

MILESTONES FOR ANIMAL WELFARE

*Public Prosecutor v. Ling Chung Yee Roy*¹

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I. INTRODUCTION

Animal law is a little-known subject in Singapore. However, the increase in public awareness and concern about animal welfare issues demand that more attention is directed at the legal aspects of such issues. An opportunity to examine this area of the law arose in the case of *Ling Chung Yee Roy*. The District Court, presided by District Judge Ng Peng Hong, had to decide whether the accused was guilty of an animal cruelty offence under s. 42(1)(e) of the *Animals and Birds Act*.² The section provides that “[a]ny person who... 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... shall be guilty of an offence...” This case is important for two reasons. First, it adds to the few existing local case law on animal cruelty.³ It is the first time a Singapore court has considered a situation that falls short of obvious cruelty. This made it necessary for the court to examine more carefully the legal requirements of the cruelty offence, particularly the meaning of “unnecessary suffering”, in order to determine the scope of its application. By contrast, the previous cases all involved serious abuse, which clearly amounted to a cruelty offence, thus making it unnecessary to state the scope of the offence with precision. Secondly, the case was decided shortly after the government accepted the recommendation of the Animal Welfare Legislation Review Committee (“AWLRC”) to amend the *ABA* to impose a duty on a person responsible for an animal to ensure

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¹ [2013] SGDC 252 [*Ling Chung Yee Roy*].

² Cap. 7, 2002 Rev. Ed. Sing. [*ABA*].

³ See *Public Prosecutor v. Hooi Yin Wang David* [2006] SGDC 204; *Public Prosecutor v. Seah Kian Hock* [1997] 1 S.L.R.(R.) 491 (H.C.); *R. v. Banjoor* [1930] S.S.L.R. 216 (S.C.); *Crane v. Paglar* [1888] 1 Straits Law Journal 72 (S.C.). See also, *Public Prosecutor v. Gracia Michael* [1999] 3 S.L.R.(R.) 249 (H.C.), which concerned the offence of killing an animal under s. 428 of the *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.). While awaiting sufficient local case law on the subject to build up, it remains necessary to draw guidance from the interpretations of the old English and Scottish animal cruelty statutes, on which s. 42 of the *ABA*, *ibid.* is substantially based.

its welfare. An examination of the relationship between cruelty law and welfare law will be useful in determining the continued importance of *Ling Chung Yee Roy* when the statutory amendment comes into force.

II. BACKGROUND

The majority of animal cruelty complaints were against pet owners, of which a significant number concerned the lack of care and improper confinement.⁴ While the Society for the Prevention of Cruelty to Animals, Singapore (“SPCA”), has always been robust in pushing for prosecution for such cases, the Agri-Food & Veterinary Authority of Singapore (“AVA”) adopts a more passive stance unless the case concerns obvious cruelty. For cases that it considers to be less serious, the AVA addresses them mainly by issuing warning letters or imposing composition fines. In *Ling Chung Yee Roy*, the AVA seemed to have broken this conventional practice, signalling that it might become more proactive in its approach to animal cruelty, a change that is most welcomed.

The accused in *Ling Chung Yee Roy* was the owner of a Border Collie dog named Hugo. For over a period of six months, Hugo was kept on the balcony of the accused’s flat. It was seen to be there most of the time, day and night. The balcony, measuring about 3 m × 1.5 m, had no proper shelter hence exposing Hugo to the sun and rain. A plastic pet carrier measuring 0.76 m × 0.61 m × 0.61 m, 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 attention of the accused’s 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 accused 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.⁵ Eventually, the AVA took over the case and decided to commence prosecution against the accused.

III. THE OFFENCES

In *Ling Chung Yee Roy*, the focus of the prosecution’s case was on Hugo’s prolonged exposure to the elements as a result of its confinement in the balcony. The accused was charged and eventually found guilty under s. 42(1)(e) of the ABA, which prescribes that a person commits an offence if he “causes, procures or, being the owner, permits

⁴ For statistics supplied by the Agri-Food & Veterinary Authority of Singapore and the Society for the Prevention of Cruelty to Animals, Singapore, see AWLRC, “Recommendations from Animal Welfare Legislation Review Committee” (March 2013) at 11, 65, 66, online: Ministry of National Development <<http://www.mnd.gov.sg/AWLRCreport/#/1/>> [AWLRC, “Recommendations”].

