

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT DUNEDIN**

**I TE KŌTI-Ā-ROHE  
KI ŌTEPOTI**

**CRI-2022-012-001272  
[2022] NZDC 20849**

**MINISTRY FOR PRIMARY INDUSTRIES**

v

**CAROLYN SYBIL IRELAND**

Hearing: 11 October 2022  
Appearances: L M Matehaere for the Prosecutor  
R M Steadman for the Defendant  
Judgment: 11 October 2022

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**NOTES OF JUDGE E SMITH ON SENTENCING**

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[1] Ms Ireland, you appear for sentence having pleaded guilty to five charges. Three are recklessly illtreating animals under the Animal Welfare Act 1999, that includes six cows on or before 10 September 2021, four cows on or before 7 October 2021 and seven heifers on or before 1 September 2020. Each of those charges carries a maximum penalty of three years' imprisonment, a \$75,000 fine or both.

[2] Then you are further charged with one charge of illtreating animals under the same Act as between 1 September 2021 and 7 October 2021 being a representative charge of illtreating a mob of approximately 80 cows, well in fact exactly 80 cows and heifers. That charge carries a maximum prison sentence of 12 months' imprisonment or \$50,000 or both.

[3] Then one further representative charge of, on 10 October 2021, under the National Animal Identification and Tracing Act 2012 you failed to register 21 cows. That is a fine only offence being a maximum fine of \$100,000 or \$10,000 for each animal up to a maximum of \$100,000.

[4] I want to go over the facts that I rely on in sentencing you and, in that regard, I want to begin with the offending under the National Animal Identification and Tracing Act. Just in terms of the purpose of the Act (NAIT), it is an Act designed to establish animal identification and tracing system. It provides for rapid and accurate tracing of NAIT animals from birth to death. It also provides information on their current location, movement and the history of that movement.

[5] NAIT animals include the cattle that you had. Now a person who is in day-to-day charge of NAIT animals is called a PICA. You were one of those because you were in charge of NAIT animals and that imposes on you serious obligations to register those qualifying animals, the location where they are at and declare their movements.

[6] I think you understand, and we should all understand, just how important that is as the drivers of the Act are particularly important and to maintain New Zealand's biosecurity effectiveness and to respond very rapidly to biosecurity incursions or exotic disease events. We know this all too clearly from recent *Mycoplasma bovis* occurrences and we can only dread and imagine the impact on New Zealand if, for example, there is a foot and mouth disease breakout where we could not effectively trace animals. It also ensures food safety, market assurances (which are so critical to New Zealand) and the support New Zealanders give farmers because of all of that.

[7] With those obligations and the purpose of that Act in mind, it is clear the primary concern with NAIT is to easily track animals in the event of those biodiversity issues and when animals are not registered in the way that they are supposed to be, there can be critical effects.

[8] As I have said, you have been registered since June 2012 as a PICA so you know your obligations and it is right that you have been registered because you have had cattle.

[9] Just by way of overarching background to all of these facts, I am conscious that you were the owner and the person in charge of a 180-hectare dairy and beef farming operation at Waikouaiti. That is a significant piece of land, it is big, but more so it is in places steep land, it is difficult to farm easily particularly with cattle. It just heightens your responsibility, really, if you are going to have cattle on a piece of land like that. You inherited it. The importance of the inheritance aspect of this matter is you carried with you, for so many years, what you felt was a heavy obligation on behalf of family to maintain that family block and have it. You felt that acutely against a background where we will soon see that you were ill equipped to solely run a property of that size and that nature.

[10] I turn, in terms, more particularly to your offending under NAIT. On 7 October, the Ministry for Primary Industries (MPI) executed a search warrant on that property. They scanned all of the animals. They discovered that 21 were identified as not being registered. Now you were sent an interview letter to provide a formal response to that identification by MPI but you did not respond. That was part of you putting your head in the sand and not addressing what you will have known by then was a serious issue.

[11] I am also conscious, and the summary of facts tells me this, that in your capacity as a person in charge of day-to-day care of cattle in a NAIT location you had been subject prior to educational, compliance and enforcement measures particularly and, as recently as November 2019, you were spoken to by a NAIT officer about your failure to declare some NAIT animal deaths and update your registration. Then again, in the March of 2021, you were actually issued with a warning letter for failure to provide an address or location details that you were required to do so and failing to register 25 NAIT animals.

[12] So the prosecution agency is right, for them this was a last resort in terms of laying the charges with prior attempts by them to assist you by less severe action than laying a charge. But you can see why everyone is concerned that you would not register animals and the effect that could have generally in New Zealand and locally to those around you.

