

The Role of the Veterinarian in the Prosecution of Cases of Animal Abuse: Writing expert witness reports

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Introduction:

In cases of animal abuse, the veterinarian is seen as an expert witness and thus vital to the court case. Mostly the veterinarian's involvement in these cases will be to submit an expert report and if deemed necessary to testify in court. While veterinarians support the prosecution of animal abuse transgressions, they are often reluctant to become involved due to fear of report writing and testifying caused by a lack of knowledge and skills in these areas. Veterinarians have also expressed fear of facing repercussions from the SAVC. In an era of heightened public awareness of animal welfare issues, veterinarians are increasingly called upon to assist with the prosecution of animal cruelty cases. These cases cover a wide range of offences, but more recently the issue of routine tail docking in puppies has attracted a lot of attention and cases have been turned away by prosecutors partly as a result of inadequate reporting by veterinarians as expert witnesses. This article will thus endeavour to assist veterinarians in addressing their fears and reluctance by providing the necessary information to empower them to play a meaningful role in the prosecution of cruelty cases.

Evidence and types of witnesses

In court cases certain facts need to be proven by means of evidence. Most often testimonial evidence (a witness testifies in court), documentary evidence (a document is entered as evidence) and real evidence (a physical object or place is examined) are used to prove certain facts (Royal College of Veterinary Surgeons, 2011). Hearsay evidence means "evidence, whether oral or in writing, of which the probative value depends upon the credibility of any person other than the person giving such evidence." (South African Veterinary Council, 2009). To explain the term hearsay we can use the following example: factual evidence would be "I saw, I said, I did..." compared to hearsay evidence which would be "he/she/they told me that he/she/they said, did or saw..." Hearsay evidence is as a general rule not allowed (South African Veterinary Council, 2009), but is allowed under certain circumstances, which is outside the scope of this paper. Normally a witness may only testify on the facts at issue i.e. an opinion about facts is not allowed. A professional witness is a witness of fact (i.e. may not give an opinion), who is also professionally qualified (Royal College of Veterinary Surgeons, 2011). In contrast to the professional witness and witness of fact, the expert witness is a witness of opinion, that is the expert witness may give an opinion if the court is satisfied that the witness is qualified to give such an opinion (Royal College of Veterinary Surgeons, 2011). As a veterinarian it is thus of vital importance to confirm which type of witness you will be in an animal abuse case. Often the veterinarian will have to be a factual (performed clinical evaluation or post mortem) as well as an opinion witness (did the animal suffer). In many cases it is the opinion of the vet, that is so highly regarded by the courts, that can win or lose a case. The veterinarian's opinion thus carries tremendous weight.

The expert witness: experience and knowledge

The Code of Conduct and Practice of Veterinarians (SAVC, 2006) describes an expert witness as “a person, who by reason of education or specialised experience possesses advanced knowledge in respect of a subject about which persons, having no particular training, are incapable of forming an accurate opinion or deducing correct opinions without expert guidance.” An expert witness is thus employed to assist the court in interpreting the facts, normally in issues of a specialist nature. In *Thysse v Bekker 2007*, an “Animal Behaviour Scientist” testified in a dog bite case. Although the court knew the expert witness was more equipped to give an opinion on his field of expertise than the court could, the judge emphasised that the court could only use the opinion of the expert as guideline, due to the fact that the judge based his finding not on scientific criteria but on legal criteria (*Thysse v Bekker 2007*). The veterinarian should thus remember that although the interpretation of the facts might make sense in the veterinary field the end result of the case will be based on legal facts. The court must be satisfied that the expert witness’s opinion is relevant and for this purpose the witness should have specialist knowledge, training, skills or experience and indeed be an expert in the field he/she is called to express an opinion on. For a general veterinary practitioner it should be easy to satisfy the court with respect to animal abuse cases based on the above-mentioned criteria, unless the veterinarian has retired or is not practising in the field in which he/she gives an opinion. The main issue thus for a veterinarian is to show that animal abuse cases are within his/her field of experience to enable him/her to give an opinion (De Villiers & Vorster, 1994). Formal qualifications without practical experience may disqualify a witness as an expert (Van der Berg & van der Merwe, 1997). The expert witness is allowed to refer to text-books in his/her testimony, if the author of the statement is of established repute or experience in the field (Van der Berg & van der Merwe, 1997) and the witness can confirm that in his/her training or experience the statement is in principle correct (Van der Berg & van der Merwe, 1997), otherwise the court may interpret the testimony as hearsay (De Villiers & Vorster, 1994).

The opposition can discredit an expert witness due to the witness proving to be unreliable e.g. if discrepancies occur in the report or during the testimony.

