

**In the High Court of New Zealand
Auckland Registry**

CIV-2010-485

In the matter of Judicature Amendment Act 1972

AND New Zealand Bill of Rights Act 1990

AND Animal Welfare (Commercial Slaughter) Code of
Welfare 2010

AND Animal Welfare (Commercial Slaughter) Code of
Welfare 2002

BETWEEN **AUCKLAND HEBREW CONGREGATION**
TRUST **BOARD** – a Charitable trust incorporated on 17
January 1955 under Part II of the Religious Charitable
and Educational Trusts Act 1908 now known as the
Charitable Trusts Act 1957

First plaintiff

AND **THE WELLINGTON JEWISH COMMUNITY**
CENTRE – a Charitable Trust incorporated on 4
March 1986 under the Charitable Trusts Act 1957

Second plaintiff

AND **MINISTER OF AGRICULTURE**

Defendant

Submissions of proposed intervenor

The Becket Fund for Religious Liberty in support of plaintiffs

Dated: 24 November 2010

MAY IT PLEASE THE COURT:

INTRODUCTION

Interest of the Becket Fund for Religious Liberty

1. The Becket Fund for Religious Liberty is a non-profit, nongovernmental, international law firm dedicated to protecting the practice of all religious traditions. It has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Native Americans, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits around the world. It is frequently involved, both as counsel of record, and as *amicus curiae*, in cases seeking to preserve universal religious liberty: the freedom of *all* religious people to pursue their beliefs without undue government interference.
2. The Becket Fund has represented a wide variety of groups whose religious convictions have come into conflict with government regulation. In France, the Becket Fund advised Sikh students in their case before the Conseil d'État and the European Court of Human Rights. In the United States, the Becket Fund is representing a community of Amish Christians who are being prosecuted for building log cabins in accordance with their religious beliefs.¹ In Turkey, the Becket Fund advised Merve Kavakçı, a member of the Turkish Parliament, in her successful appeal to the European Court of Human Rights when she was expelled from Parliament and stripped of her Turkish citizenship for wearing a religious headscarf.²

¹ *Yoder v. Morristown*, complaint available at <http://www.becketfund.org/files/1eeff.pdf>.

² *Kavakçı v. Turkey*, application no. 71907/01 (2007).

3. Based on its expertise in international religious freedom, the Becket Fund for Religious Liberty (Becket Fund) seeks to intervene in this proceeding in support of Plaintiffs. It seeks to demonstrate through this submission that the Animal Welfare (Commercial Slaughter) Code of Welfare 2010 (the “Code”) violates international law.

Basis on which the Becket Fund seeks to intervene

4. In accordance with its mission to protect religious freedom for all, the Becket Fund wishes to make submissions on the confined legal issues of the application of international law to New Zealand’s Code. Consistent with that discrete interest, the Becket Fund:
 - (a) Does not seek to have any evidence released to it;
 - (b) Will take all reasonable steps to ensure its submissions do not duplicate submission made by the existing parties; and
 - (c) Seeks no speaking time at trial.

Summary of Submission

5. Jews must eat meat. Jewish law—the *halakha*—requires Jews to consume meat on the Sabbath and on certain holidays. New Zealand’s recently-enacted ban on kosher slaughter amounts to a ban on kosher meat in New Zealand and thus effectively prohibits adherence to Jewish law.
6. This ban contravenes three of New Zealand’s obligations under international law. First, it violates New Zealand’s obligations under Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”). Article 18 prohibits interfering with “the right to freedom of thought, conscience and religion.” Second, it violates New Zealand’s obligations under

Article 26 of the ICCPR, which prohibits all forms of discrimination on the basis of religion. Third, New Zealand's ban on kosher slaughter violates international customary law, as that body of law is informed by the Universal Declaration of Human Rights ("UDHR").

7. Aside from these international legal obligations, the New Zealand government's ban on kosher slaughter will unnecessarily subject New Zealand to censure by the international community. In addition to the opprobrium New Zealand will receive based on its apparent targeting of a tiny religious minority, there are also the shameful historical associations of bans on kosher slaughter. The only nations to enact bans on kosher slaughter until now have been European nations in the grip of historical anti-Semitism. And even those nations allowed the importation of kosher meat. Perhaps New Zealand is the first country in the world to implement a ban on kosher slaughter without any hostility towards Jews at all. But it can expect reasonable doubt from the rest of the world.