⁵ SPCA, “Annual Report” (July 2011 to June 2012) at 10, online: Society for the Prevention of Cruelty to Animals, Singapore <http://www.sPCA.org.sg/pdf/SPCA%20Annual%20Report%202011-2012_low%20res.pdf>.

to be confined, conveyed, lifted or carried any animal in such a manner or position as to subject it to unnecessary pain or suffering". He was fined \$5,000.⁶

The accused could also have been charged under s. 42(1)(a), which makes it an offence to cruelly ill-treat an animal,⁷ and under s. 42(1)(d), which makes it an offence to cause an animal unnecessary pain or suffering by wanton or unreasonable conduct.⁸ However, for the present case at least, there is no practical advantage in relying instead on these general offences. The offence under s. 42(1)(e) is merely a more specific version of these general offences.⁹ All three offences require the proof of unnecessary suffering, a concept that will be revisited below.¹⁰

Since the prosecution also alleged that the accused failed to provide Hugo with sufficient food and water, another glaringly relevant provision is s. 42(1)(c), which states that a person commits an offence if "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". That the prosecution chose to ignore this offence is a matter of curiosity, for its requirements are less stringent and thus easier to fulfil. Unlike ss. 42(1)(a) and 42(1)(d)–(e), s. 42(1)(c) does not require proof of unnecessary suffering.¹¹ The focus, instead, is on whether the food and water supplied to the animal were insufficient. This would have been easily established on the facts of *Ling Chung Yee Roy* given the "ample evidence to support the prosecution's case that the dog was not provided with adequate food and water at the material time".¹² But since the prosecution decided to charge the accused under s. 42(1)(e), it became necessary for the court to grapple with the concept of unnecessary suffering.¹³

IV. THE MEANING OF UNNECESSARY SUFFERING

The court in *Ling Chung Yee Roy* was obviously troubled by the fact that unnecessary suffering is not defined in the ABA.¹⁴ But it ultimately held that Hugo has been subjected to unnecessary suffering. This finding is clearly correct and well supported in principle. To assess this finding, it is useful to consider separately the two constituent elements of the concept of unnecessary suffering.

⁶ A person who commits an offence under s. 42(1) of the ABA, *supra* note 2 is liable to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both.

⁷ *Ibid.*, s. 42(1)(a): "Any person who—(a) cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal... shall be guilty of an offence..."

⁸ *Ibid.*, s. 42(1)(d): "Any person who—(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... shall be guilty of an offence..."

⁹ Thus, case law interpreting the U.K. equivalents of *ibid.*, ss. 42(1)(a) and 42(1)(d) is also relevant in the interpretation of *ibid.*, s. 42(1)(e).

¹⁰ The word "cruelly" in *ibid.*, s. 42(1)(a) is to be understood to mean the causing of unnecessary suffering. For this interpretation of the same word in the *Cruelty to Animals Act 1849* (U.K.), 12 & 13 Vict., c. 92, s. 2, see *Ford v. Wiley* (1899) L.R. 23 Q.B.D. 203 [*Ford*]; *Budge v. Parsons* (1863) 3 B. & S. 382, 122 E.R. 145; *Bowyer v. Morgan* (1906) 70 Justice of the Peace Reports 253; *Barnard v. Evans* [1925] 2 K.B. 794.

¹¹ It may be that unnecessary suffering is deemed to result from the deprivation of food and water.

¹² *Ling Chung Yee Roy*, *supra* note 1 at para. 59. See also *ibid.* at para. 53.

¹³ Although the court could have amended the charge by virtue of the *Criminal Procedure Code* (Cap. 68, 2012 Rev. Ed. Sing.), s. 128.

¹⁴ *Ling Chung Yee Roy*, *supra* note 1 at para. 57.

A. Suffering

First, it is necessary to determine what amounts to suffering. The accused's main argument was that Hugo has not suffered.¹⁵ He claims that for the offence to apply, Hugo must be shown to be ill or injured; there must at least be some indication that it has suffered from heatstroke, sunburn or dehydration.¹⁶ At trial, he called three veterinarians to testify that Hugo was healthy and fit. However, as Hugo was only examined at a much later date, none of the evidence shed any light on whether it was healthy during the relevant period for which the offence was alleged to have been committed. On the other hand, the prosecution did not tender any evidence to show that Hugo fell ill during the relevant period. Therefore, if the accused's argument of what amounts to suffering was adopted, the prosecution would have failed to discharge its burden of proving suffering.

