W-L See*

Introduction

Singapore has fairly powerful animal protection laws. In practice, however, these laws are only powerful to the extent that they are actually enforced. In Singapore, the low number of prosecutions for animal cruelty is a cause for serious concern. While there can be a myriad of reasons for this phenomenon, this paper argues that one primary cause is the insufficient understanding of what amounts, or may amount, to cruelty at law. This results in an unsound enforcement policy which reduces the protection afforded to animals. By highlighting this problem, this paper hopes to draw attention to the importance of the study and development of animal law, which has a direct impact on the extent to which animals are actually protected.

The following discussions will proceed in six parts. Part 1 provides a brief description of the animal protection laws of Singapore. Part 2 looks at the available enforcement statistics and identifies potential problems with the existing prosecution policy. To better illustrate these problems, Parts 3 and 4 examine a number of recent cases that presently attract public concern and discuss whether the laws applicable to these cases were properly understood by the enforcement agency. Part 5 explains the relevance of public opinion in determining issues of animal cruelty. Lastly, Part 6 stresses the importance of utilising the prosecution mechanism as a means to obtain judicial clarification of the law.

Part 1: Animal protection laws of Singapore¹

The main source of animal protection laws in Singapore is section 42(1) of the Animals and Birds Act of 1970 (hereinafter *ABA*),² which sets out a list of cruelty offences:

- (1) Any person who —
 - (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal;

* Assistant Professor of Law, Singapore Management University. This is a modified version of a paper presented at the '2014 International Conference on Animal Liberation, Animal Rights, and Equal Ecological Rights: Dialogues between Eastern and Western Philosophies and Religion', which took place on 26–27 April 2014 at Hsuan Chuang University, Taiwan. I am grateful to the organisers for the opportunity to present at the conference and their excellent hospitality during my stay in Taiwan.

¹ For a detailed analysis of the offences, see Alvin W-L See, "Animal Protection Laws of Singapore and Malaysia" [2013] SJLS 125.

² (Singapore, cap 7, 2002 rev ed).

- (b) causes or procures or, being the owner, permits any animal to be so used;
- (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;
- (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 messy structure of section 42(1) reflects the piecemeal development of this area of the law in Singapore, which drew heavily from early English animal protection legislations.³ However, despite the antiquity of these anti-cruelty provisions, they are capable of dealing with a broad range of cruelty conducts. The most important offences are clearly (a) and (d) ('general offences') due to their broad wordings. The rest could be seen as subsets of the two general offences, applying where the specifically contemplated cruelties have occurred.

Despite their varied wordings, most of these offences are essentially underpinned by the concept of unnecessary suffering.⁴ This imports a test of objective

³ See especially Protection of Animals Act 1911, 1 & 2 Geo 5, c 27.

⁴ In the case of s 42(1)(a) of the *ABA*, the word 'cruelly' is to be interpreted as the causing of unnecessary suffering. For this interpretation of the same word in s 2 of the Cruelty to Animals Act

reasonableness, relying on a hypothetical reasonable person to supply the acceptable standard of conduct.⁵ In simple words, and to state in very general terms, cruelty at law is established if such a reasonable person who puts himself in the defendant's position would not have acted as the defendant had. More shall be said later about the significance of this test.

Besides the *ABA*, the Penal Code (hereinafter *PC*) also makes it an offence to kill, maim, poison, or render useless any animal.⁶ Section 428 states:

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.

Although this offence appears to be stated in absolute terms, exceptions could be found in the *PC* itself as well as in other legislations. More shall be said about these exceptions in Part 5.

While it is often said that the purpose of the animal protection laws of Singapore is to prevent cruelty to animals, prevention is achieved only indirectly through the deterrence effect of punishments meted out to cruelty perpetrators. Because unnecessary suffering is a legal requirement (either explicitly or implicitly), the mechanism for legal protection is only triggered after the animal has already suffered from cruelty.⁷ 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'.⁸ 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.

