

ANIMALS—ARE THEY ‘THINGS’ OR ‘PERSONS’ IN LAW?

THE QUEST FOR LEGAL RIGHTS FOR ANIMALS

If you know one thing about animals and the law, it is probably that **animals are property**. They are not ‘persons’.

The problem with this is that if you’re not a person under our law, you **can’t have rights**.

Animals can’t have rights under our law while our law treats them as property, or ‘things’.

Many animal lawyers are trying to change this. One of the most well known was **Steven Wise**.

WHO WAS STEVEN WISE?

Steven Wise was an animal rights lawyer in the United States of America and the founder and President of the Nonhuman Rights Project (NhRP).

Steven Wise’s main focus as an animal lawyer was the pursuit of ‘animal personhood’—that is, **changing the law** so that it recognises **animals as beings who can have rights**, rather than as mere things.

Steven Wise believed that the law needs to change because animals deserve certain rights and protections.

Steven Wise died on 15 February 2024. The ADO acknowledges the incredible work and legacy of this tremendously inspiring animal lawyer.



Steven Wise in Canberra with the first edition of this Fact Sheet, May 2015

NONHUMAN RIGHTS PROJECT (NhRP)



The NhRP is an animal law organisation that aims to achieve legal rights for animals, or ‘nonhumans’, by bringing cases to **court**, rather than seeking law reform through legislation. The NhRP hopes that a court will recognise one of their **animal clients** as a **legal person**.

You don’t have to be a human being to be a ‘person’ under Australian or American law. For example, **corporations** and **ships** are considered to be legal persons, while animals are treated as things. Yet even though they are considered legal persons, corporations and ships don’t have the same rights as human beings.

The NhRP aims to change the status of nonhuman animals to ‘persons’. They want to do this so that animals would hold basic rights such as freedom from torture and freedom from captivity:

...and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them.¹

The NhRP is working with teams of lawyers around the world to gain ‘personhood’ for animals such as chimpanzees, bears, elephants, dolphins, and whales.

The NhRP focuses on these animals because they are ‘complex individuals’ capable of emotional and cognitive intelligence. This is important in a legal context, because the closer they are to ‘us’, the easier it should be for a court to recognise these animals as legal persons.



HAS A COURT EVER RECOGNISED AN ANIMAL AS A LEGAL PERSON, ANYWHERE?



Meet Cecilia the chimpanzee.

Cecilia lived at the Mendoza Zoo in Argentina (as pictured). In 2016 a local animal law organisation went to court to try to have Cecilia released from captivity. The organisation argued that by being held in the zoo, Cecilia was being illegally and arbitrarily deprived of both her freedom of movement and her right to a decent life.

In a momentous decision, the court agreed and held that Cecilia was a ‘non-human legal person’ with the ‘inherent rights of sentient beings’², and that she should be taken from the zoo and released to a chimpanzee sanctuary.

How did the organisation do it?

The animal law organisation relied on an old legal process called *habeas corpus*. This Latin phrase literally means ‘You shall have the body’. It is used when a **person** is imprisoned or captured, and a court is asked to examine the lawfulness of the person’s imprisonment. It protects a person’s right not to be unlawfully deprived of his or her freedom.

But if you’re an animal, you don’t have this right because you are a thing and not a person!

In Argentina, however, the animal lawyers actually filed a habeas corpus petition for Cecilia the Chimpanzee.

They argued that despite being almost genetically identical with a human being, Cecilia was treated as a slave of the zoo, and discriminated against because of her species.³ They submitted that Cecilia was kept in deplorable conditions, living alone and isolated in a tiny cement cage.⁴

¹ Nonhuman Rights Project: www.nonhumanrights.org.

² https://www.nonhumanrights.org/content/uploads/2016/12/Chimpanzee-Cecilia_translation-FINAL-for-website.pdf, p24.

³ Ibid p3.

⁴ Ibid p2.

Ultimately the court accepted that to classify animals as things is incorrect.⁵ The court acknowledged that ‘great apes are legal persons, with legal capacity.’⁶

The court ordered that habeas corpus be granted, declared Cecilia a nonhuman legal person, and ordered the transfer of Cecilia to a local sanctuary within six months.⁷



In April 2017 Cecilia was removed from her concrete cage at the zoo and taken to a chimpanzee sanctuary in Brazil to live ‘in peace, in the company of several other chimpanzees who were retired from lives of confinement.’⁸

HABEAS CORPUS IN AMERICA, THE LAND OF THE FREE!



The NhRP has launched several habeas corpus cases on behalf of chimpanzees and elephants in captivity.

The first chimpanzee case involved Tommy (pictured). Tommy had been kept in a cage on his owner’s property for many years.

