

DOLI 6  
**Summary of  
 Evidence**



**Facts**

Zion Wildlife Services Ltd (ZWS) is a limited liability company having its registered office at Zion Wildlife Gardens Ltd (ZWG) Gray Road, R D 1 Kamo, Whangarei. The nature of the business operated by ZWS appears to be that of a supplier of labour to ZWG.

ZWG is a limited liability company having its registered office at Gray Road, R D 1 Kamo, Whangarei. The nature of the business operated by ZWG is that of a zoo where paying visitors come to view and, prior to 28 May 2009, in some cases interact with some of the lions and tigers and other animals on-site. ZWG in relation to ZWS were operating as either the **person in control of the place of work** that makes up the operations at Gray Road, or as a **principal** to ZWS having engaged them as a **contractor** to supply ZWS **employees** to undertake work required to operate the ZWG facility.

Country Developments Ltd (CDL) is a limited liability company having its registered office at Zion Wildlife Gardens Ltd (ZWG) Gray Road, R D 1 Kamo, Whangarei. The nature of the business operated by CDL is that of landowner / developer and ZWG apparently leases the property at Gray Road from CDL.

On 27 May 2009 Patricia Elaine Busch (Mrs P Busch) was the Managing Director ZWS, ZWG and CDL. She was the sole shareholder for ZWS and CDL. She also held a 25% shareholding in ZWG.

ZWG operates under the Ministry of Agriculture and Forestry (MAF) Biosecurity New Zealand (MAFBNZ) Standard 154.03.04 Containment Facilities for Zoo Animals (Zoo Standard). The Zoo Standard is approved by the Environmental Risk Management Authority (ERMA) under the Hazardous Substances and New Organisms Act 1996 and by MAF pursuant to Sections 39 and 40 of the Biosecurity Act 1993.

The Zoo Standard requires a facility such as ZWG to have approval from MAF to operate and to meet the requirements it and the Zoo Standard imposes. MAF also subjects facilities such as ZWG to regular audits and inspections by MAFBNZ Inspectors. Documents received from MAFBNZ indicate that they were undertaking audits and inspections on a regular basis of the ZWG site and operations.

Clifford Dalu Mncube (Mr Mncube) was on 27 May 2009 an **employee** of ZWS. ZWS **employed** Mr Mncube in the position of animal handler and wildlife sanctuary assistant. Part of Mr Mncube's role was to plan activities and work with the big cats on a day-to-day basis around the interaction and group tours. Mr Mncube had commenced employment with ZWG in 2005 and on 29 June 2007 his employer was changed from ZWG to ZWS under the same employment terms and conditions.

**Where Evidence  
 Recorded & How  
 Element Proved**

DOLI 11/29

DOLI 11/29

DOLI 11/29

DOLI 11/29

DOLI 11/20

DOLI 11/20

DOLI 11/23 Mncube IEA

**Facts (cont.)**

On 27 May 2009 Mr Mncube was also responsible for providing training and day to day leadership for other employees of ZWS involved in animal handling under instruction from Glen James Holland (Mr Holland) and Mrs Busch.

Napoleon Marthinus Ferreira (Mr Ferreira) who is generally known on site as Martin was on 27 May 2009 an **employee** of ZWS. ZWS **employed** Mr Ferreira in the position of animal handler and wildlife sanctuary assistant and in his day to day work he was expected to conduct tours, clean enclosures.

9(2)(a) who is generally known on site as 9(2) was on 27 May 2009 an **employee** of ZWS. ZWS **employed** 9(2)(a) in the position of building assistant with duties that involved erecting and maintaining buildings, tracks and other facilities within the ZWG site.

9(2)(a) was on 27 May 2009 an **employee** of ZWS. ZWS **employed** 9(2)(a) in the position of animal handler and wildlife sanctuary assistant including truck driving with duties which included conducting group tours and assisting as required in other areas. In addition to his paid employment with ZWS 9(2)(a) was also a volunteer at ZWG on some days each week.

9(2)(a) was on 27 May 2009 an **employee** of ZWS. ZWS **employed** 9(2)(a) in the position of joint office manager, retail and tours with duties associated running the retail shop/office.

