Summary of Evidence

Department of Labour
TE TARI MAHI

Where Evidence Recorded & How Element Proved

On 25th April 2012 Helena Erica SCHOFIELD suffered fatal crushing injuries when interacting with Mila, an African elephant after having just finished an "education" talk about Mila with some members of the public visiting the Zoo.

Facts

Franklin Zoo Charitable Trust operates a small zoo located at 83 Ridge Road, Tuakau, Auckland New Zealand and trades as Franklin Zoo & Wildlife Sanctuary. According to The Franklin Zoo and Wildlife Sanctuary Operators Manual "the Franklin Zoo and Wildlife Sanctuary have been purchased by the company Franklin Zoo Limited."

DOLI 10 – Exhibit AUC/5379072/8

A check through the Companies Office website lists the company as Franklin Zoo Limited and its sole Director and full legal name as Helen Erica SCHOFIELD (last updated on 26 March 2012).

DOLI 10 – Exhibit AUC/5379072/3

Records further show the company as having 4 shareholders namely Helen Erica SCHOFIELD, Tom SCHOFIELD, Jennifer Ann CHUNG (sister of deceased) and Graeme Howard STRACHAN.

According to the Franklin Zoo and Wildlife Sanctuary Operators manual (August 2010) "the shareholders have set up the Franklin Zoo Charitable Trust to fundraise to ensure the husbandry needs of the animals are met with ongoing development and fulfilment of the Zoo's mission. In the event of failure of Franklin Zoo Ltd the Trust will continue care of the animals and relocate them if necessary."

An e-mail dated 14 June 2012 from one of the shareholders, Jenny CHUNG, advises that "Franklin Zoo Ltd owns the property" and that "Helen (deceased) had arranged with our accountant Lincoln Sharp, Campbell Tyson Limited Pukekohe and lawyer Bridget Chrystall, Davidson, Armstrong &Campbell Waipukerau in February to move all income over to Franklin Zoo Charitable Trust from Ist April 2012".

Copy of e-mail on DOLI 11

A certificate issued by the Charities Commission with the number CC32753 certifying Franklin Zoo as a Charitable Trust was attached to this e-mail.

The aim of Franklin Zoo has been to provide retirement, rehabilitation and/or re-homing for at risk exotic and native species. These may include species displaced from circus, small zoo, or similar institution closure.

As of July 2010 Franklin Zoo housed a number of primates, carnivores and other animals of which Mila, the African Elephant was one.

The sole director and owner of the Zoo at the time and up to the accident was Helen SCHOFIELD who was a shareholder and also the deceased.

As of 30 October 2011 Franklin Zoo Limited employed approximately 8 people, some part time and some fulltime including Helen SCHOFIELD

Copy of e-mail on DOLI 11

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who was the owner of Franklin Zoo Limited. Helen was the victim in this case.

The accident occurred when Helen went inside the elephant enclosure to calm Mila down after Mila had received what is to be believed an apparent electric shock from the electric fence surrounding the elephant enclosure. This may have occurred when Mila was throwing sand over herself and her trunk may have accidentally touched the electric fence.

There were several people present at the time of the accident and the NZ Police took statements of the people concerned, copies of which were provided to the Department.

One witness account 9(2)(a) [redacted] claims she saw Mila jump sideways suddenly for no apparent reason but states Mila was still between 2-3 meters away from the fence. The witness then heard Helen say that she was going to go and try to calm it (Mila) down with some favourite fruit.
As Helen was standing in front of Mila the elephant put her head down and moved towards Helen and increased her speed.
The witness saw Helen back up and turn around. When Helen was about a meter from the opening in the enclosure she tripped and fell.
Mila then pulled Helen back into the enclosure and put her trunk around Helen's mid section and picked her up. The witness heard Helen say something to Mila to put her down.
The elephant then went down on her knees and pushed her head and trunk (with Helen inside it) down into the bank. The witness saw Mila move her head from side to side as she did this.
Helen was calling for Mila to let her go. After Mila had let Helen go she (Helen) was still moving and talking.
The witness saw Mila back away before returning to Helen and rub her trunk over Helen. That was the last time the witness saw Helen move.

Witness accounts taken by NZ Police on DOLI 10 – Exhibit AUC/5379072/13

Other witness accounts do not mention the accident specifically as they simply did not see the accident occur but rather were in the vicinity.