FACTUAL BACKGROUND

8. In accordance with their religious requirements, New Zealand's Jews rely on the commercial availability of meat that is "kosher," as defined by Jewish law.
9. Jewish law demands that meat is slaughtered according to the laws of "shechita," a subset of kosher law.³
10. Additionally, Jewish law prohibits the consumption of an unhealthy animal known as a "treifa" or "treif" animal. A treif animal that is slaughtered ac-

³ Maimonides, *Mishneh Torah, Laws of Shechita* 1:1-4; Oruch Ha'Shulchan, *Yoreh De'ah* 1:1-2.

According to the laws of shechita is, nonetheless, unfit for consumption by a religious Jew.⁴ One who knowingly and brazenly consumes a treif animal (even following an otherwise valid slaughtering process) is liable in Jewish religious courts for violation of Jewish religious law.⁵

11. Shechita requires that prior to slaughter, the animal be healthy. As set forth in the Plaintiffs' affidavits, the stunning process required by the Code renders the animal not sufficiently healthy for shechita purposes. This means that stunning an animal prior to slaughter would render the animal unfit for consumption by observant Jews. Affidavit of Jeremy Lawrence, 5.
12. Previous enactments of the Code provided exceptions to the pre-slaughter stunning requirement for animals slaughtered in accordance with religious law.
13. As a part of the drafting process of the new Code, the National Animal Welfare Advisory Committee ("NAWAC") issued recommendations to the Minister. It recommended that the revised code continue to provide an exemption for religious slaughter. Statement of Claim, 2.
14. In 2010, the Minister of Agriculture issued the awaited revision of the Code. The Minister chose not to implement the exemption for religious slaughter requested by the NAWAC. That revision is now presented before this Court. Statement of Claim, 4.
15. By failing to provide an exemption for religious slaughter, the Minister makes it impossible for New Zealand's Jewish community, a very small

⁴ *Exodus 22:30*; Maimonides, *Mishneh Torah, Laws of Forbidden Foods 4:6-7*; Oruch Ha'Shulchan, *Yoreh De'ah 29:8-9*.

⁵ Maimonides, *Mishneh Torah, Laws of Forbidden Foods 4:6*; Oruch Ha'Shulchan, *Yoreh De'ah 29:8*.

minority, to slaughter the 2500 chickens they need each year. Affidavit of Rabbi Haim Dovrat.

16. New Zealand's biosecurity laws make it impossible to import kosher poultry of any sort, leaving the Jewish community entirely without access to kosher poultry. Statement of Claim 5.
17. Imported lamb and beef is exorbitantly expensive compared with local meat—so expensive that it is beyond the financial capacity of many of New Zealand's Jews. The Code thus effectively prohibits many religious from eating meat with any regularity. Statement of Claim 5.
18. For observant Jews, being forced to consume a vegetarian diet is not a matter of mere preference. Jewish law unambiguously requires Jews to eat kosher meat on the Sabbath and on certain holidays.⁶ Thus the de facto ban on kosher meat in New Zealand amounts to a de facto ban on complying with Jewish law in New Zealand.

ARGUMENT

I. New Zealand's ban on kosher slaughter violates its obligations under international law.

19. The newly enacted Code makes it effectively impossible for New Zealand's Jews to access kosher meat and thus to comply with the obligations of Jewish law. The Code prohibits domestic slaughter and, as Plaintiffs explain in their Statement of Claim, New Zealand's existing laws effectively prohibit all kosher meat imports by banning imported poultry and

⁶ See, e.g., Maimonides, *Mishneh Torah, Laws of the Sabbath* 30:10; Maimonides, *Mishneh Torah, Laws of Rest on Yom Tov* 6:16-18.

making imported lamb and beef prohibitively expensive. See Statement of Claim 5.

20. By enacting this *de facto* ban on kosher meat and thereby preventing Jews from complying with the obligations of their religion, New Zealand has violated its obligations under:

- (a) Article 18 of the ICCPR;
- (b) Article 26 of the ICCPR; and
- (c) customary international law, as informed by the UDHR.