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, which includes the adding of a welfare provision into the *ABA* to impose a duty of care on persons in charge of animals to meet the needs of those animals.⁹ This

1849, 12 & 13 Vic, c 92, see *Ford v Wiley* (1899) LR 23 QBD 203; *Budge v Parsons* (1863) 122 ER 145; *Bowyer v Morgan* (1906) 70 JP 253; *Barnard v Evans* [1925] 2 KB 794.

⁵ See, above n 2, 139, 141–43.

⁶ (Singapore, cap 224, 2008 rev ed).

⁷ An exception is the offence of abandonment under s 42(1)(f) of the *ABA*, which requires only proof that the act of abandonment is *likely* to cause unnecessary suffering or distress to the animal.

⁸ Animal Welfare Act 2006 (UK) c 45, s 9.

⁹ Animal Welfare Legislation Reform Committee, 'Recommendations from Animal Welfare Legislation Review Committee' (Law Reform Recommendation, 1 March 2013) <<http://www.mnd.gov.sg/AWLRCreport/#/1/>>.

recommendation has been accepted by the Ministry of National Development and is likely to become law in the second half of 2014.

Part 2: Enforcement efforts

Having strong animal protection laws does not guarantee the successful protection of animals. Like Singapore, many other former British colonies have inherited relatively strong animal protection laws. But there are notorious examples of these laws being ignored for a myriad of reasons.¹⁰ The question is how does Singapore, which is often touted as having one of the most efficient legal and enforcement systems in the world, fare in this regard?

The government agency in charge of enforcing animal protection laws is the Agri-Food & Veterinary Authority (AVA). Established on 1 April 2000, one of its objectives is to promote and regulate the welfare of animals.¹¹ Another institution having an important role to play in the enforcement efforts is the Society for the Prevention of Cruelty to Animals of Singapore (SPCA). However, having no formal power to prosecute, the SPCA's function is mainly to persuade the AVA to prosecute and to supply relevant data for the purposes of investigation and prosecution. Although the AVA and the SPCA have worked closely in combating animal cruelty, there were many instances where the two could not come to agreement in terms of enforcement policies.

Since the AVA's inception, there have only been about 37 successful prosecutions for animal cruelty.¹² On average this is less than 3 prosecutions per year.¹³ In comparison, the SPCA received and investigated about 1800 cases between 2011 and 2013 alone.¹⁴ Several of these cases were considered to be serious enough to warrant prosecutions. To understand the reason behind the AVA's seemingly passive stance, it is necessary to look past mere numbers and examine closely the kind of cases that the AVA is reluctant to prosecute. Out of the reported convictions, 30 cases involved blatant acts of cruelty such as abuse and killing. Only 7 cases were concerned with animals neglected by their owners. In most of these cases the neglected animals

¹⁰ 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).

¹¹ Agri-Food and Veterinary Authority Act (Singapore, cap 5) s 11(1)(b).

¹² I am indebted to Deirdre Moss (previously Animal Welfare Director of SPCA (Singapore)) for providing me with conviction statistics between 1985 and 2012, which were derived from her personal records. Surprisingly, these unofficial statistics appear to be more complete than those provided in the AVA's annual reports. To Deirdre's record I have added two recent cases that arose in 2013 and 2014.

¹³ The AVA also issues warnings and compound fines in many cases. See Animal Welfare Legislation Reform Committee, above n 9, 13 and 67. See also statistics provided in the AVA's annual reports (<<http://www.ava.gov.sg/Publications/ListOfPublications/>>).

¹⁴ SPCA (Singapore), *Annual Report: July 2011 to June 2012*, 10–13 (<http://www.sPCA.org.sg/pdf/SPCA%20Annual%20Report%202011-2012_low%20res.pdf>); SPCA (Singapore), *Annual Report: July 2012 to June 2013*, 14–16 (<http://www.sPCA.org.sg/pdf/SPCA%20Annual%20Report%202012_13.pdf>).

were either found dead or in very poor conditions (injured, sick, emaciated, etc).¹⁵ What appears to have been left out of the picture are the countless household animals that are improperly treated, confined or neglected by their owners but did not suffer obvious injury or illness (hereinafter ‘borderline cases’). In fact, such cases form a significant percentage of cruelty complaints received by the SPCA. Although they do not amount to outright abuse, the SPCA nonetheless takes a very serious view of such cases, considering many as sufficiently serious to warrant prosecutions.¹⁶ In contrast, before Hugo’s case (see below), the AVA normally refuses to prosecute in such cases.