It should be remembered that the expert witness can only base his/her opinion on the facts of the case (e.g. physical condition of the animal, disease and/or injuries of the animal, parasite infestation) and must be able to substantiate his or her opinion (De Villiers & Vorster, 1994). The facts of the case include supporting evidence as received from the animal welfare officer e.g. photographs, history of the animal and the environmental condition in which the animal was confined. The opinion of the veterinarian will be based on prior experience and knowledge e.g. “in my experience the prognosis for recovering from this type of trauma is poor”. An expert witness may charge a professional fee for his/her services, based on an hourly professional rate and expenses incurred. It is up to the veterinarian to decide whether or not to act as expert witness *pro bono* and is a matter of negotiation between the veterinarian and the client (usually an animal welfare organisation).

The expert witness report

The SPCA Inspector acts as either a witness or as a complainant, or both, depending on the cruelty case. Written reports by veterinarians assist the prosecution to strengthen their case against the defendant and are considered a part of the evidence against the defendant. The better the written report — and one that can be clearly understood by the layperson — the less likely the court will subpoena the veterinarian to defend or explain their report, especially when the case is brought forward to a magistrate's court. High profile cases which are brought before a high court will almost always require the veterinarian to testify. Thus a well written report (under certain circumstances) can result in the veterinarian not being called to testify and if the veterinarian is called to testify the report can be used to remind him/her of the facts of the case during the testimony.

Whilst writing the report the veterinarian should remain objective, impartial independent and act with integrity (Royal College of Veterinary Surgeons, 2011). The expert witness's role is to assist the court to come to a fair decision, not to assist either party involved in winning their case, even if he/she is being paid a professional fee by one of the parties. It is the court's responsibility to either find the defendant guilty or not guilty. The veterinarian should also refrain from writing an emotional account of the events – stay with the facts and as unemotional as possible. There is nothing wrong in stating “in my opinion this animal suffered unnecessary mental and physical trauma”, “the pain this animal had to endure was severe”, “this procedure was completely unnecessary and caused severe pain and suffering” but emotional accounts e.g. “this poor animal had the most horrendous life and the owners were obviously cruel” should be avoided. Check spelling and common errors as the opposition may use a sloppy report to discredit you as witness.

The report should clearly distinguish the facts, opinion and hearsay evidence and must contain a clearly stated opinion. The opinion is that which is often lacking in veterinary expert witness reports. A well stated opinion can make the difference for the magistrate or judge. If for example, a puppy with a botched tail docking is presented, it is important that the veterinarian explicitly states that the animal suffered as result of the procedure (explain the anatomy of the tail and what structures are affected), and that it is an unacceptable procedure performed in an unacceptable manner. It is important to keep in mind that the magistrate or judge does not have a veterinary background, probably knows very little about animal matters and may not have dealt with similar cases in the past. The language used in a report should be understandable by a lay person but at the same time project a professional image. Where scientific terms are used they should be explained.

The expert witness report: format

Some minimal requirements are mentioned below to assist the veterinarian in compiling a good report. Examples of reports can be found on the Expert Witness Institute website www.ewi.org.uk (Expert Witness Institute).

The report should at least contain:

- the practice or veterinarian's name and contact details;
- the veterinarian's qualifications and field of expertise – a curriculum vitae may be attached to the report (as already explained above the veterinarian needs to prove he/she has the necessary expertise). Experience shows that a short introductory paragraph would suffice. However, it may be more so required in a High Court hearing than in a lower court hearing. It is suggested though that a CV is available if requested.
- background / circumstances of the case;
- it is important to state which information is hearsay e.g. "From the information I received from Mr. X (animal welfare officer), it is my understanding the animal was confiscated due to an alleged animal abuse offence....." or "My report is based on the following information". Use the term "possible" or "alleged" where applicable;
- the court case name or number (if available) / client names (normally the SPCA) / animal details, identification of the animal, identification of samples — always scan for a microchip number and / or check the ears (if they still exist) for tattooing — most cases are lost due to lack of proof who the owners were or the animal description was questioned by the defence, and not because the animal did not suffer.);
- details regarding the facts in this case (post mortem or clinical findings, test results), the results of the full clinical examination of the animal should be noted and not just the area of concern e.g. the docked tail;

If an animal is brought in by an animal welfare officer / SPCA Inspector, a veterinary report checklist (James, 2012) could be requested from them, which is a simple list of information required to describe the animal, its condition and welfare state — over and above the normal clinical examination and especially where post treatment is undertaken. The following observations are important: weight before and after; eating / drinking habits (before and after); vocalisations when the animal is brought into the practice; parasite infestation; behaviour of the animal whilst being examined; bowel movements etc;

- the veterinarian should use the term "possible" if he/she is unsure, but try to explain the reasons why a certain conclusion was reached;
- summary of conclusions;
- instructions or reasons (e.g. why do you claim this is animal abuse);
- chronology of case;
- technical background (complex cases);
- opinion (consider all facts even those negative to your opinion);
- literature citations (if necessary) and
- statement of truth / declarations, signature, appendix (if necessary).