9(2)(a) was on 27 May 2009 an **employee** of ZWS. ZWS **employed** 9(2)(a) in the position of wildlife sanctuary assistant with duties that involve assisting with office administration work, some marketing, etc.

9(2)(a) who is generally known on site as 9(2) was on 27 May 2009 an **employee** of ZWS although he was on leave and in South Africa on this date. ZWS **employed** 9(2)(a) in the position of animal handler and wildlife sanctuary assistant with duties that included assisting with animal encounters, cleaning and maintenance.

ZWG was on 27 May 2009 the **principal** to a **self employed contractor** Mr Holland who was trading as Wildlife Connections and who had been engaged to provide advice and information and to fulfil the Licensed Operator role under MAFBNZ rules. There was a formal contract document between the parties for this work and Mr Holland had authority to speak on behalf of ZWG in his role as the "Operator".

ZWS, ZWG and CDL were on 27 May 2009 the **principals** to a **self-employed contractor** 9(2)(a) who is commonly known as 9(2)(a) had been engaged by the companies to fulfil the role of Operations Manager for Staffing and Security at the ZWG site.

Where Evidence Recorded & How Element Proved
DOLI 09 Holland
DOLI 11/23 Ferreira IEA DOLI 9 Ferreira
DOLI 11/23 9(2)(a) DOLI 9 9(2)
DOLI 11/23 9(2)(a) IEA DOLI 9 9(2)(a)
DOLI 11/23 9(2)(a) 9(2)(a) IEA DOLI 9 9(2)(a)
DOLI 11/23 9(2) IEA DOLI 9 9(2)
DOLI 11/23 9(2)(a) IEA DOLI 9 9(2)(a)
DOLI 11/7 ZWG & Holland Contract DOLI 9 Holland
DOLI 11/7 ZWG, ZWS & CDL / 9(2) Contract DOLI 9 9(2)

**Facts (cont.)**

9(2)(a) was on 27 May 2009 resident at the ZWG site. 9(2)(a) is the daughter of 9(2)(a) 9(2)(a) undertakes some work around the ZWG site and has previously been involved with raising cubs.

9(2)(a) a friend of 9(2)(a) was staying at the ZWG site on 27 May 2009 and assisting with tours and basic animal care.

On 27 May 2009, approximately 42 wild animals were held in physical containment at the park, consisting of lions, tigers, cheetahs, servals, a black leopard and a baboon. These animals are under the care of ZWG for their upkeep and welfare, with such work actually being undertaken by employees of ZWS. CDL provides the facilities and containment for the wild animals.

Amongst these wild animals were two (2) white Bengal tigers, a male called Abu and a female called Rewa. According to the records of ZWG Abu was born 13 June 2001 and acquired 10 January 2002 from the Wildwood Endangered Animal Sanctuary in Oregon, USA, arriving in New Zealand on 4 June 2002. These two tigers, Abu and Rewa, were not animals that were used for interactions with the public.

On 18 February 2009 Abu attacked ZWS employee Demetri Nicholas Price (Mr Price) while the tiger was being relocated along with the female Rewa from another enclosure into Enclosure 9. This attack resulted in serious harm to Mr Price. This Department was still investigating this event on 27 May 2009. Mr Mncube was also involved in this incident and was hailed as a hero for getting Abu off Mr Price during the attack.

On 26 May 2009 an adjourned Employment Authority hearing into a claim by Craig Busch (Mr Busch) for unjustified dismissal was reconvened at the Department of Labour's Whangarei offices with Authority Member Yvonne Oldfield (The Authority) presiding. This hearing was taking evidence from a number of the employees of ZWS and contractors to ZWS and ZWG. It was set down for three days.

On the morning of 27 May 2009 most employees of ZWS arrived on site at their usual starting times of between 0800 and 0830. Mr Holland was also present at this time as there was a booked 'big cat encounter'. MAFBNZ had previously placed a requirement on ZWG to ensure that the MAF Approved Operator be present for all big cat interactions with the public.

Two English tourists, 9(2)(a) 9(2)(a) had booked a 'big cat encounter' for the morning of 27 May 2009. 9(2)(a) and 9(2)(a) arrived at the retail shop from Dargaville at approximately 0845 and were about 15 minutes late. 9(2)(a) contacted Mr Holland by radio to let him know that these ladies had arrived. In addition she radioed Mr Mncube to prepare the cat for the interactive.

