

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP 44/93

BETWEEN PETER ANTHONY LOWE

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

Hearing: 19 March 1993

Counsel: Appellant in person
No appearance by or on behalf of Respondent

Judgment: 12 May 1993

RESERVED JUDGMENT OF HAMMOND J

There is, in Auckland, a handsome German Shepherd called Ben. He belongs to the appellant. The appellant did not register his dog, contrary to s.39(1) of the Dog Control and Hydatids Act 1982. He was fined \$100.00 and Court costs in the District Court at Auckland. He appeals to this Court on the ground that the sentence was manifestly excessive.

The learned District Court Judge (who on an appeal is blessed with an anonymity not conferred on me) filed the following memorandum as to his reasons for the sentence imposed:

Minor Offences

Your Honour may not be familiar with the manner in which "Minor Offences" are dealt with in this Court. Notices of Prosecution for minor offences are surreptitiously placed in the Judge's "In Tray" at frequent and irritating intervals, usually in his or her absence. They come in stacks or bundles and are usually accompanied by numerous other prosecutions instigated by Government departments, local and other statutory bodies. At or about the same time there will also appear, equally mysteriously, applications for Second Hand Dealers Licences, Auctioneers Licences, Sharebrokers Licences, Massage Parlour Licences, Immigration Removal Warrants and many others. Also not to be overlooked are stacks of Fines Enforcement files, applications for rehearings of minor offences such as overparking and all manner of similar misdemeanours. These are often carefully concealed beneath a pile of civil interlocutory applications and miscellaneous outpourings of our criminal, quasi criminal and civil system. The aforesaid offence of non-registration of a male German Shepherd cross of a greater age than three months is, of course, merely one particular example of a minor offence. The range of minor turpitude is enormous. To mention but a few - electrical wiring regulations, by-law breaches, underage drinking, failure to send child to school (truancy). (This one may now have been repealed). Others may be found scattered like grains of wheat amongst statutes and regulations.

The Disposal Thereof

The Judge peruses the mountain of files with great care and then imposes whatever penalty he or she deems appropriate. No hearing is held. No defendant or counsel are present. No submissions are made. No tears are shed. No howls of derision are heard from the gallery. Fellow miscreants do not suddenly awake from slumber and bleary-eyed stagger drunkenly forward or in such other direction as their condition impels. No anxious mother suckles a fretful child. There are no sideways glances or rolling back of eyes from counsel's table and certainly no titters are heard to run round the Court.

The Judge sits alone in his chambers and affixes his facsimile signature to the Information Sheet perhaps muttering silent curses to himself as he does so. He does not deliver a condemnatory monologue, at least not one that is recorded or intended for the ears of others.

I hope this short memorandum may assist Your Honour in dealing with this appeal.

The fateful moment for the hearing of this appeal arrived. The Court Crier and the Registrar duly attended on me in my chambers. In full High Court regalia we processed through several levels of the High Court building at Auckland. Other processions of bewigged and black-robed Judges were likewise criss-crossing the

building at 10.00am, sidestepping each other in a manner reminiscent of line-out drills for aged All Blacks. The Court Crier threw open the door of the courtroom and shrieked, "Pray silence for His Honour the Queen's Judge". One enters with due decorum, hoping that this chorus of welcome has not caused too many in the crowded courtroom to faint in the excited anticipation of it all. But nobody faints in this case; besides my procession, there is in the courtroom only the appellant, looking quite purposeful, and a woman companion. There is no counsel present for the Auckland City Council.

The case is called. The appellant steps confidently forward. He announces that he is prepared to proceed. I ask him if he has a dog called Ben? And if so, did he register it? Yes, and no. Why did he not register it? Because he is on an invalid benefit, the exact amount of which is so pitiful that I forbear to mention it here. I ask if he had mentioned his plight to the relevant city officials. The appellant says that he offered to meet the registration fee on a time-payment basis. This was summarily declined. He was summonsed, fined, and hence his appearance before me.

I gazed at the ceiling. Did you tell the District Court Judge of your problems? Yes sir, I did. *Nunc, vero inter saxum et locum durum sum.* (For the uninitiated - now, I really am between a rock and a hard place: the appellant says he did appear; the District Court Judge said he did not).

There are countless admonitions in the law reports abjuring Judges in my position from tinkering with the sentences of Judges in the Court below. And worse, I recall that it was only a matter of several weeks ago that in the High Court I delivered, in stentorian fashion, a judgment saying that in areas where District

Court Judges have greater expertise than High Court Judges, one ought to be especially careful in interfering.

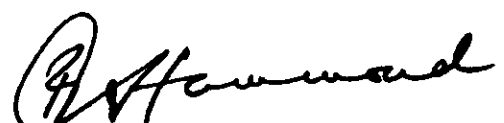
One wonders, in those circumstances, on what basis one could possibly interfere. The most far-flung possibilities flash across one's mind. The late Professor Davis campaigned tirelessly in his years as a law professor and Dean of Law at Auckland to end discrimination between cats and dogs. In his view (expressed in the august pages of no less than the *Modern Law Review*) dogs are rigorously controlled, whilst, if I may be permitted the expression, cats are entitled to pounce about town, completely unregulated. Was there something in the new New Zealand Bill of Rights which would end this shameful discrimination and assist Mr Lowe?

I began formulating an oral decision in my mind. Then I realised that I was mumbling aloud, and the Registrar was looking at me strangely, or perhaps more strangely than usual.

Pragmatism, some will say fortunately, took over.

The decision of the learned District Court Judge is quashed, and I substitute therefore a fine of \$20.00. I urge upon the appellant the wisdom of the registration of Ben.

Cave canem (again, for the uninitiated, beware of the dog).


R G Hammond J

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP 44/93

BETWEEN **PETER ANTHONY LOWE**

Appellant

AND **AUCKLAND CITY COUNCIL**

Respondent

RESERVED JUDGMENT OF HAMMOND J