Collecting evidence

The veterinarian should make contemporaneous notes (i.e. notes as they proceed with the case) during the clinical evaluation or post mortem. These notes can be used to refresh the veterinarian's memory when writing the report and may also be used to refresh his/her memory during the testimony. Please note that the opposite side may request to see these notes (SAVC, 2006) thus it is important that the following should be kept in mind with respect to notes: the notes should be transparent (no tippex or scratching out), maintain a timeline (where applicable) and should not be suspect of tampering. Changes and mistakes should be deleted by crossing-out the incorrect part, correcting it and signing next to the correction.

Continuity of evidence (chain of evidence) is important in any animal abuse case. The chain of evidence refer to the fact that the collection, handling, storing, dispatching, opening, testing etc. of the sample should be done in such a manner that the court can be satisfied that the samples were not tampered with or contaminated. It is suggested that samples be taken in the presence of a member of the South African Police Services (SAPS) as they know the correct procedures and have the correct containers or bags that can be sealed and placed in an evidence bag, thus making it easy for the veterinarian. If the SAPS members are not present, the veterinarian can seal the samples to ensure that nobody can tamper with the sample. We suggest that State Veterinarians can be contacted to assist with sealing the samples, if seals are not available at the veterinarians' clinic. Photos can be very effective evidence in an animal abuse case. Mostly digital photos are used these days, which can be suspect of being tampered with, due to the various software programs that can change or enhance the photo, hence the importance of authentication. We suggest that the veterinarian print the photos, sign and date them; and submit with the report, A statement should accompany the photos to attest that the photos were not altered. Digital cameras that record the date and time are an added advantage.

Fear of SAVC repercussions

Veterinarians may be reluctant to write veterinary reports as the defendant may have access to these reports. There is a fear of victimisation by the owner of the animal featured in the report, where the owner may lodge a complaint to the SAVC. The SAVC is obliged to investigate the complaint and veterinarians fear that this could lead to further complaints related or unrelated to the cruelty case. The defendant may also attempt to discredit the veterinarian's report by finding compelling evidence to discredit their expert state.

The South African Veterinary Council acknowledges the need for veterinarians to act as expert witnesses in animal abuse cases and supports veterinarians in the promotion of animal welfare. Council is available to assist veterinarians should they have any queries or doubts regarding involvement in cases of animal cruelty. Council deals with complaints and does not institute its own investigations in the absence of a complaint, unless there is *prima facie* proof of a transgression. In the unlikely event that a complaint based on professional misconduct relates to a veterinarian acting as an expert witness is received by Council, it will be dealt with fairly, taking into account the context of the alleged misconduct. As with any complaint, if the

veterinarian can justify his/her actions given the circumstances, there should be no cause for concern.

Court proceedings

Different hearings can be held in which lawyers are appointed, court dates are set etc. The veterinarian will be subpoenaed to appear in court when the trial starts to testify on the matter. The defence may cross-examine, after which the state will again re-examine the veterinarian as professional and/or expert witness. A witness has the right to at any stage address the magistrate / judge /court, to express or clarify statements made. It is up to the presiding officer to allow this into evidence or to ignore the statements. The case may be postponed several times. Before sentencing the court may again retain the witness's services as to ascertain the seriousness of the crime / animal suffering.

The courts do have a witness pay-out structure and when dealing with the prosecutor he/she must be made aware of the time lost in business and they will facilitate the pay out.

Conclusion

The veterinarian is a very important role-player in the prevention and control of animal abuse. Without the veterinarian's input into animal abuse cases the reality is that animal abusers will continue to be unpunished for their deeds. An attempt was made to provide practical advice in this article and we trust that it will be of some assistance to veterinarians.

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The authors intend to do a follow up article dealing with real cases. It will be appreciated if veterinarians can send any problems experienced with animal abuse cases (reports, testifying) or insights that were gained during these trials or reports to Dr E. van Vollenhoven.

The authors have a combined background in law, animal welfare prosecutions, animal welfare science and veterinary ethics and are available to assist veterinarians with reports and advice. They can be contacted at the Department of Companion Animal Clinical Studies, Faculty of Veterinary Science, University of Pretoria:

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