What, then, is the AVA’s reason(s) for refusing 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 which case even the imposition of a fine is unwarranted. The AVA’s annual reports provide a little hint. 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’. Read together with the statistics set out above, one may infer that the AVA did not regard the borderline cases as amounting to cruelty at law.

How, then, did the AVA arrive at such a conclusion? The concern here is that the question of what amounts, or may amount, to cruelty at law has not been sufficiently considered. There is a real likelihood that this has contributed to the thinking that the borderline cases could not amount to cruelty at law, which is clearly incorrect. As explained earlier, the animal protection laws of Singapore are sufficiently broad, provided of course that they are properly interpreted.

Parts 3 and 4 below will look at two other kinds of cases to illustrate the AVA’s passive stance. By examining the laws applicable to these cases, it shall be shown that the AVA’s passive stance is indeed caused by its insufficient understanding of what the relevant laws are.

Part 3: Improper treatment

In 2009, a dog named Dimples was found chained and confined on a balcony with minimal shelter to the elements.¹⁷ 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 its disappointment, the AVA decided not to prosecute but

¹⁵ For a recent case, see eg ‘Man fined \$10,000 for animal cruelty’, *The Straits Times* (Singapore), 25 April 2014, A8.

¹⁶ See generally the SPCA’s annual reports, bulletins, newsletters, and etc: <<http://www.sPCA.org.sg/publication.asp>>.

¹⁷ SPCA (Singapore), *SPCA Bulletin*, October 2009, 5<<http://www.sPCA.org.sg/pdf/Bulletin%20oct09.pdf>>; *SPCA Newsletter*, January 2010<<http://www.sPCA.org.sg/documents/newsletterjan2010animalabuse.pdf>>; SPCA (Singapore), ‘Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore’ (30 December 2011), [30]<http://www.sPCA.org.sg/documents/sPCA_proposalforlegislativereform.pdf>.

instead imposed a composition fine. The fact that a fine was imposed implies that the AVA accepted that an offence has been committed. But the refusal to prosecute suggests a failure to appreciate the seriousness of the cruelty committed.

In 2010, a video recording showing a dog (named Butters) being beaten by one of its owners using a bundle of thin wooden sticks was uploaded onto the internet.¹⁸ Despite considerable public outrage expressed in online forums, the AVA decided not to prosecute or fine the owner but instead merely issued a warning. The most problematic aspect of the AVA's treatment of this case is its statement of reasons for not prosecuting. First, Butters was 'healthy and in good condition'.¹⁹ Second, 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'.²⁰ By these statements, the AVA has unwittingly restricted the definition of cruelty to cases of intentional abuse causing severe pain and suffering. This is obviously incorrect. The cruelty offences set out in the *ABA* are clearly capable of much broader interpretations.

Both cases are good examples of the passive stance adopted by the AVA with regards to its enforcement policy. The latter case, especially, directly illustrates the problem highlighted in this paper. In 2013, however, the situation appeared to have taken a turn for the better. The landmark case concerned a dog named Hugo.²¹ For a period of over 6 months, Hugo was kept on a small balcony of its owner's flat. The balcony had no proper shelter hence exposing Hugo to the elements. Hugo was seen to be there most of the time, day and night. A plastic pet carrier, which was not much larger than Hugo, was subsequently added to the balcony but this did not sufficiently improve Hugo's situation. 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 several neighbours. Concerned about Hugo's ordeal, they reported the matter to the SPCA, which sent an inspector to investigate the matter. The owner, however, did not heed the inspector's advice to improve Hugo's living condition. The SPCA then referred the matter to the AVA. Due to the perceived inaction of the AVA, the SPCA proceeded to lodge a Magistrate's complaint.²² Eventually, the AVA took over the case and commenced prosecution against the owner. The Magistrates' Court found the owner guilty under section 42(1)(e) of the *ABA* for confining Hugo in such manner as to cause it unnecessary suffering. A fine of \$5,000 was imposed.