**Where Evidence Recorded & How Element Proved**

DOLI 9 9(2)(a)

DOLI 11/21 Police Statement by 9(2)(a)

Reference Enclosure 9 somehow

DOLI 9 Ferreira, 9(2)(a) 9(2)(a) 9(2)(a)

DOLI 11/21 Police Statements by 9(2)(a) & 9(2)(a) DOLI 09 9(2)(a)

**Facts (cont.)**

While waiting for Mr Holland to arrive to take 9(2)(a) and 9(2)(a) up for their 'big cat encounter' three more visitors "walked in" seeking a guided tour. These were 9(2)(a) her daughter 9(2)(a) from England and their taxi driver 9(2)(a)

Mr Holland invited the 9(2)(a) and 9(2)(a) to go with him to observe the 'big cat encounter' 9(2)(a) and 9(2)(a) were about to take part in then join a guided tour.

9(2)(a) placed signs at the door to the retail shop and at the gate stating 'Cat Interaction or Encounter taking place, no-one beyond this point'. Mr Ferreira was given a lead by Mr Mncube and went to collect a young lion Sabili from its enclosure for the encounter. The interactive lion encounter itself lasted about 20 to 25 minutes and involved 9(2)(a) and 9(2)(a) being able to pat the lion and pose for photographs with it.

With the 'big cat encounter' was completed Mr Mncube at about 9.20 a.m. called 9(2)(a) on the radio to come and take 9(2)(a) and 9(2)(a) on the guided tour. Mr Mncube took the lion on its lead to put it back in its enclosure. As he walked the lion through the pathway behind Enclosures 10 and 11 he noticed that the lion wanted to play with the low-hanging branches of a tree overhanging the pathway.

Once the lion was locked back in its enclosure Mr Mncube notified 9(2)(a) that the Park could reopen. Mr Mncube handed 9(2)(a) and 9(2)(a) over to 9(2)(a) when he arrived, took them along with the 9(2)(a) and 9(2)(a) on a guided tour through the rest of the ZWG site starting near Enclosures 17.

While 9(2)(a) was taking the visitors on the guided tour Messrs Mncube and Ferreira agreed that it was close enough to smoko so they stopped for their morning tea break in the Barn. They were joined at their break by 9(2)(a) who recalled that this was about 10 o'clock.

During the break they discussed the ongoing Employment Authority Hearing as well as other matters. Mr Mncube talked with 9(2)(a) the issue of the low hanging tree branches and asked 9(2)(a) to have a look at them with him after the break.

After the break Messrs 9(2)(a) and Mncube went down to the area behind Enclosures 10 and 11 to look at the low hanging branches. After a brief discussion it was agreed that 9(2)(a) would trim the branches back so that they did not hang down and distract the lions when being walked through that area.

After the discussions 9(2)(a) went and got the chainsaw and the required PPE (chainsaw chaps, helmet and hearing protection) and put them on the 1-tonne dumper known on site as the Maggot.

Where Evidence Recorded & How Element Proved
DOLI 11/21 9(2)(a) 9(2)(a)
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DOLI 11/21 9(2)(a) 9(2)(a)
DOLI 9 9(2)(a)
DOLI 09 Ferreira DOLI 9 9(2)(a) DOLI 11/21 Police Statements 9(2)(a) 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 11/21 9(2)(a) 9(2)(a)
DOLI 9 9(2)(a) DOLI 9 Ferreira
DOLI 9 Ferreira
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)

**Facts (cont.)**

Mr Mncube then caught up with Mr Ferreira to start the cleaning of the enclosures. They were accompanied by 9(2)(a) who came along with them observing from the outside and taking photos now and then. 9(2)(a) stated that she joined them at about 10.30 a.m. They started at Enclosure 5 or 6.

The cleaning work consisted of picking up all the bones and faeces on the ground in the enclosures. The tools used by Messrs Mncube and Ferreira to do this consisted of a wheelbarrow, a shovel, and a stick to flick the bones or faeces onto the shovel then into the wheelbarrow. 9(2)(a) observed that on entering each enclosure Messrs Mncube and Ferreira were interacting with the animals including patting and cuddling them.