21. New Zealand's international commitments are reflected in the New Zealand Bill of Rights Act,⁷ which incorporates the rights of religious liberty into domestic law, an obligation that Plaintiffs have addressed in their submissions to the Court. Thus each of the international obligations described here are enforceable in New Zealand's courts.

22. New Zealand has violated these international obligations by implementing the kosher slaughter ban without sufficient justification.⁸

A. The Code violates the right to freedom of religion under Article 18 of the ICCPR

23. The International Covenant on Civil and Political Rights ("ICCPR") is one of the primary human rights instruments in force today.⁹ New Zealand ratified the ICCPR in 1978.

24. Article 18 of the ICCPR protects:

the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with oth-

⁷ New Zealand Bill of Rights Act 1990.

⁸ Though not addressed in this submission, the Code's provisions also potentially ban halal slaughter, which would have significant implications for New Zealand's Muslim community.

⁹ G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Dec. 16, 1966).

ers and in public or private, *to manifest his religion or belief in* worship, *observance, practice* and teaching.¹⁰

25. In General Comment 22 to the ICCPR, the Human Rights Committee interpreted Article 18 to emphasize that the right to manifest a religious belief specifically includes “not only ceremonial acts but also such customs as the observance of *dietary regulations*.”¹¹

1. The Code infringes on the right of New Zealand’s Jews to manifest their religious beliefs because it makes it impossible for them to eat meat on the Sabbath and certain holidays.

26. For Jews, the laws regulating the preparation and consumption of food (collectively, known as the laws of “kashrut” or, conjugated differently, “kosher”) are not merely optional or aspirational. They are obligatory.¹² Their coerced violation represents a severe violation of the Jew’s conscience.

27. Religious Jews believe that the consumption of non-Kosher food, even if under duress or unintentional, brings about a “contamination of the heart.”¹³ They believe that the consumption of non-kosher food defiles the body in a manner not observable to the Crown or to the courts but—in the mind of the Jewish believer—very severely.¹⁴

28. The laws of ritual slaughter, shechita, are a subset of the laws of kashrut. They articulate in great detail the manner in which an animal must be

¹⁰ *Id.* art. 18 (emphasis added).

¹¹ UN High Comm’r for Human Rights, HRC, General Comment No. 22: The right to freedom of thought, conscience and religion, art. 1, CCPR/C/21/Rev.1/Add.4 (July 30, 1993) (emphasis added) [hereinafter General Comment 22].

¹² See, e.g., Maimonides, *Mishneh Torah*, Laws of Forbidden Foods 4:6; Tur, *Yoreh De’ah* 1:1; Oruch Ha’Shulchan, *Yoreh De’ah* 1:1, 29:8.

¹³ Talmud, *Yoma* 39a (literally “contaminates the heart of a person”); see Shulchan Oruch, *Yoreh De’ah* 81:7 (R. Moses Isserles (“Rema”)) and the commentaries *ad locum* of R. Shabsi ben Meir Ha’Cohen, *Sifsai Cohen* (“Shach”) 81:24-25 and R. Dovid Ha’Levi Segal, *Turai Zahav* (“Taz”) 81:12

¹⁴ *Id.*; see also R. Moses Feinstein, *Igres Moshe*, *Orech Chaim* II:88.

slaughtered in order to be kosher. The slightest deviation from those specified rules could render the animal un-kosher and thus unfit for consumption by a religious Jew.

29. As Plaintiffs have stated, stunning or otherwise disabling an animal in the manner prescribed by the Code renders the animal “treif” and thus not-kosher. Nothing can be done to make the animal kosher once it is rendered “treif.”¹⁵

30. Jewish law requires Jews to eat meat every Saturday (their Sabbath) and most other Jewish holidays.¹⁶ Thus, it is impossible for the Jew to avoid the laws of kosher slaughter simply by abstaining from meat. Adopting vegetarianism as a means of complying with the Code is not an option.

31. The Code effectively forces Jews to abstain from eating meat in violation of their religious law. By preventing Jews from obtaining kosher meat, New Zealand is infringing their right to manifest their religious beliefs.

2. A ban on kosher slaughter is not necessary under Article 18 to protect public safety, order, health, morals or the fundamental rights and freedoms of others in New Zealand.