However according to Jenny CHUNG in her statement she said that she saw Mila jump back and felt it was possible that Mila's trunk had hit the electric fence. She also stated that Mila knows that the fence is electrified and that she has had occasional shocks before.

It was at that time that Helen said that Mila had received a shock from the electric fence. Jenny then saw Helen go into the enclosure through the opening in the fence with a bucket of food.

Jenny then saw Mila running towards Helen at speed.

Because of where Jennifer was at the time she was unable to see what happened next. As Jennifer sensed danger she tried to get over the viewing fence area. By the time Jennifer got over the fence and around the mound of dirt she saw Helen lie down on the ground motionless.

Attempts were made by Zoo staff to get Mila away from Helen in order to render assistance to Helen. Staff eventually managed to get Mila away

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from the scene and secure her in the barn adjacent to the paddock enclosure.

Members of the NZ Police and St Johns staff attended the scene but were unable to locate any signs of life in the deceased.

Death was confirmed upon the arrival of and by an advanced paramedic.

A New Zealand Police photographer also attended the scene and took a number of photographs of the accident scene, victim and surroundings. Copies of these photographs were made available to the Department.

Photographs taken by NZ Police on DOLI 10 – Exhibit AUC/5379072/1

The Department of Labour after hours inspector was notified shortly after the accident and details of the accident and contact details of NZ Police and other interested parties were provided.

Email correspondence on DOLI 11

The Ministry of Agriculture & Forestry (Bio Security) now known as the Ministry of Primary Industries authorised Auckland Zoo to act as interim operator and advisors for Franklin Zoo in the person of Kevin Russell BULEY, Life Science Manager.

ON 26th April 2012 the investigation was signed over to Senior Health and Safety Inspector Arnie WASSENAAR who visited the place of work at approximately 2.00pm and took details and photographs of the scene and surroundings with the assistance of Kevin BULEY.

Note book entries on DOLI 11

Analysis

Franklin Zoo is subject to the Biosecurity Act 1993 and refers to conditions set out in the following publications MAF Biosecurity New Zealand Standard 154.03.04 "Containment Facilities for Zoo Animals" and Biosecurity New Zealand Standard 154.03.03.01 "Supervision of Containment Facilities both issued by the Ministry of Agriculture and Forestry Biosecurity New Zealand (now Ministry of Primary Industries).

DOLI 10 – Exhibit AUC/5379072/14

A compliance audit by MAF Biosecurity New Zealand Standard: 154.03.04 "Containment Facilities for Zoo Animals was carried out on 3 November 2011 and Franklin Zoo was found to be in compliance with the relevant Standards and conditions therein.

DOLI 10 – Exhibit AUC/5379072/15

As a result of the audit the Zoo was issued with the following Certificates:

DOLI 10 – Exhibit AUC/5379072/12

"Certificate Of Approval as a Containment Facility" dated 3 November 2011 with the reference number 267.

"Certificate Of Approval as an Operator of a Containment Facility" in the name of Helen SCHOFIELD dated 3 November 2011 with the reference number 267.

As an employer Franklin Zoo Limited is also subject to the duties and obligations set out in the Health and Safety in Employment Act 1992.

On 26th April 2012 a visit was carried out to Franklin Zoo with a view to

Element to prove is indicated in **bold** type

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meet with Mr Kevin BULEY, life science manager at Auckland Zoo and appointed interim operator and advisor for Franklin Zoo. At the time of the visit the Department was advised that the zoo was closed to the general public. General discussions were held with Mr BULEY regarding the operation of the zoo since the accident and elephant management protocols. The accident scene was also visited.

During this visit concerns were raised with Mr Buley by The Department regarding the open "gap" in the elephant enclosure fence through which Helen got access into the enclosure. The "gap" measures approximately 35-40 cm in width between two wooden posts being part of the link wired fence around the enclosure wide enough for a person to fit through but obviously too small for an elephant.

Mr Buley explained the reason for the "gap" was a ready access for zoo staff only for cleaning or maintenance/service purposes to get the enclosure ready for the elephant. Mr Buley further stated that this is an acceptable practice in elephant enclosures in Zoos worldwide.

On 1 May 2012 the above mentioned concerns were relayed by the Department via e-mail to Mr Buley about the suitability of the current fencing arrangements around the elephant's enclosure. Mr Buley was advised that prior to reopening the zoo to the public the following matters should be addressed.