Fortunately, the court disagreed with the accused and held that the way Hugo was kept "will have a negative impact on its well-being" and that "the welfare of the dog is not dependent on whether the dog is healthy or not".¹⁷ As this was a response to the accused's argument that Hugo was healthy in the sense that it was neither ill nor injured, the court merely meant to say that suffering is not confined to being ill or injured. The court should not be understood as suggesting that no suffering needs to be proven as the proof of suffering is clearly required by s. 42(1)(e).¹⁸ The court went on to accept the opinion of one of the prosecution's expert witnesses that Hugo could suffer stress due to its prolonged exposure to the elements.¹⁹ In doing so, the court has recognised that mental suffering is relevant for the purposes of the cruelty offence. The relevance of mental suffering is also reflected in two other cruelty offences under the ABA. It is an offence under s. 42(1)(a) for a person to cruelly ill-treat an animal by *infuriating* or *terrifying* it, and an offence under s. 42(1)(f) for an animal owner to abandon his animal in circumstances likely to cause it unnecessary suffering or *distress*. The holding is also consistent with the prevailing position under U.K. law. In the Scottish case of *Patchett v. Macdougall*, Lord Hunter explained that the concept of unnecessary suffering "imports the idea of the animal undergoing, for however brief a period, unnecessary pain, distress or tribulation".²⁰

This aspect of the court's decision has important implications. As the SPCA complained:²¹

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

¹⁵ *Ibid.* at para. 34.

¹⁶ *Ibid.* at para. 58.

¹⁷ *Ibid.* at para. 59.

¹⁸ The necessity of proving suffering is best emphasised in the Scottish case of *Patchett*, *infra* note 20. See also, *Isted v. C.P.S.* (1998) 162 Justice of the Peace Reports 513 at 520.

¹⁹ *Ling Chung Yee Roy*, *supra* note 1 at para. 59.

²⁰ 1983 Justiciary Cases 63 at 67 [*Patchett*].

²¹ SPCA, "Proposal for Legislative Reform: Recommendations to Strengthen Animal Welfare Laws in Singapore" (2011) at para. 14, online: Society for the Prevention of Cruelty to Animals, Singapore <http://www.sPCA.org.sg/documents/sPCA_proposalforlegislativereform.pdf> [SPCA, "Proposal"].

animal's mental/emotional suffering and also due to the difficulties of proving such mental suffering where there is no palpable physical injury.

A relevant case that had attracted much attention concerned a dog named Butters. In a video recording uploaded onto the internet in 2010, Butters was seen being beaten repeatedly by its owner using a bundle of thin wooden sticks. Despite considerable public outrage, the AVA decided not to prosecute the owner but instead issued a stern warning. One reason for the decision was that the AVA found Butters to be "healthy and in good condition".²² The SPCA, on the other hand, took the view that Butters had suffered mentally from the ordeal.²³

The fact that it is less easy to determine mental suffering as compared to physical suffering is no reason for rejecting 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.²⁴ 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 called a "logical approach".²⁵ 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 were not normal behaviours of a happy and comfortable dog. The prosecution witnesses, a number of whom are veterinarians and experts on dogs, were unanimous in their views that Hugo must have suffered in the condition it was kept.²⁶

B. Unnecessary

The second question is whether Hugo's suffering was unnecessary. It is suggested that this matter should be determined using an objective reasonableness test.²⁷ Essentially a test of negligence, it relies on the hypothetical reasonable person in the accused's position to supply the acceptable standard of conduct, falling short of which the animal suffering will be considered to be unnecessary. The accused was to be judged by the standard of a "reasonably caring, reasonably competent owner".²⁸ In *Ling Chung Yee Roy*, the court implicitly accepted the objective reasonableness test when it held, agreeing with the views of several witnesses, that "any reasonable person would no doubt conclude that [what Hugo has experienced] constitutes suffering and

²² "'Dog abuse' duo let off with stern warning" *The Straits Times* (23 July 2010) A3 ['Dog abuse' news report].

²³ SPCA, "Proposal", *supra* note 21 at para. 29.