[13] In terms of the summary of facts for the Animal Welfare Act offending, again by overarching comment, the purpose of the Animal Welfare Act is to recognise that animals as sentient and it places an obligation on owners to properly attend to the welfare of animals. It specifies that conduct is not permissible in relation to animal or class of animals and provides for the development of issues with codes of welfare. It places on all owners and persons in charge of animals to properly attend to their welfare in accordance with generally accepted good practice. That good practice clearly includes, and this is outlined in the Act, for example proper and sufficient food and water, adequate shelter, opportunities to display normal patterns of behaviour, handling that minimises unreasonable or unnecessary pain or distress and most importantly for you, protection from and rapid diagnosis of any significant injury or disease.

[14] So the Welfare Act is to provide care for animals but also if we did not have that Act we would also make our products far less desirable internationally and domestically for obvious reasons.

[15] In terms of your offending under that Act, animal welfare inspectors carried out an inspection on 22 September 2021. Soon after entering your property, it became apparent there had been a lack of monitoring of cattle, insufficient pasture and supplementary feed. Now you acknowledged that to me and we will talk a little bit later about winter and the cost of feed and even being able to get the feed is something that you wanted me to be conscious about. The inspectors observed nine dead cattle and the variable mix of cows, calves, yearlings and bulls intermingled all over the property. Now that is an important issue in terms of when and how heifers get pregnant and whether they should be at their age.

[16] Further investigations ensued with assessments of the large mob of cattle that you had. Veterinarians were then used to try and get a sense as to the state of that cattle.

[17] Just by way of assistance, veterinarians use a standardised scoring system, that is a body condition score, it is called BCS of cattle. BCS one is emaciated and 10 is

obese. The code suggests any animal that falls below three requires urgent remedial action. Best practice for cows at calving should be about a five and with heifers a 5.5.

[18] Despite you being advised that there was to be an inspection, when they arrived there were seven dead animals found on the property on 27 September that had showed signs of prolonged recumbencies. Just in terms of the charge that deals with six cows, and I do not want to regale you in significant detail, but of the six cows one was a mature female, dead, in poor condition, with a score of 1.5. Clearly it had been paddling and thrashing, with significant faeces. An opinion was expressed that it was likely in severe distress prior to death.

[19] A second was found dead with ventral recumbency with a broken right hind leg, probably trying to get out of a dry creek. Her score was an estimated at two, significant faeces behind and would have suffered a reasonable amount of pain and distress. The same could be said of the third cow. The difficulty with the third cow that was observed, being HB02, was an opinion that that cow had likely been down for days and the veterinarian considered would have likely suffered unreasonable distress prior to death and was located on a flat part of the property within walking distance of the house. The fourth involved a dead cow that probably had a calf that was feeding on her prior to her death. The next similarly dead, likely as a result of a painful death from dehydration. Without regaling you in detail and, with respect to the other cows, you will know they were similarly in distress, all preventable, one with a calf still trying to suckle although it had passed.

[20] Similar comments are made with respect to all of the heifers.

[21] With respect to the mob of 80 cows, their condition was different in the sense that, in general terms, the evidence suggests they were likely constantly hungry so much so many were too weak to forage continuously for the food that they required. There was chronic underfeeding. The veterinarian formed the view that there was likely slow starvation for many of them. The infrastructure of your farm was poor, many broken fences, with incomplete water reticulation making feeding and watering, of course, difficult.

[22] One of the real problems for you is that for the previous eight to nine years the Ministry had tried to engage with you via education and notices requiring you to supply supplementary feed and water, segregation of the bulls from the heifers and the treatment of injuries. Despite those attempts of encouragement and education, you had not been able to relieve the suffering of that mob or the identified cows and the other scrummages. You had been encouraged on multiple occasions to seek support and guidance but for a variety of reasons had not done so.

[23] For your part, just in terms of explanation and response to those facts, your counsel and you (through the probation report I have read) want to highlight that you have no previous convictions of any type. That is true. You are not a person of criminal disposition, you are of good character but I will return to the notices that you have had over many years although has not resulted in charges or convictions.

[24] To be fair to you, you have accepted full responsibility. You have pleaded guilty early. You want me to accept that you genuinely have great affection for your animals but the state of your farm and the animals was a sad and unfortunate combination of the pressure you felt to maintain a farm that was beyond an ability to run solely by you. You must have known you could not run a farm of that size or type by yourself yet you tried to do so. You did so in a fashion that harmed, hurt and caused the death of the animals referred to. The terrain itself was something you could not ever cope with even in your most hopeful dreams.

[25] I am conscious that you talk to me of the cost of feed over some of those winters, one of the winters particularly wet, and the COVID intervention. You also maintained a full-time job to earn income. Your father's stroke and then his passing affected you desperately. I am very conscious that you also cared for your sister who has [details deleted] that requires you to have as much eyes on her as you possibly can and that presentation by her has been all the worse because of this offending.