Email correspondence on DOLI 11

- The access "gaps" in the enclosure fence to be closed off and one to be made available in the fence away from the general public's view.
- Picnic tables or other structures that can be used to scale the public's viewing fence to be removed permanently from this area to prevent persons from accessing the elephant's enclosure.

Mr Buley advised that Franklin Zoo has an established Protected Contact protocol for its elephant management programme designed to allow staff to manage the elephant safely.

Elephant Management Program on DOLI 10 – Exhibit AUC/5379072/6

Mr Buley further advised that this protocol includes the following "rules" and specifically state that:
7. "No person will ever enter a pen in which elephant is present";
8. "No person to place themselves within reach of the elephant's trunk without supervision from manager';
10. "Two people to be present whenever contact of any sort with Mila is to occur. Both to be team members".

This protocol was authored by Helen Schofield in September 2011.

Accident Investigation report from Franklin Zoo Charitable Trust

On Wednesday 16 May 2012 an accident investigation report was received from Mr Buley regarding the Helen Schofield accident including relevant staff statements and photographs of the accident scene surroundings and a copy of the elephant management protocol.

Franklin Zoo Accident Investigation report on DOLI 10 – AUC/5379072/19

The report disclosed that although the zoo had a Protected Contact protocol for its management programme and this protocol had been read

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and understood by all staff that worked with the elephant, Helen Schofield appeared to have broken with the established protocol and had entered the same space with the elephant.

The report further stated that it would appear from statements from staff that procedures were not always adhered to and staff including Helen Schofield were sometimes in the same space as the elephant albeit in different parts of the enclosure.

It seems evident that these interactions with the elephant were outside the established protocols formalised by Franklin Zoo all of which were initiated, written and implemented by the deceased Helen Schofield.

Statement from Jennifer Chung

On Thursday 17 May 2012 the Department received a statement from Jenny Chung, trustee of the Franklin Zoo Charitable Trust in which she lists voluntary duties she was engaged in at the zoo.

Jennifer Chung statement to Department on DOLI 10 – Exhibit AUC/5379072/20

She stated that she lived on the premises at the zoo together with her sister (Helen) and their mother 9(2)(a) and volunteered for 50 weeks of the year, seven days a week without any pay.

Some of the duties included:

- "General cleaning duties around the zoo.
- Bookkeeping and general administration duties.
- Paying wages of staff.
- Reception duties.
- Occasionally assisting Helen with the elephant by stationing her when construction takes place, taking the elephant for walks and preparing food buckets for the elephant. Helen trained me to perform these tasks outside the enclosure or within the enclosure when the elephant was inside the barn."

Jenny further states that Helen handled all matters in relation to the animals. Helen was the holder of the MAF (now Ministry for Primary Industries) licence to operate the zoo and as such was responsible for all compliance matters arising from the licence including:

- Health and safety of all staff and volunteers at the zoo.
- Training and supervision of all staff in relation to animal matters
- Compliance with all statutory and professional requirements and rules in relation to wild animals that are part and parcel of running a wildlife sanctuary.

Jenny further comments on the training she received from Helen in that she was very clear and strict on adhering to the protocols she had set out in respect of handling the elephant.

Jenny reiterated in her statement that all matters regarding health and safety including duties and responsibilities were initiated and managed by Helen and would not be able to add any more useful information or knowledge to her statement.

In addition to the documentation already discussed above the following

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procedures/policies were provided by Franklin Zoo to the Department.

Franklin Zoo and Wildlife Sanctuary Elephant Management Program

This document gives a brief history of Mila the elephant and how she came to Franklin Zoo and her progress to date. It sets out the protocol for elephant keepers/carers including the do's and don'ts when working with the elephant. It further describes the difference between the "Free Contact" program and the "Protected Contact Management program which was used with the elephant.

DOLI 10 - Exhibit AUC/5379072/6

Franklin Zoo and Wildlife Sanctuary Emergency Procedures DANGEROUS ANIMAL ESCAPE

This procedure describes a dangerous animal by type in the Zoo and sets out a step by step procedures dealing with an emergency of this type.