The NhRP argued that Tommy should be freed because he is a person entitled to the bodily freedom that habeas corpus protects.

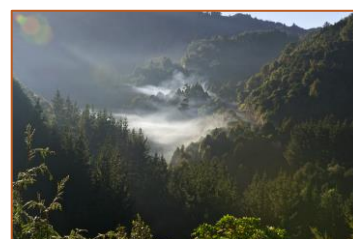
The NhRP has pursued Tommy’s case up to New York’s highest court, the Court of Appeals.⁹

In 2017 the NhRP went on to file a petition for habeas corpus in the Connecticut Superior Court on behalf of Beulah, Karen, and Minnie, three wild-born elephants who ended up in a US zoo.¹⁰ The Court dismissed the petition in December 2017 on the basis that the case was ‘frivolous’.¹¹ In January 2018 the NhRP filed a motion to re-argue the matter but the Court declined to hear it.

In October 2018 the NhRP filed a petition for habeas corpus in the New York Supreme Court on behalf of an elephant named Happy. The petition demanded the recognition of Happy’s legal personhood and fundamental right to bodily liberty (ie to be free), and that she be transferred to an elephant sanctuary.¹² The case was litigated for several years, but ultimately was doomed by a majority judgement of the New York Court of Appeal which held in December 2022 that a legal person has to be able to bear duties to have legal rights, and therefore an animal such as Happy does not have a right to liberty.¹³

OTHER ‘NATURAL’ NONHUMAN PERSONS

In 2014 the New Zealand Government changed the legal status of a natural area from a national park to a legal person.¹⁴ The change means that the land is no longer owned by the Government or Maori people. Rather, **the land owns itself.**



⁵ Ibid p23.

⁶ Ibid p24.

⁷ Ibid p32.

⁸ <https://www.thedodo.com/cecilia-chimp-sanctuary-rights-2348132702.html>.

⁹ <https://www.nonhumanrights.org/media-center/06-08-17-media-release-tommy-kiko-appellate/>.

¹⁰ <https://www.nonhumanrights.org/client/beulah-karen-and-minnie/>

¹¹ Ibid.

¹² <https://www.nonhumanrights.org/client-happy/>

¹³ <https://www.nonhumanrights.org/client-happy/>

¹⁴ *Te Rewari Act 2014.*



In 2017 the New Zealand Government granted legal personhood to the Whanganui River. The *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*¹⁵ establishes a representative body (Te Pou Tupua) made up of persons appointed by the

Government and the Maori. These people act as the living personality of the river (Te Awa Tupua).

Similarly, in 2017 the Uttarakhand High Court (in northern India) ruled that the Ganga and Yamuna rivers were legal persons ‘with all corresponding rights, duties and liabilities of a living person’.¹⁶ This decision was, however, overturned on appeal by the Supreme Court of India.¹⁷

These are fascinating legal developments which reflect the capacity of legal systems to grant legal personhood to environmental landscapes. In the NhRP case on behalf of Tommy the chimpanzee, one of the arguments denying him legal personhood was that he is ‘unable to bear social duties and responsibilities’. The granting of legal personhood to a river directly challenges this reasoning.

COULD AN NhRP-STYLE CASE BE BROUGHT IN AUSTRALIA?

Habeas corpus is a recognised legal procedure in Australia.

Great apes (gorillas, orangutans, chimpanzees and bonobos) are held in zoos in Australia, but are not currently used for scientific research.¹⁸



Chimpanzees at Taronga Zoo in Sydney

Habeas corpus could be used to try to secure the release of a chimpanzee or other great ape held in captivity. The relevant animal would need to have cognitive capabilities that could qualify them as a ‘legal person’, including being self-aware, using language, having empathy, being able to retain and store information, reason, solve problems, and so on.

A suitable jurisdiction would then need to be found. This could be done by examining court decisions and laws of every state and territory in Australia to assess whether habeas corpus would be a suitable mechanism to argue that the animal plaintiff is a legal ‘person’ entitled to legal personhood and therefore bodily liberty.

DISCLAIMER While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.

¹⁵ <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

¹⁶ <https://india.mongabay.com/2020/06/commentary-righting-the-wrong-rights-of-rivers-in-india/>.

¹⁷ <https://www.hindustantimes.com/india-news/sc-puts-on-hold-uttarakhand-high-court-order-declaring-ganga-a-living-entity/story-IYqkaeholhAyWfjAP8GYOO.html>

¹⁸ National Health and Medical Research Council (NHMRC), *Principles and guidelines for the care and use of non-human primates for scientific purposes*, September 2016, page 4, paragraph 3; available at: <https://www.nhmrc.gov.au/guidelines-publications/ea15>.