32. Article 18 allows for limitations on the right to manifest a religious belief when such limitations are “necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.”¹⁷

33. The Minister of Agriculture has attempted to justify banning kosher slaughter on the grounds that:

“The animal welfare benefits of requiring pre-slaughter stunning outweighed the disadvantage of observant Orthodox Jews

¹⁵ Maimonides, *Mishneh Torah, Laws of Forbidden Foods* 4:7; Oruch Ha’Shulchan, *Yoreh De’ah* 29:9.

¹⁶ See, e.g., Maimonides, *Mishneh Torah, Laws of the Sabbath* 30:10; Maimonides, *Mishneh Torah, Laws of Rest on Yom Tov* 6:16-18.

¹⁷ G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Dec. 16, 1966).

not being able to eat locally grown and commercially killed kosher meat.”

34. The New Zealand government has balanced its priorities in the wrong direction. The ethical and humane treatment of animals is undoubtedly important, as Jewish tradition has recognized for over 3000 years.¹⁸ But animal welfare does not, and cannot be permitted by this Court to, defeat enumerated human rights.
35. In a similar case considering a ban on religious slaughter, the Austrian Constitutional Court defined *public order* as “legal provisions which are essential for the functioning of cohabitation within a state such as main principles of road traffic regulations or provisions concerning funerals in due form.”¹⁹
36. Accordingly, that court held that “[a]nimal welfare does not justify a ban on a thousands-of-years old tradition which tries to minimise pain and harm to the animal during the procedure.” *Id.*
37. Similarly, public order is not implicated in this case. Obliging the Jewish community to forgo meat imposes a great burden upon it, while an exemption from the regulation for a small minority population is a minor accommodation that the government could easily implement. Indeed, the fact that Jews have long engaged in kosher slaughter in New Zealand without any appreciable threat to public order, safety, or health is evidence that the

¹⁸ See Talmud, *Bava Metzia* 32b (identifying Exodus 23:5 as the source for the prohibition known as “*tza'ar ba'alei chayim*”); see also Sefer Ha'Chinuch, *Mitzvah* 80.

¹⁹ Verfassungsgerichtshof [VfGH] [Austrian Constitutional Court] Dec. 17, 1998, B3028/97 VfSlg 15394 (Austria); see Markus Vašek, *Ritual Slaughter and the Freedom of Religion*, Austrian Constitutional Court, Judgment December 17th 1998, available at <http://www.internationalconstitutionallaw.net/download/2e512a11faa3537917b96c8d5c32cd0c/Vasek.pdf>.

Government cannot rely on the public order exception to enact a shechita ban.

38. Similarly, the close-to-universal practice of other states demonstrates that refusing to provide an exemption for kosher slaughter cannot be “necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.” If a kosher slaughter ban were in fact necessary to preserve public order, how could the vast majority of the 167 parties to the ICCPR allow kosher slaughter?²⁰ The Government cannot plausibly claim that the exemptions in other nations have harmed public order, welfare, health, or morals. Since the public order defence is the same in New Zealand as it is in other countries, New Zealand cannot rely on it without claiming that more than 100 other nations have gotten it wrong.

B. New Zealand’s kosher slaughter ban violates the right to equal protection of the law under Article 26 of the ICCPR because it discriminates against the Jewish community on the basis of religion.

39. New Zealand’s kosher slaughter ban separately deprives Jews of equal protection of the laws in violation of Article 26 of the ICCPR.

40. Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, *religion*, political or other opinion, national or social origin, property, birth or other status.²¹

41. Discrimination can be the result of not only of hostile motives, but of the effects of government regulation. Regulations that foreseeably harm a

²⁰ See *infra* Part IC; Parties to the ICCPR, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en&clang=en (2010).

²¹ G.A. Res. 2200A (XXI), art. 26, U.N. Doc. A/6316 (Dec. 16, 1966) (emphasis added).

class of people on the basis of religion, as is the case here, violate New Zealand's obligations under international law.