DOLI 10 – Exhibit AUC/5379072/7

Franklin Zoo and Wildlife Sanctuary Operator's Manual

This document contains the history of the Zoo, long term aims, list of animals housed at the Zoo and includes specific containment requirements for all animals at the Zoo including Mila the elephant.
Of note are the specific requirements and measurements of the elephant's enclosure all of which are in accordance with MAF (now Ministry for Primary Industries) requirements and is maintained as per maintenance of enclosures and systems. (section 2.2.4 of Standard 154.03.04 MAF Biosecurity New Zealand)

DOLI 10 – Exhibit AUC/5379072/8

Franklin Zoo & Wildlife Sanctuary Workplace Health and Safety Policy

This document contains a passage for visitors to the zoo including supervision, hygiene and to keep a safe distance from the animals and not to put any part of the body inside an enclosure.

The health and safety policy for employees includes training and supervision for employees, hygiene, disinfection procedures when necessary and personal protective clothing, employee's responsibilities and fire warden duties.

DOLI 10 – Exhibit AUC/5379072/9

Hazards

The hazard at the time of the accident was the elephant which was agitated as a result of a possible electric shock from the electric fence.

Contributing causes

Failure to adhere to established elephant management protocols e.g. Helen Schofield, zookeeper, entering the enclosure ignoring the Zoo's policies and protocols. (Note: As the Zoo's owner and Director Helen Schofield was the author of all policies and protocols dealing with the elephant management program.)

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Extreme tiredness of Helen Schofield possibly resulting in an impaired judgment of the situation. (It was stated in the Zoo's accident report that due to financial constraints and lack of staff Helen had not had a day off since the elephant arrived some 2.5 years ago).

The elephant being in a heightened state of agitation due to possible electric shock.

Dr Helen Schofield slipping and falling on the paddock substrate when trying to exit the enclosure quickly.

Health and Safety in Employment Act 1992

Section 6:

As an employer (but also as the owner and director of Franklin Zoo Limited) Helen had a duty to provide and maintain a safe working environment for herself as an employee.

It could perhaps be argued that if the "gap" in the fence had not been there Helen would not have had direct access into the enclosure.

However bearing in mind that the enclosure set up including the fencing's specific dimensions and modifications were all in compliance with MAF Standards (now Ministry of Primary Industries) and taking into account the situation that had arisen (electric shock) and the determination on Helen's part to calm the elephant down it is believed Helen would have entered the enclosure anyway in some way, possibly away from the public's view and may well have resulted in the same tragic outcome.

It is the Department's view that a safe place of work clearly was not provided by Franklin Zoo Limited as the employer or maintained as soon as Helen went inside the enclosure to confront the elephant ignoring existing protocols initiated and implemented by her self.

As the employer Helen also had a duty to ensure that whilst at work she was not exposed to hazards in her place of work.

It is the Department's view that as soon as Helen went inside the enclosure she clearly exposed herself to the hazard namely the elephant in a clear agitated state. Again these were actions taken by Helen contrary her own protocols and procedures contained in the elephant management program.

As the employer Helen had a duty to develop procedures for dealing with emergencies that may arise while employees, in this case Helen, was at work.

Emergency procedures were drawn up by Helen herself in cases of animal escapes at the zoo or during transport.
There are specific protocols laid down in the elephant management program in rules 6,7,8 and 10 where it is stated that:

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6. When entering the elephant enclosure from any access gate, you must first call on the radio to alert the elephant keeper and get a response from that elephant keeper before entering.
7. No person will ever enter a pen in which the elephant is present.

8. No person to place themselves within reach of the elephant's trunk without supervision from the manager (Helen)

10. Two people to be present whenever any contact of any sort with Mila (elephant) is to occur. Both to be team members.

Clearly all of the above protocols and procedures were ignored by Helen on the day of the accident resulting in this tragic death.

Conclusions

In the two and a half years that the elephant had been at Franklin Zoo, Dr Helen Schofield had developed a uniquely close relationship with the animal. The elephant responded particularly well under Dr Schofield's care and the elephants care and welfare had improved dramatically.

This resulted in increased levels of confidence working around the animal and Mr Buley, the author of the investigation report believes that this evolving relationship may have "lulled" Dr Schofield into believing that she could safely interact with the elephant outside of the established Protected Contact protocols.

By going outside of these protocols Dr Schofield exposed herself, on the day of the accident, to a significant higher level of risk in the management of the elephant ultimately and tragically resulting in her demise.