At about 10.30 a.m. a New Caledonian family consisting of mother, father and two boys came into the retail shop. 9(2)(a) said that as they were French speakers with very limited English and that it took a little while to establish what they wanted.

9(2)(a) radioed Mr Mncube and informed that she had an 11 o'clock tour due and asked if he had someone who could come down to take it. Mr Mncube said that he would come down and that he would be there in 5 minutes.

Mr Mncube arrived at the retail shop at about 10.45 a.m. and told 9(2)(a) that he would take the New Caledonian family and hand them over to 9(2)(a) who was up the top by Enclosures 5 and 6 with the earlier tour group.

After cleaning several enclosures Mr Ferreira stated that Mr Mncube changed the routine by saying that instead of cleaning Enclosure 2 next with the three young tigers in, that they go and clean Enclosure 9 containing Abu, a male white tiger and Rewa, a female white tiger.

Enclosure 9 was a large, sloping enclosure on the northern side of the small stream running through the ZWG site. The enclosure could be entered through a large steel frame gate and included a separate den box into which animals in it could be secured.

By this time 9(2)(a) and the tour group were at Enclosure 9 where they observed the male tiger Abu in the den and that they spent a few minutes watching the female tiger Rewa in the main enclosure. This was the last stop on the guided tour and 9(2)(a) then took the group back up from Enclosure 9 so they could return to the gift shop.

When they arrived at Enclosure 9 Mr Mncube unlocked it and Messrs Mncube and Ferreira went into the animal enclosure. Mr Ferreira stated that he was pushing the wheelbarrow and that Mr Mncube had the spade and stick. They only opened the gate enough to get themselves and the wheelbarrow through. 9(2)(a) recalls that Mr Ferreira was pushing the wheelbarrow but could not recall if Mr Mncube was carrying anything.

Where Evidence Recorded & How Element Proved
DOLI 9 Ferreira
DOLI 11/21 Police Statement by 9(2)(a)
DOLI 9 Ferreira
DOLI 11/21 Police Statement by 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 Ferreira
DOLI 11/21 Police scale drawings
DOLI 9 9(2)(a)
DOLI 9 Ferreira
DOLI 11/21 Police Statement by 9(2)(a)

**Facts (cont.)**

Mr Ferreira stated that the female tiger Rewa came up to him as she was very friendly. He stated that the Abu appeared to be sleeping or lying in the den when they first entered the enclosure. **9(2)(a)** stated that Abu was in the den when Messrs Mncube and Ferreira entered the enclosure.

**9(2)(a)** when he saw Messrs Mncube and Ferreira entering Enclosure 9 he stopped the tour group and said to them “oh there he is, there’s Abu, the biggest white tiger we’ve got” as he saw Abu emerge from the den.

**9(2)(a)** stated that the male tiger Abu was looking out from inside the den and walked straight out to Mr Mncube. She stated that the tiger was not making any sounds and to her did not look like he was in attack mode or anything.

Mr Ferreira was about 2 metres from Mr Mncube when he saw Abu come out of the den and go towards Mr Mncube. He said that he heard Mr Mncube greet Abu with a ‘hello’. Mr Ferreira said that he could see the tigers face and that things didn’t look right.

Mr Ferreira said that before he could warn Mr Mncube about Abu not looking right that it (the tiger) had grabbed the upper leg of Mr Mncube. **9(2)(a)** stated that the tiger grabbed Mr Mncube by the leg with his mouth she remembers that it was around the knee area.

About this time **9(2)(a)** who had been focussed on talking to the tour group caught movement out of the corner of his eye and saw that the tiger appeared to be up against Mr Mncube

Mr Ferreira stated that Mr Mncube appeared very calm and said to him “Martin, help me please”. Mr Ferreira started hitting the tiger on the nose area with the stick. **9(2)(a)** said she moved further along the side of the fence and felt shocked and helpless.

**9(2)(a)** stated that he could not hear any growling noise or snarling from the tiger. He stated that he saw Mr Mncube punch the tiger. He stated that he heard Mr Mncube say “help me Martin, I’m in trouble”. He then directed that his tour group stay where they were and ran back down the pathway to Enclosure 9 where the attack was occurring.