²⁴ See mainly, Marian S. Dawkins, *Animal Suffering: The Science of Animal Welfare* (London, New York: Chapman and Hall, 1980); Bernard E. Rollin, *The Unheeded Cry: Animal Consciousness, Animal Pain and Science* (Oxford: Oxford University Press, 1989); Caroline E. Manser, *The Assessment of Stress in Laboratory Animals* (Horsham: Royal Society for the Prevention of Cruelty to Animals, 1992); and the collection of essays in Franklin D. McMillan, ed., *Mental Health and Well-Being in Animals* (Oxford: Blackwell Publishing, 2005).

²⁵ SPCA, "Proposal", *supra* note 21 at paras. 20-33.

²⁶ See *Ling Chung Yee Roy*, *supra* note 1 at paras. 21-31.

²⁷ See Alvin W.-L. See, "Animal Protection Laws of Singapore and Malaysia" [2013] Sing. J.L.S. 125.

²⁸ *R.S.P.C.A. v. Isaacs* (12 November 1993), unreported (Q.B.) (the quotation was taken from the unreported transcript of the judgment).

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.

One significant implication of adopting the objective reasonableness test is that it implicitly rejects the requirement of *mens rea*, e.g., intention to cause suffering or knowledge that suffering has been caused. While this may seem like an obvious point, especially since s. 42(1)(e) makes no reference to such a requirement, it is worth stressing again because the requirement of *mens rea* is often assumed. A recent example is the case of Butters the dog, where another reason why the AVA decided not to prosecute was because it was satisfied that the owners had “no ill intention to hurt their pet dog while attempting to discipline it” and that “this case was different from one of animal cruelty, which involves deliberate intent to inflict harm and severe pain on an animal”.³⁰ Although prevalent in 19th century England and Scotland, this view has since been rejected.³¹ In the Scottish case of *Duncan v. Pope*, Lawrence J. emphasised that the only question is whether there was “cruelty in fact” and “the intention of the [defendant] in doing this does not matter”.³² 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”.³³ 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 *Ling Chung Yee Roy*, the accused argued that he was not aware of how much rain and water would cause suffering to Hugo and he was also not sure what would constitute suffering to Hugo.³⁴ 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.

V. ANIMAL WELFARE AND ANIMAL CRUELTY

The court’s references to Hugo’s welfare in assessing whether Hugo has suffered unnecessarily are justified by the fact that unnecessary suffering and poor welfare are not mutually exclusive concepts.³⁵ The welfare of an animal refers to “its state as regards its attempts to cope with its environment”.³⁶ It is to be measured in terms

²⁹ *Ling Chung Yee Roy*, *supra* note 1 at para. 59.

³⁰ ‘Dog abuse’ news report, *supra* note 22.

³¹ 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: Oxford University Press, 2001) at 224-226.

³² (1899) 63 Justice of the Peace Reports 217.

³³ *Ford*, *supra* note 10 at 225 (Hawkins J.).

³⁴ *Ling Chung Yee Roy*, *supra* note 1 at para. 35.

³⁵ The court also referred to the long title of the ABA, *supra* note 2, which says: “An Act... for the prevention of cruelty to animals, birds or fish; for measures pertaining to the general welfare and improvement of animals, birds or fish in Singapore...”

³⁶ D.M. Broom, “Animal Welfare: Concepts and Measurements” (1991) 69 J. Animal Science 4167 at 4168. A similar definition is adopted by the World Organisation for Animal Health (“OIE”), of which Singapore is a member: OIE, *Terrestrial Animal Health Code*, (2013) at Article 7.1.1, online: OIE

of degree. As Professor Radford explains, “at any given time, the state of its welfare will be located on a point somewhere along a spectrum between very good at one end, indicating an excellent quality of life, and, at the other, so poor that it ultimately proves to be fatal”.³⁷ The question is, at what point of the welfare spectrum would one regard cruelty to have occurred?

Although suffering is the best indicator of poor welfare, poor welfare need not always involve suffering. The animal may have yet to experience suffering from its poor welfare. For example, an animal may be exposed to increased *risk* of certain illnesses as a result of being deprived of sufficient exercise, fed with food that has insufficient nutrients or that is not suitable for its breed, *etc.* The animal’s welfare is considered to be poor even though it has yet to fall ill or suffer.³⁸ Poor welfare without suffering is generally beyond the concern of most existing cruelty laws.³⁹ In the case of a person responsible for an animal, cruelty law only imposes a duty to refrain from causing, and to prevent, unnecessary suffering to the animal. There is no duty to ensure the welfare of an animal beyond what is necessary to prevent unnecessary suffering.