¹⁸ 'Dog abuse' duo let off with stern warning', *The Straits Times* (Singapore), 23 July 2010, A3.

¹⁹ Ibid.

²⁰ Ibid.

²¹ *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252 (Singapore District Court), noted Alvin W-L See, 'Milestones for Animal Welfare' [2014] SJLS, forthcoming.

²² SPCA (Singapore), *Annual Report: July 2011 to June 2012*, 10

< http://www.sPCA.org.sg/pdf/SPCA%20Annual%20Report%202011-2012_low%20res.pdf>.

Hugo's case is significant as certain essential points of law were clarified. First, the court accepted that mental suffering is relevant for the purposes of the cruelty offence.²³ In determining whether Hugo has suffered, the court rejected the owner's argument that Hugo was neither ill nor injured. Instead, the court accepted expert opinions that Hugo could have suffered stress due to its prolonged exposure to the elements.²⁴ The prosecution's witnesses, a number of whom are veterinarians and dog experts, were unanimous in their views that Hugo must have suffered in the condition it was kept.²⁵ That Hugo had in fact suffered stress and frustration could be inferred from its incessant barking and its conduct of kicking and flipping its empty bowl.

Importantly, this holding finally addressed one of the SPCA's major concerns:

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.²⁶

A good example is Butters' case noted above. Contrary to the AVA's view, the SPCA argued that Butters had suffered mentally from the ordeal.²⁷

The second important aspect of Hugo's case is the court's implied acceptance of the objective reasonableness test. Hugo's owner argued that he was unaware of how much rain and water would cause suffering to Hugo and he was also unsure what would constitute suffering to Hugo.²⁸ This implicitly asserts a requirement of *mens rea* (guilty mind). Although the court did not directly address this argument, the finding of guilt implies that the argument was rejected. Instead, the court held that 'any reasonable person would no doubt conclude that [what Hugo has experienced] constitutes suffering and it is unnecessary'.²⁹ 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.

This approach is consistent with the English case of *RSPCA v Isaacs*, where the defendant was charged for causing unnecessary suffering to a sick and elderly dog by unreasonably omitting to provide it with the necessary veterinary care and attention.³⁰ Holland J explained that the omission would be unreasonable if, 'viewed objectively ... no reasonably caring, reasonably competent owner would be guilty of a similar

²³ See also *Patchett v Macdougall* 1983 JC 63 (Scottish High Court of Justiciary) 67, where 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'.

²⁴ *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, [59].

²⁵ *Ibid* [21]–[31].

²⁶ SPCA (Singapore), above n 17, [14].

²⁷ *Ibid*, [29].

²⁸ *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252, [35].

²⁹ *Ibid*, [59].

³⁰ *RSPCA v Isaacs* (Unreported, UK High Court (QB), Mann LJ and Holland J, 12 November 1993).

omission'. The defendant was eventually found guilty, as the state of the dog 'was plainly inconsistent with objectively reasonable care'.

One significant implication for adopting an 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. Animals often suffer not from intentional cruelty but from their owners' negligence or indifference. Clearly, the concept of cruelty is wide enough to also cover such cases. To impose a requirement of *mens rea* would unduly restrict the scope of the cruelty offences, leaving many animals unprotected. Fortunately, the AVA's explanation in Butters' case with regards to the requirement of 'ill intention' is now confirmed to be incorrect.

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 heavier. The AVA's decision not to prosecute in that case is 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.