[26] As a result of the charges, to be fair to you, you are in the process of destocking the whole farm and you have got quite a way down that. I am told that 95 per cent of the farm is now destocked. The other five per cent perhaps indicates what I have been

talking about, is you need a real stockman to get the next five per cent where they are and how they are and the person engaged cannot quite do that at this time.

[27] The prosecution also seeks that you be disqualified from being able to own or be in charge of cattle for five years. To your credit, you do not object to that despite your love of animals and the owning of them. The only real difference between you and the prosecution is the penalty to be imposed.

[28] In terms of that penalty, I do have to take into account the sentencing purposes and principles. In terms of those principles, the ones that are most important, I have decided are to make you accountable for what you have done, to promote in you a sense of responsibility and to denounce and deter your conduct. In terms of the purposes of the sentencing, it is important that I take into account the gravity of your offending, its seriousness, the need to impose the least restrictive outcome and to take into account other offending of a similar type. We call that consistency.

[29] Against that background the prosecution's position is that the most appropriate type of sentence is a fine, as opposed to imprisonment or community work, as the least restrictive outcome. Your counsel agrees and so do I. That comes because of your otherwise good record and the nature of the offending, your attempts to destock, take responsibility and early guilty plea.

[30] The only real issue is what should be the levels of those fines and I have received very helpful submissions from particularly the prosecution, but also your counsel. They have also provided to me other cases.

[31] Remember, I said to you, I have to impose a sentence consistent with other cases (that is really important) and particularly with the Animal Welfare Act cases and the Court of Appeal case of *Erickson* which I have read<sup>1</sup>.

[32] From the prosecution's perspective, they formed the view, that case reflects the matters I should consider are the serious nature of your offending and the aggravating features, that I should impose a fine for the 11 cattle that required euthanasia of

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<sup>1</sup> *Erickson v Ministry for Primary Industries* [2017] NZCA 271, [2017] NZAR 1015.

\$12,000; the six dead cattle of \$5,000 and the ill-treatment of the mob at \$5,000 together with \$5,000 for the failure to register, coming to approximately a starting point of \$27,000.

[33] For your counsel's part, she seeks to persuade me to have starting point of the fines significantly lower than that. The real contest is the gravity of your offending and the seriousness of it.

[34] I do take into account the way *Erickson* approaches the matter and, in that case, the Court talks firstly about of aggravating features that I need to consider. In that regard, there are in my view some aggravating features present. On any view of those facts, the cows that died and also those that were to be euthanised (and certainly when you look at some of the mob that were suffering), there was significant pain and distress. You were clearly taking a lead role in the offending because you were the sole person responsible for the operation. I do not particularly think that it is a position of trust that you have abused because you are the sole operator. You have not used extreme violence and I certainly do not think it is premeditative. Matters that are in similar cases have resulted in very high fines.

[35] While this is not repetitive offending in the sense of previous convictions, I am conscious of that sentencing is an invaluable exercise and you have been well on notice for a number of years to repair your husbandry practices and you have not and I do take that into account in all of these fines that I impose.

[36] I am also very conscious with respect to the NAIT matters that Parliament increased the penalties for that relatively recently to indicate the serious nature of non-registration and those obligations.

[37] When I look at all of those things, I am entirely satisfied that the penalties suggested by the prosecution are very appropriate, they are moderate and reflect the moderately serious offending outlined in the facts. In that regard, I do adopt a starting point of some \$27,000 being \$12,000 for the cattle that required euthanasia, \$5,000 for the dead cattle, \$5,000 for the ill-treatment of the mob and \$5,000 for the failure to register.



[38] However, I then have to consider if there are any mitigating matters that ought to reduce that fine and I think there are significant matters. I know I have said it is serious offending but you are entitled to 25 per cent discount for your early guilty plea. I am also going to afford you a further 15 per cent discount for your good character, your remorse which, in my view, is significant and significant personal impact for you in reducing income of a further 15 per cent. So, with a 40 per cent discount the fines come to some approx. \$16,200.00. I am, however, entirely persuaded that the reparation sought is appropriate in its entirety and I will impose that.

[39] The only other issue is whether or not I intend to disqualify you from owning cattle in the way suggested. That is entirely appropriate. Not to do so would cause an unacceptable risk for cattle that came into your care. So, for those reasons, I deal with you as follows, with some further small discount on the fines given the reparation figure:

- (a) On each of the five charges matter, I impose a fine of \$3,000 which comes to a total of \$15,000.
- (b) I further impose reparation in the sum of \$11,179.29.
- (c) I further, in respect of the animal welfare matters, make an order disqualifying you from being the owner of or exercising authority in respect of or being the person in charge of cattle for five years and that begins 6 December 2022.

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Judge E Smith

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 28/10/2022