"Animal lawyers" – Having an animal as your client

Lawyers cannot claim to have played the largest role in the founding of the animal welfare movement in England. As with the historical beginnings of many other socially progressive movements, that honour belongs to men of the cloth, not those of the scrolls. Nevertheless, the law can boast a number of luminaries who were ahead of their times in having a keen sense of the moral imperative to show compassion towards non-human animals. Some 13 years before Martin's Act of 1822 (the Act generally regarded as England's first animal welfare statute), Lord Chancellor Erskine had sponsored a similar Bill which had unfortunately failed to make it onto the statute book. Erskine was a great animal lover who often brought his dogs to legal meetings. He once protested to a carter who was beating his horse. The carter arrogantly replied, "Can't I do what I like with my own?" This outraged Lord Erskine so much that he used his stick to strike the carter, retorting, "And so can I – this stick is my own".

Leaving aside Lord Erskine's perhaps understandable brief foray into violent direct action as a method of achieving change, his method was to seek to introduce animal welfare legislation. The legislative approach has since continued to be the route of choice for the animal welfare movement, and has certainly been used very successfully. The Protection of Animals Act 1911 continues to prohibit the causing of "unnecessary suffering", and that legislation has been supplemented by a raft of piecemeal animal welfare legislation emanating from the UK Parliament, and more recently the devolution organs and (particularly in relation to farm animals) the European Union. The Government is expected to introduce a consolidating Animal Welfare Bill in this session of Parliament which should, in most respects, improve the legislative protection for animal welfare still further.

Lawyers, however, think mainly in terms of protecting rights through litigation in the courts, rather than through legislative change. Of course, victory in the political struggle to pass legislation is often a prerequisite, because it is often only through legislation that rights are provided for in the first place, particularly where animals are concerned. But rights provided for in statutes are of little use unless they are enforced in the courts; and there is considerable scope for the common (judge-made) law to be developed to the benefit of animals through litigation, even in the absence of statutory

reform. Indeed, it is worth remembering that many other socially progressive struggles (most notably the civil rights struggle in the United States) have relied on the courts as their primary means of achieving change.

Over the last 25 years there have been a number of changes in the legal environment that have considerably widened the scope for the English courts to be used to protect the rights and interests of animals. The two most significant changes have been in the field of judicial review, by which a person with "sufficient interest" (or "standing") in a decision of a public authority can challenge the legality of that decision on the grounds that the decision is unreasonable, the correct procedures have not been followed before the decision was taken, or the decision is for some other reason outside of the decision-maker's proper sphere of discretion.

The first change has been the exponential increase in the number of claims for judicial review and the expansion of administrative law generally. The other change, which largely contributed to the first, was the relaxation of the rules on standing, so that it is now easier for pressure groups to seek judicial review of decisions that they perceive as contrary to the interests which they represent. Greenpeace has been particularly energetic in making use of the more relaxed standing rules, bringing challenges to decisions of public authorities that Greenpeace regards as contrary to the interests of the environment. The significance of the more relaxed approach to standing is potentially even greater for animal welfare groups. The "parties" with the most direct interest in animal welfare are, of course, animals, who cannot litigate in their own names. The opportunity is now there, and has been there for some time, for humans concerned about animal welfare, either as individuals or groups, to challenge decisions affecting animals effectively on their behalves.

Although animal welfare groups have been slower than environmental groups in realising this potential, the gap is now being closed. Four recent or ongoing cases illustrate the increasing frequency with which "animal law" cases are now coming before both the English and European courts.

The first of these was the *CIWF* case, in which the group Compassion in World Farming challenged the system of breeding broiler chickens. Over the last 30 years,

selective breeding has halved the time it takes for a broiler chick to reach its 2 kg slaughter weight. As a result, broiler chickens now reach slaughter weight considerably earlier than the time when they reach sexual maturity. The industry's solution is to semi-starve the broiler chickens that comprise the breeding flock in order to avoid them suffering from other welfare problems from being grossly overweight. CIWF sought judicial review of the Secretary of State's refusal to take action to stop the chronic hunger to which breeder broilers were being subjected. Although the claim failed on the facts (there was insufficient evidence to show that the breeder broilers were truly "starving"), both the High Court and the Court of Appeal recognised that the case raised serious issues.

The second illustrative case – still ongoing – is being brought by Greenpeace, and challenges the UK Government's failure to ban "pair trawling" for sea bass within 200 miles of the UK - a fishing practice which is responsible for the deaths of over 2,000 dolphins in the English Channel every year. The case is being brought under the EU Habitats Directive.

The third case, brought by the BUAV, illustrates the potential for laws not directly relating to animal welfare to be used in the interests of animals. In that case the BUAV challenged the decision of the Secretary of State to grant planning permission, in the teeth of the conclusions of his own planning inspector, to Cambridge University for the building of a new research facility in which painful experiments were to be conducted on primates. Although the challenge failed, Cambridge University abandoned the project.

Finally, there was the major victory for animal welfare campaigners in the European Court of Justice just a few months ago. The Court dismissed a challenge by France to certain amendments to the Cosmetics Directive which banned the importation into the EU of cosmetics which have been tested on animals. The French challenge relied heavily on international free trade laws, again highlighting the particular relevance of non-UK law in the animal welfare field. Litigation is likely to be an especially important weapon where the WTO Agreement is concerned, not least because of the difficulties animal welfare groups face in influencing the "hard law" provided by the text of the Agreement itself.

These cases illustrate the great potential for animal welfare to be advanced in the courts, but also illustrate that victory in any particular case can never be assured; litigation is intrinsically an uncertain business. This is, of course, true of all animal welfare campaigning – victory is never achieved overnight, there will be setbacks, and it is persistence that pays off. The enthusiasm of animal welfare groups to use the law must not be suffocated by the promotion of unrealistic expectations that are subsequently dashed. The "legal route" is not an alternative to other forms of campaigning, but should be seen as another (important) tool within the animal protection toolkit. However, the risks of litigation (with each bout being perceived as a win/lose struggle), the lack of access to legal resources, and the costs of obtaining even initial advice have often discouraged animal welfare organisations from making use of that tool.

A new organisation now exists to change that. The Association of Lawyers for Animal Welfare (ALAW) is a group of solicitors, barristers and legal academics who have come together to promote "animal law" in all its manifestations, to share knowledge and expertise, and to be a resource for campaigners and animal welfare organisations. We hope that animal welfare groups will, like environmental groups, come to regard a consideration of the possibility of a legal challenge as an integral part of planning any campaign. The suffering of animals has already found a voice in the media and in Parliament. Now they are finding a voice in the courtroom, and ALAW is turning up the volume.

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