42. General Comment 18 of the General Comments to the ICCPR explains that discrimination “should be understood to imply *any distinction, exclusion, restriction or preference* which is based on any ground such as . . . religion, . . . and *which has the purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”²²
43. Banning kosher slaughter will make it impossible for Jews to access everyday food the way that the rest of the population does.
44. The Minister of Agriculture does not dispute that the regulations will make kosher poultry effectively unavailable in New Zealand, and will render other kinds of meat over four times as expensive as non-kosher meat. Affidavit of Gary Leon Stone, 4. He has thus conceded that the regulations he approved have the foreseeable effect of discriminating against Jews on the basis of religion.²³
45. The discriminatory nature of the current Code is put into sharp relief by the unequal treatment of duck, goose, and swan hunting in New Zealand. In contrast to the strict regulations required for the slaughter of chickens in the Code, ducks and other fowl may be hunted and killed with bullets that will neither stun animals before they experience pain nor even necessarily kill them immediately. ARBH-3, Affidavit of Adina Rita Betty Halpern.

²² UN High Comm'r for Human Rights, HRC, General Comment No. 18: Non-discrimination, art. 6, CCPR/C/21/Rev.1/Add.4 (emphases added) (hereinafter “General Comment No. 18”).

²³ The regulations also discriminate against Jews by impairing their separately established right to access food on an equal basis with others. The right to access food is protected by, *inter alia*, Article 11 of the International Covenant on Economic, Social, and Cultural Rights, ratified by New Zealand in 1978. G.A. Res. 2200A (XXI), art. 11, U.N. Doc. A/6316 (Dec. 16, 1966)

Thus New Zealand's laws discriminate against Jews and in favour of hunters, in violation of Article 26 of the ICCPR.

46. To be sure, the Human Rights Committee has held that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”²⁴ But the distinctions that New Zealand makes in favour of hunters and against Jews are neither reasonable nor legitimate under the Covenant, because New Zealand is not consistently pursuing its professed interest in protecting animal welfare. And can New Zealand really say that its previous kosher slaughter accommodation—and those in most other ICCPR signatories—was unreasonable? Because it cannot, this exception does not apply, and New Zealand's kosher slaughter ban violates Article 26.

C. The ban on kosher slaughter violates New Zealand's obligations under customary international law, as informed by the Universal Declaration of Human Rights.

47. Customary international law provides a separate set of obligations binding on New Zealand. New Zealand's ban on the production and importation of kosher meat also violates its customary international law obligations.
48. Customary international law consists of unwritten codes of international conduct upon which there is general agreement that binds even those countries that have not signed a treaty on the matter. “[C]ustom and treaties are the . . . sources of the Law of Nations.”²⁵ It is defined by the practice of the international community, to the extent that states consider themselves legally bound to those practices.

²⁴ See General Comment No. 18.

²⁵ Lassa Oppenheim, *International Law: A Treatise* 24 (1905).

49. Customary law is defined by two things: the practice of states, and *opinio juris*, the sense that a state is legally bound to follow a practice. “Wherever and as soon as a certain frequently adopted international conduct of States is considered legally necessary or legally right, the rule, which may be abstracted from such conduct, is a rule of customary International Law.”²⁶
50. Customary international law in the area of human rights is deeply informed by the seminal instrument of modern human rights law, the Universal Declaration of Human Rights, which expressly proclaims freedom of religion: “the right to freedom of thought, conscience and religion; this right includes freedom to . . . manifest . . . religion or belief in teaching, practice, worship and observance.”²⁷ Because the UDHR is now considered part of customary international law, religious freedom, and in particular the freedom to produce or import kosher meat, has also become part of customary international law.²⁸
51. Moreover, because the international community, as a general rule, exempts ritual slaughter from animal welfare laws, and does so out of a sense of obligation to international human rights norms, accommodation of religious slaughter can be considered a customary international legal norm.

1. Europe

52. In line with the European Convention on Human Rights²⁹ and the ICCPR, Europe has widely recognized religious slaughtering practices to constitute

²⁶ *Id.* at 23.

²⁷ G.A. Res. 217A (III), art. 18, U.N. Doc. A/810 (Dec. 12, 1948).

²⁸ “[T]he international community now accepts the observance of fundamental freedoms as obligatory. The document most widely cited, in political and judicial fora alike, is the UDHR.” Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional, and International Jurisprudence* 42 (2002) (listing international cases that cite the UDHR as customary law).