Part 4: Unlawful killing³¹

Unfortunately, the AVA appeared to have reverted to its usual passive stance in its treatment of a case in which a healthy companion animal was put to sleep. Tammy was a 7-month-old rescued puppy. In 2013, Tammy's rescuer managed to find Tammy an adopter (hereinafter 'owner'). But the adoption proved to be ill fated. Shortly after adopting Tammy, its owner complained that Tammy's aggressive behaviour was a danger to her children. Tammy was eventually sent to a veterinarian to be put to sleep. This event caused the outrage of animal lovers, particularly Tammy's rescuer. The general sentiments were that the owner's conduct was wrongful and that Tammy should have been returned to its rescuer for further rehoming efforts. The veterinarian who put Tammy to sleep was also criticised for carrying out the procedure.

The AVA, who was asked to look into the matter, did so but eventually decided not to prosecute the owner and the veterinarian. In a press release, the AVA explained when it is acceptable to put a healthy animal to sleep.³² The important parts are set out here:

3 Veterinarians have a responsibility to consider not just the welfare of the pet / animal, but also the concerns and circumstances of the pet owner ...

³¹ 'Death of 'aggressive' puppy draws online flak', *The Straits Times* (Singapore), 15 October 2013, B7.

³² Agri-Food and Veterinary Authority, 'AVA explains euthanasia guidelines' (Press Release, 22 October 2013) <http://www.ava.gov.sg/NR/rdonlyres/98AEF716-C60D-48DC-B191-46B7A7E68F7C/26948/PressRelease_AVAexplainseuthanasiaguidelines.pdf>.

Veterinarians ... may at times be called upon to euthanize an animal for various reasons, such as to alleviate their suffering, or if they are aggressive ...

4 ... Before euthanizing an animal, the veterinarian will conduct the necessary professional assessment and satisfy himself that euthanasia is a reasonable option considering the circumstances. The veterinarian will ascertain ownership of the animal and discuss with the owner the various options available so that the owner can make the final informed decision. The decision, however, is ultimately the responsibility and right of pet owner. In advising the owner, the veterinarian, has to also be mindful of the implications of not acceding to a request for an aggressive pet to be euthanized, such as the client's potential distress and safety threats to the owner, his/her family, another unknowing adopter or the general public.

The AVA found that the veterinarian had followed the standard protocols in dealing with the owner's request to put Tammy to sleep. The AVA was also convinced, based on the veterinarian's statement of experience with Tammy, that Tammy was aggressive. Lastly, the AVA also took into account the fact that the owner 'had considered alternatives such as re-homing her pet before deciding to have her dog euthanised'. Unfortunately, the AVA appeared to have given no consideration at all about the laws applicable to this case, which would dictate the relevant factual inquiries necessary to determine the legality of putting Tammy to sleep.

The general rule appears to be that unless authorised by law, the killing of an animal amounts to an offence under section 428 of the *PC*. There are a number of instances where the killing of an animal is authorised by law. An example is the killing of animals for food carried out in a licensed slaughterhouse.³³ Another example is authorised euthanasia. The power to euthanise an animal is found in the *ABA* itself. 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'. Similarly, section 45 allows an authorised officer or police officer to order the destruction of an animal if he 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.

³³ See Wholesome Meat and Fish Act (Singapore, cap 349A, 2002 rev ed).

Clearly, under these two sections, the power to euthanise an animal is vested only in the courts and authorised public officers. Furthermore, the power could only be exercised in very specific situations for the benefit of the animals. Tammy's case does not fall within any of these exceptional instances where killing of an animal is authorised by law.

Tammy's case, however, is less straightforward because there were two parties involved: the owner and the veterinarian. The owner did not kill Tammy herself but instead procured its killing by the veterinarian. It is convenient to first deal with the legality of the veterinarian's action. The AVA recognised that it is acceptable in certain situations for veterinarians to put animals to sleep. It even laid down standard protocols to be adhered to by veterinarians in dealing with requests by owners to put their animals to sleep. But there is in fact no law that authorises this. Of course, society generally finds it acceptable to euthanise an incurably ill animal to relieve its suffering. And no person has ever been prosecuted for doing so. Faced with an unintended gap, the law turns a blind eye, and sensibly so. But Tammy's case is not a case of euthanasia for Tammy was a healthy animal. It would appear that, in theory at least, section 428 of the *PC* applies to the veterinarian's act of killing Tammy. In practice, however, compliance with the AVA's standard protocols is likely to be a valid a defence.