Whether a person responsible for an animal should be required to ensure that the animal’s welfare is maintained at a good level is a separate question. Most major jurisdictions have taken this further step. For example, under s. 9 of U.K.’s *Animal Welfare Act 2006*,⁴⁰ a person commits an offence if he fails “to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice”. The section also sets out a non-exhaustive list of such needs, which include the need for a suitable environment, the need for a suitable diet, the need to exhibit normal behaviour patterns, *etc.*⁴¹ Almost three months before *Ling Chung Yee Roy* was decided, the AWLRC’s recommendation to include a welfare provision into the ABA was accepted by the Ministry of National Development.⁴² When the new welfare provision comes into force in the near future, it would allow enforcement action to be taken to assist an animal that has poor welfare without having to wait until it has actually suffered. In theory, if enforcement is optimal, poor animal welfare should be detected before cruelty arises. In reality, however, there will be many cases where

<<http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/>>: “Animal welfare means how an animal is coping with the conditions in which it lives” [emphasis omitted] [OIE, *Health Code*].

³⁷ Radford, *supra* note 31 at 216. See also Broom, *ibid.* at 4168.

³⁸ See also Broom, *ibid.* at 4169:

If the housing conditions or management procedures result in impaired immune system function and consequently increase susceptibility to disease, then the state of the animal is clearly affected and welfare is poor. This poor welfare occurs before any suffering, although it may well become worse as disease and associated suffering develop.

³⁹ An exception is the offence of abandonment under s. 42(1)(f) of the ABA, *supra* note 2, where only the *likelihood* of the unnecessary suffering needs to be proven. The welfare of an abandoned animal may be poor because of the increased risk of it experiencing starvation, falling ill, being run down by vehicles, *etc.*, even if none of these has yet to occur when the animal is found.

⁴⁰ (U.K.), 2006, c. 45 [AWA (U.K.)].

⁴¹ See also, OIE, *Health Code*, *supra* note 36 at Article 7.1.1 [emphasis omitted]:

An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress.

⁴² AWLRC, “Recommendations”, *supra* note 4 at 36, 37. See also the SPCA’s recommendation: SPCA, “Proposal”, *supra* note 21 at paras. 45-80.

the animal is found to have suffered from its poor welfare. *Ling Chung Yee Roy* will continue to be important because it defines the extent to which existing cruelty law applies to such cases. The finding of cruelty will also allow the courts to impose heavier penalties since it is a more serious offence compared to a mere failure to ensure welfare.⁴³

VI. CONCLUSION

The decision in *Ling Chung Yee Roy* represents a significant milestone in the efforts to protect animals from cruelty. Aside from its legal significance, the facts of the case also shed light on other important matters. First, the case marks a change on the part of the AVA in becoming more proactive in prosecuting animal abusers. This is important, as criminal conviction is clearly a more effective deterrence than composition fines and warning letters. While the decision to prosecute may have been a result of public pressure, particularly from the SPCA, the AVA must nonetheless be commended for taking into account public opinion in its decision-making process. As explained earlier, whether an animal suffering is unnecessary should be decided by applying the objective reasonableness test. The attribute of the hypothetical person is necessarily informed by society's attitude on the matter. Secondly, the case also shows an increase in public concern about the issue of animal welfare as well as a willingness by the public to play their part in the enforcement of cruelty law. The SPCA received eight complaints.⁴⁴ Three of the accused's neighbours came to testify in court. They even supplied video and photographic evidence of Hugo's ordeal. Clearly, the effort to protect animals from cruelty is only effective and sustainable through the cooperation of all stakeholders. In this regard, it may be confidently said that Singapore is making good progress.

⁴³ For example, under ss. 4-8 of the AWA (U.K.), *supra* note 40, the maximum imposable fine for a cruelty offence is £20,000, but only £5,000 for a welfare offence under s. 9 of the AWA (U.K.), *ibid*.

⁴⁴ SPCA, "Annual Report", *supra* note 5 at 10.