²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, Europ. T.S. No. 5 (“Everyone has the right to freedom of thought, conscience and religion . . .”).

part of the fundamental right to freedom of religion. For example, the Council of Europe, in its Convention for the Protection of Animals for Slaughter, makes it permissible for member states to permit religious slaughter.³⁰ The European Union has also affirmed this principle by way of regulation.³¹

53. The preeminent European human rights instrument—the European Convention on Human Rights and Fundamental Freedoms—has been interpreted by the European Court of Human Rights to protect kosher slaughter. In *Cha'are Shalom Ve Tsedek v. France*, the court recognised the religious importance of kosher slaughter and found that “ritual slaughter must be considered to be covered by . . . the right to manifest one’s religion in observance.”³² In that case, the court found that the applicants’ religious liberty was not obstructed precisely because they had access to kosher meat.³³
54. Similarly, the Austrian Constitutional Court ruled that the right to access to kosher food was an integral part of the right to religious freedom.³⁴ The Austrian statute in question required that anaesthesia be used for animal slaughter “whenever reasonable.”³⁵ The court interpreted the statute to comply with the right to religious liberty by holding that for believing Muslims or Jews, mandatory anaesthesia—which renders the animal unfit for consumption under religious law—was unreasonable. That decision

³⁰ Convention for the Protection of Animals for Slaughter, art. 17, Oct. 5, 1979, Europ. T.S. No. 102.

³¹ Council Regulations 1099/2009, ¶ 18 2009 O.J. (L 303) 3 (EC).

³² App. no. 27417/95 (2000) at ¶76.

³³ *Id.* at ¶83

³⁴ Vasek, *supra*, at 230.

³⁵ *Id.*

ensured that ritual slaughter would continue to be available for religious communities in Austria.³⁶

55. The German Federal Constitutional Court considered Germany's Nazi-era ban on kosher slaughter in 2002.³⁷ Germany's regulations had been updated in 1986 to allow for religious slaughter for personal consumption. The Constitutional Court held that a halal butcher could produce halal meat for sale to communities that religiously required it, significantly broadening the interpretation of Germany's animal slaughter law in light of the fundamental human right of religion.

56. European countries have thus consistently found ways to support animal welfare while also allowing religious communities access to the food that their religion requires. Therefore for purposes of international law, a custom of doing so has developed within Europe.

2. Other Countries

57. Commonwealth countries, including the United Kingdom,³⁸ Canada,³⁹ India,⁴⁰ and Australia,⁴¹ typically provide exemptions for ritual slaughter.

58. In the United States, the Humane Slaughter Act provides for ritual slaughter, particularly kosher slaughter.⁴²

59. Additionally, the United States provides for freedom of religion through the First Amendment of its Constitution. The United States has religious

³⁶ *Id.*

³⁷ BVerfG [Federal Constitutional Court] Jan. 15 2002, 1 BvR 1783/99 (F.R.G.).

³⁸ *See, e.g.*, Welfare of Animals (Slaughter or Killing) Regulations, 1995, S.I. 1995/731, § 22 (U.K.).

³⁹ Meat Inspection Regulations, 1990, SOR/90-288 Part III section 77 (Can.).

⁴⁰ Prevention of Cruelty to Animals Act, § 28, 1960 (The Ministry of Environment & Forests (India)).

⁴¹ Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption, AS 4696:2007, ¶ 7.12 *available at* <http://www.publish.csiro.au/Books/download.cfm?ID=5553> (Austl.).

⁴² 7 U.S.C. § 1902 (2006) (finding that shechita slaughter is a humane method of killing).

protections for the slaughter of animals mandated by sincere religious belief. In *Church of Lukumi Babalu Aye v. City of Hialeah*,⁴³ the United States Supreme Court struck down a local ordinance that had the effect of banning Santeria slaughter, which also does not allow for pre-slaughter stunning. Thus the Government's kosher slaughter ban would be deemed unconstitutional within the United States.

60. The near-universal practice of the international community is to allow and protect religious forms of slaughter. New Zealand, by disregarding this precedent, violates customary international law.

D. By violating international law, New Zealand exposes itself to international sanctions.

61. In rejecting the recommendation of NAWAC, the Minister of Agriculture may have overlooked the wide-ranging consequences of violating international human rights law.

62. The Human Rights Committee, the body that oversees the ICCPR, has a mechanism for hearing individual complaints. By abrogating Article 18's right to freedom of religion, New Zealand risks costly litigation as well as investigation and censure by the UN in the case that the Jewish Community chooses to pursue its rights in international fora.