Regardless of whether the veterinarian has committed an offence, Tammy's owner could be liable for an offence of abetment by instigation,³⁴ which includes the abetment of 'an act which would be an offence, if committed by a person capable by law of committing an offence ...'³⁵ Since Tammy's owner has abetted an act (the killing of Tammy) which would amount to an offence (under section 428 of the *PC*) if carried out by a person having no defence, the offence of abetment is made out. The penalty for abetment is the same as the penalty for the offence abetted.³⁶

Having established an offence on the part of Tammy's owner, the important question is whether she could avail herself of any defence? Based on her reason for putting Tammy to sleep, a relevant provision is section 81 of the *PC*, which sets out the defence of necessity:

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* [emphasis added].

Where the defence is argued on the basis that the killing of the animal will avoid some greater harm (ie based on justificatory necessity), an implicit requirement is the

³⁴ See Penal Code (Singapore, cap 224, 2008 rev ed) ch V.

³⁵ *Ibid*, s 108. See also Explanation 3: '[i]t is not necessary that the person abetted should be capable by law of committing an offence ...'.

³⁶ *Ibid*, s 109.

proportionality between the defendant's response and the threatened harm.³⁷ This requirement finds support from the Explanation that accompanies the section:

It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.³⁸

Even if the threatened harm is of such a nature as to justify the commission of an offence to prevent it, the defendant's response must be reasonably necessary.³⁹ It is suggested that in deciding whether these requirements are satisfied, an objective test is applied. Again, a hypothetical reasonable person is called upon to determine the issue.

It is difficult to decide if the defence of necessity applies in Tammy's case without the benefit of full facts, which are best determined in a full trial. However, it is not unfair to say that the owner's arguments raise some curious points. Could a 7-month-old puppy pose such a threat to human safety so as to justify putting it to sleep? Even if such aggressiveness is found to be true, is the owner's decision to put her to sleep a reasonably necessary response? It is arguable that a reasonable person in the owner's position would have chose to return Tammy to her rescuer instead of putting her to sleep. Tammy's rescuer, it seemed, would have taken Tammy back, especially if made known that the alternative was to put Tammy to sleep.

Based on the above discussion of 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. While animals are capable of being the subject of legal ownership, the law has accepted that animals are a special kind of property deserving protection.⁴⁰ Thus, while an owner of defective goods is free to throw it away or destroy it, he cannot do the same to an animal that he owns. The owner's freedom to deal with the animal, a living property, is necessarily constrained by law.

Lastly, 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 which, ironically, carries the message (among others) 'A pet is a lifetime commitment'.⁴¹ The AVA claims to have 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

³⁷ See Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (Lexis Nexis, 2nd ed, 2012) 664–65.

³⁸ See also Illustrations (a) and (b) to s 81.

³⁹ Yeo, Morgan & Chan, above n 37, 666–67.

⁴⁰ See David Favre, 'Living Property: A New Status for Animals Within the Legal System' (2010) 93 *Marquette L Rev* 1021.

⁴¹ Agri-Food & Veterinary Authority

<<http://www.ava.gov.sg/AnimalsPetSector/ResponsiblePetOwnership>>.

to their new owners with some behavioral issues due to young age or past negative experiences. With proper care and training, 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 expectations and responsibilities that the said programme seeks to instill in animal owners. It is crucial that the AVA start sending real signals that irresponsible pet ownership would attract legal consequences.

Part 5: The relevance of public opinion

The AVA has on several occasions justified its decision not to prosecute by saying that the complained conducts do not amount to cruelty. Given that these complained conducts often attract public outrage and disapproval, it is interesting to ask if public opinion has any role to play in determining the legality of these conducts.