As previously stated the Franklin Zoo Limited had systems and procedures in place to deal with hazards and emergencies all written by Dr Schofield.

Dr Schofield as the owner/director of the zoo was responsible for the day to day running of the Zoo and as such had full responsibility for the care of all animals particularly the day to day care and management of Mila the elephant.

It would appear from records obtained that as from 1st April 2012 Franklin Zoo Charitable Trust was the sole owner of the Zoo. However being registered under the Charities Act has no impact on an organisation's legal status so organisations registered with the Charities Commission, which Franklin Zoo limited is will still need to comply with these other Acts such as the Companies Act 1993.

Compliance with the Health and Safety in Employment Act 1992

It is evident from the information gathered that on the day of the accident there had been non compliance with the Act.

Helen Schofield as the owner and director and employee was clearly in

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breach of the protocols and procedures that had been written specifically with health and safety in mind (and authored by Helen) when interacting with Mila the elephant in some way.

As stated earlier it would appear that Helen of her own accord made the decision to enter the elephant enclosure to calm the elephant down after it got upset due to what was believed to have been an electric shock from the electric fence surrounding the enclosure.

For reasons only known to Helen she entered the enclosure to physically face the elephant completely ignoring and against all established safety protocols that the zoo had put in place to minimise exposure to risk to the hazard which in this case was Mila the elephant who was clearly in an agitated state.

From eyewitness accounts it is clear that the elephant charged at Helen as she confronted the elephant .The elephant then picked Helen up and put her down again on the ground inside the enclosure somewhere in the process inflicting injuries to Helen ultimately resulting in her demise.

Whilst it could be argued that on the day of the accident Franklin Zoo Limited was "technically' in breach of the zoo's own protocols, it is the Department's view, taking into account the possible misjudgement of the agitation level of the elephant due to Dr Schofield's extreme fatigue resulting in the actions that Dr Schofield took on the day of the accident, (actions contrary established protocols authored by herself), and Dr Schofield's position within the company and the zoo including her being in charge of and the author of the aforementioned health and safety policies, safety procedures and protocols little is to be gained by recommending enforcement action be taken against Franklin Zoo Limited.

Recommendations

That no enforcement action be taken against Franklin Zoo Limited.

That prior to the Zoo re opening the Franklin Zoo Limited will:

- Retrain all staff regarding the danger that elephants can pose and the importance of adhering to formal working protocols/procedures.
- Closing off the keeper access "gap" to the paddock closest to the visitor viewing area (the gap through which Dr Schofield passed to enter the enclosure). This is to discourage visitors from potentially trying to enter the paddock area themselves. (At the time of this writing the re-opening of the Zoo is still to be determined).
- Moving of picnic tables away from the visitor viewing area so that zoo visitors cannot use these tables to more easily climb over the viewing fence (re-opening date of zoo still to be determined)

In addition to the matters above the Franklin Zoo Limited having consulted with Mr Kevin Buley of Auckland Zoo, will address the following matters prior to re-opening the Zoo:

As per Franklin Zoo accident investigation report on DOLI 10 – Exhibit AUC/5379072/19

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- Installation of a replacement paddock gate to enable the elephant to be more easily secured in the paddock or in the barn/pen area (to be completed by end of June 2012)
- Installation of weld mesh around the internal barn doors and installation of door braking systems to enable safe operation of doors when the elephant is in the barn (to be completed by end of June 2012)
- Recruitment of full-time elephant keepers (to be completed by end of June 2012)
- Installing taller gates at the "zebra gate" area and raising the height of the surrounding fence to prevent visitors from climbing into a restricted elephant area (re-opening date of zoo still to be determined)
- Finalise, publish and communicate revised 'Protected management' elephant management protocols to be completed before the animal re-enters a protected Contact regime – likely Sept/Oct 2012.
- Providing appropriate 'Protected Contact' training from elephant management experts to enable the animal to be moved from the current 'No Contact' management regime to a 'Protected Contact' management regime. (Protected Contact management needs to be re-established to ensure that the welfare of the elephant is maintained and that the appropriate training can be conducted to prepare the animal for export out of New Zealand (training likely to commenced by Oct 2012)
- Progress plans to export the elephant to an elephant facility outside of New Zealand (completion date not likely before May 2013)