63. In addition to the oversight of international human rights treaty bodies, New Zealand's actions risk censure in the international community. The United States, for example, has an office within its Department of State dedicated to promoting international religious freedom.⁴⁴ As a part of this mission, it conducts an annual review of the status of religious freedom in

⁴³ 508 U.S. 520 (1993).

⁴⁴ See Office of International Religious Freedom, Department of State, <http://www.state.gov/g/drl/irf/index.htm>.

nations all over the world. Indeed, New Zealand's kosher slaughter ban and this case were noted in the 2010 International Religious Freedom Report, issued just last week.⁴⁵ Under U.S. law, the government may impose economic sanctions on countries found to violate religious freedom.⁴⁶

64. International public opinion might also bring with it unintended economic effects. The community of Jews in New Zealand may be a small minority, but the number of people around the world who care about the right to religious expression in Jewish communities is much greater, and a ban on kosher slaughter could have an economic impact on New Zealand's exports. Given the large amount of agricultural products New Zealand exports to the United States, a boycott of New Zealand products by American grocery stores could have significant economic effects in New Zealand.

II. New Zealand's ban on kosher slaughter aligns New Zealand with the historically anti-Semitic policies behind such bans in other countries.

65. The European countries in which kosher slaughter is currently explicitly or implicitly banned are Switzerland,⁴⁷ Sweden,⁴⁸ Iceland,⁴⁹ and Norway.⁵⁰

⁴⁵ U.S. Department of State, 2010 Report on International Religious Freedom, New Zealand (Nov. 17, 2010) *available at* <http://www.state.gov/g/drl/rls/irf/2010/148888.htm>.

⁴⁶ 22 U.S.C. § 6432-45 (2006).

⁴⁷ Loi Fédérale Sur la Protection des Animaux [LPA] [Federal Animal Protection Act], Dec. 16, 2005 Recueil systématique du droit fédéral [RS] 455 section 7 art. 21(2005), *available at* <http://www.admin.ch/ch/f/rs/4/455.fr.pdf> (Switz.); U.S. Department of State, 2009 Report on International Religious Freedom, Switzerland (2009) *available at* <http://www.state.gov/g/drl/rls/irf/2009/127340.htm>.

⁴⁸ 12 § Djurskyddslagen [Animal Welfare Act] (Svensk författningssamling [SFS] 1988:534) (Swed.); U.S. Department of State, 2009 Report on International Religious Freedom, Sweden *available at* <http://www.state.gov/g/drl/rls/irf/2009/127339.htm> (2009).

⁴⁹ Regulerd Um Slátrun Búfjár [Regulation on the Slaughter of Livestock] art. 1 No. 158/1957 (1957) (Ice.). *See also* Bergeaud-Blackler, Florence, Nouveaux Enjeux Autour de l'abattage Rituel Musulman: Une Perspective Européenne, Cahiers d'économie et sociologie rurales, n°73 (2004), *available at* <http://www.inra.fr/internet/Departements/ESR/publications/cahiers/pdf/bergeaud.pdf>.

⁵⁰ Lov Om Dyrevelferd [Norwegian Animal Welfare Act] Section 12 (2010), *available at* <http://www.regjeringen.no/en/doc/Laws/Acts/animal-welfare-act.html?id=571188>.

66. The four countries that have banned kosher slaughter allow for the importation of kosher meat.⁵¹ Kosher meat is available almost everywhere in the world.
67. Legislation banning religious slaughter over the last 150 years has consistently appeared in the context of anti-Semitism. Contrary to international human rights norms, these laws have targeted religious minorities for special disfavour.
68. In Switzerland, the first anti-shechita law came into force as part of the Swiss Constitution of 1893.⁵² Contemporary accounts stated that “the Anti-Semites, chiefly Protestants, carried a law prohibiting as cruel the Jewish method of slaughtering animals for food.”⁵³
69. In 1929, a time when anti-Semitism was on the rise across Europe, Norway made kosher slaughter illegal due to acknowledged anti-Semitic sentiment.⁵⁴
70. In Germany, one of the first pieces of legislation enacted after Hitler took power in 1933 was a ban on kosher slaughter.⁵⁵
71. Those enacting anti-shechita laws typically used the pretext of animal welfare to justify their maltreatment of a religious minority group. For exam-

⁵¹ Pablo Lerner & Alfredo Mordechai Rabello, *The Prohibition of Ritual Slaughtering (Kosher Shechita and Halal) and Freedom of Religion of Minorities* 22 *Journal of Law and Religion* 1, 58-59 (2006/2007); U.S. Department of State, 2010 Report on International Religious Freedom, Norway, available at <http://www.state.gov/g/drl/rls/irf/2010/148970.htm> (2010).