It is of course incorrect to suggest that judges and enforcement agencies must always follow public opinion. Often, legal provisions are worded in such a way that leaves no room for reference to public opinion. However, where the law explicitly adopts an objective test or is properly interpreted to have done so, such as for the offences under the *ABA* and the defence of necessity under the *PC*, public opinion is a necessary consideration. As explained earlier, an objective test relies on a hypothetical reasonable person to determine the reasonableness of the defendant's conduct. The attributes of this hypothetical person are necessarily informed by society's attitude towards the issue in question. In this sense, one may say that it is a legal requirement to take into account public opinion in determining issues of animal cruelty.

Admittedly, public opinion is not always collectively held. Not every person would have directed his or her mind to the issue of animal cruelty. There are also persons who are aware of this issue but deem it unimportant. The same problem arises for all moral issues, and yet the use of objective test remains prevalent in the common law (especially in the law of torts). The solution, it is suggested, is simply to focus on the opinions of persons who are genuinely concerned about the matter.

The ability to accommodate public opinion is one of the main reasons why the animal protection laws of Singapore have withstood the test of time. As society progresses and moral values change, what was previously regarded as reasonable infliction of suffering may now be regarded as cruelty.⁴² To ensure that this advantage is not lost in practice, the AVA is implored, in so far as is reasonable, to align its definition of cruelty with public opinion.

Part 6: The importance of prosecution

Prosecution serves many important functions. An obvious one is its deterrence effect. Unlike compound fines and warnings, which appear to be the AVA's preferred

⁴² *Halsbury's Laws of England*, vol 2 (Butterworths, 4th ed Reissue, 1991) [407].

enforcement methods, prosecution carries the possibility of an imprisonment sentence upon conviction. This serves as a very powerful deterrent in light of the social stigma associated with imprisonment.

More importantly, as a substantial portion of animal law is rooted in criminal law, the main method by which formal adjudication by a court could be sought is through the commencement of prosecution.⁴³ Administered by personnel specifically trained in the law, the courts are in a better position to resolve difficult or unclear legal issues. There are good examples. In *R v Banjoor*, the court interpreted the word ‘ill-treatment’ found in the predecessor of section 42(1)(a) of the *ABA* as being wide enough to include cruelty by omission.⁴⁴ In *Crane v Paglar*, the court held that for the secondary offence of procuring, assisting or permitting cruelty to an animal, it is a legal requirement that the defendant has knowledge of the cruelty, although the statutory wording was silent.⁴⁵ More recently, in *PP v Ling Chung Yee Roy* (Hugo’s case), the court has laid many uncertainties to rest, taking a wide view of what amounts to animal cruelty at law. The decision not to prosecute in Tammy’s case represents a missed opportunity to seek the court’s clarification on the legality of putting a healthy animal to sleep.

The problem faced by Singapore is best described as involving a vicious cycle. The low number of prosecutions has resulted in few cases being put before a court. This deprives the courts of the opportunities to address the substantive elements of animal law. This contributes to the insufficient understanding of animal law, which in turn leads to the formulation of an unsound enforcement policy. It is suggested that where there is doubt as to the correct interpretation of the law, and especially where the public has expressed strong disapproval over the complained conduct, the case is best put before a court for consideration.

8. Conclusion

The AVA’s approach to the issue of animal cruelty and its prosecution policy clearly lack consistency. This paper has argued that one important cause is the AVA’s insufficient understanding of what amounts to cruelty at law, particularly the failure to appreciate that where the law adopts an objective test, public opinion is a necessary consideration. It is crucial that this error is recognised and rectified. Otherwise, the same problem will haunt the animal welfare provision that will soon be added to the *ABA*, rendering it less effective than intended. The contribution of this paper is merely to stress the importance of the study and development of animal law as these have a

⁴³ An alternative method is the making of a complaint to a Magistrate: Criminal Procedure Code (Singapore, cap 68) s 151.

⁴⁴ [1930] Straits Settlements LR 31 (Straits Settlements Supreme Court): ‘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’ (Murison CJ).

⁴⁵ [1888] 1 Straits LJ 72 (Straits Settlements Supreme Court).

direct impact on the extent to which animals are actually protected. Ultimately, it is only through the cooperation of all stakeholders that the efforts to protect animals have any real hope of success.