⁵² Bundesverfassung der Schweizerischen Eidgenossenschaft, [aBV] [Constitution of 1874], May 29, 1874, art. 25 (Switz.).

⁵³ “Anti-Semites,” *Encyclopædia Britannica* 200 (Vol. 1, New Am. Supp. 1897).

⁵⁴ Norway, *Universal Jewish Encyclopedia* 242 (1942); Prof. Dr. Fure, Odd Bjorn, *Antisemitism in Norway*, 7 available at http://www.osce.org/documents/sg/2003/06/336_en.pdf 23 June 2003.

⁵⁵ Arnold Arluke & Boria Sax, *Nazi Animal Protection and the Holocaust*, 5 *Anthrozoös* 6, 7 (1992).

ple, the official purpose of the Nazi law was “to awaken and strengthen compassion as one of the highest moral values of the German people.”⁵⁶

72. Sweden followed Germany in 1937,⁵⁷ and in the same year Poland instituted a quota system limiting the number of animals Jews were allowed to slaughter. Later, the occupying Nazis criminalized kosher slaughter in Poland.⁵⁸ Hungary and Italy banned shechita in 1938.⁵⁹ (The bans in Germany, Poland, Hungary, and Italy were lifted after World War II.⁶⁰)
73. Iceland banned shechita in 1957, and also had a long history of anti-Semitic feeling, perhaps peculiar since so few Jews lived there.⁶¹
74. Given this history, New Zealand should take into account the hostile message it is sending, intentionally or unintentionally, to Jews around the world by banning kosher meat.
75. Indeed, the Ministry’s reluctance to grant a tiny minority of New Zealand’s population with an exemption to its regulations—an exemption that had been in place for many years without incident—will suggest to many, rightly or wrongly, that hostility against the Jewish community, or perhaps the larger religious community, is ultimately the driving force behind the latest attempt to ban kosher slaughter.

⁵⁶ *Id.* at 8.

⁵⁷ Lerner & Rabello, *supra* note 52 at 15.

⁵⁸ Rabbi Isaac Lewin, Rabbi Michael L Munk, & Rabbi Jeremiah J. Berman, Religious Freedom: The Right to Practice Shehitah 90 (1946).

⁵⁹ *Italy Reassures U.S. on Status of Jews*, New York Times at 7 (Oct. 21, 1938); Lewin et. al., *supra* note 59 at 82.

⁶⁰ Lewin et. al., *supra* note 59 at 214-15.

⁶¹ *Regulerd Um Slátrun Búfjár* [Regulation on the Slaughter of Livestock] art. 1 No. 158/1957 (1957) (Ice.). See also Roger Boyes, *Meltdown Iceland: Lessons on the World Financial Crisis From a Small Bankrupt Island* 18 (2009) (main Icelandic newspaper praised expulsion of Jews in 1938).

CONCLUSION

76. The Government has created an entirely unnecessary conflict between New Zealand's legitimate interest in preventing cruelty to animals and its international human rights obligations under the ICCPR and international customary law to protect the religious freedom of one of its smallest minority groups. In addition, since the great majority of nations find kosher slaughter to be entirely consonant with animal welfare, New Zealand's decision to ban kosher slaughter unfortunately aligns it with countries that have bans in place due to historic anti-Semitism. The Government's decision is thus both illegal and inadvisable.
77. For the foregoing reasons, the Court should find in favour of Plaintiffs, and declare an exemption in the Code for kosher slaughter.

Respectfully submitted,



Diana M. Verm
Legal Counsel
Meir Katz
Legal Fellow
The Becket Fund for Religious Liberty
3000 K St. N.W.
Suite 220
Washington, D.C. 20007
USA

+1.202.595.0095 (tel.)
+1.202.595.0090 (fax)
dverm@becketfund.org

Counsel for Proposed Intervenor
The Becket Fund for Religious Liberty