The tiger then started growling and tried to drag Mr Mncube into the den. Mr Ferreira said that Mr Mncube grabbed hold of the rail running across the top of the doorway into the den to keep from being dragged in. Mr Ferreira states that Mr Mncube was still very calm and that he looked at him and said “this is serious mate, just please help me”

**9(2)(a)** said that only Mr Mncube’s legs were sticking out of the den and that Mr Ferreira was still trying to hit the tiger about the head with the stick. **9(2)(a)** said that when he arrived at the enclosure gate that Mr Mncube was being dragged by his left shoulder into the den.

<b>Where Evidence Recorded &amp; How Element Proved</b>
DOLI 9 Ferreira
DOLI 11/21 Police Statement by <b>9(2)</b>
DOLI 9 <b>9(2)(a)</b>
DOLI 11/21 Police Statement by <b>9(2)</b>
DOLI 9 Ferreira
DOLI 9 Ferreira
DOLI 11/21 Police Statement by <b>9(2)</b>
DOLI 9 <b>9(2)(a)</b>
DOLI 9 Ferreira
DOLI 11/21 Police Statement by <b>9(2)</b>
DOLI 9 <b>9(2)(a)</b>
DOLI 11 Ferreira
DOLI 10 Photo Exhibit NTH/498/0019
DOLI 9 Ferreira
DOLI 11/21 Police Statement by <b>9(2)</b>
DOLI 9 <b>9(2)(a)</b>

**Facts (cont.)**

Mr Wickenden took the CO<sup>2</sup> fire extinguisher from its box at the corner just above the main gate to the enclosure. As the tiger had partially dragged Mr Mncube into the den 9(2)(a) then fired a blast of the fire extinguisher through the peep hole in the door.

Both Messrs 9(2)(a) and Ferreira said when interviewed that they had been concerned that the fire extinguisher could cause harm to Mr Mncube so the blasts from it were short ones.

While this was going on Mr Ferreira was still trying to hit the tiger but with little success as it was inside the den and there was limited effect from the hitting due to the height of the animal entrance (1.11 metres).

9(2)(a) then tried to throw the fire extinguisher over the fence to Mr Ferreira but as the extinguisher weighed about 3.5 kg and the fence was 3 to 3.5 metres high he was unable to do so. A decision was made by Messrs Ferreira and 9(2)(a) that they would briefly open the gate, hand the fire extinguisher in and close the gate again which they did.

At about this time 9(2)(a) used his radio to call "Code Red, Code Red, Code Red – Abu and Dalu". This alerted all staff within the park with radio's that there was a major emergency taking place and where.

9(2)(a) who had been working with the chainsaw clearing the low hanging branches behind Enclosures 10 and 11 wearing hearing protection and the other PPE heard 9(2)(a) calling "Dalu, Dalu" as he finished the work was putting the chainsaw down and taking off the helmet and hearing protection.

Mr Ward said he looked in the direction the voices had come from and could see what looked like a mass of bodies moving very quickly from his right to left towards the den. He heard Mr Ferreira calling for the prodder (cattle prodder).

9(2)(a) said he took off to get the prodder from the 'Tardis', a small round shed outside the Barn. He said that he was still wearing the chainsaw chaps while running and started reaching down to take them off as he ran as they were hindering his movements. At the same time 9(2)(a) ran across to Enclosure 12 to get another fire extinguisher.

9(2)(a) who had realised that the tour group 9(2)(a) had been leading was still watching went to them and started escorting them away from Enclosure towards the barn and the main gates.

The tiger had now come out of the lockup or den box and started to drag Mr Mncube down the fenceline. 9(2)(a) was spraying the tiger in the face with the fire extinguisher but to no avail; it would not release Mr Mncube.

Where Evidence Recorded & How Element Proved
DOLI 9 9(2)(a) & Ferreira DOLI 10 Photo Exhibit NTH/489/0013 DOLI 10 Photo Exhibit NTH/489/0020
DOLI 9 9(2)(a) & Ferreira
DOLI 9 9(2)(a) & Ferreira DOLI 11/3
DOLI 9 9(2)(a) & Ferreira
DOLI 9 9(2)(a) & 9(2)(a)
DOLI 9 9(2)
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DOLI 9 9(2)
DOLI 9 9(2)(a)
DOLI 11/21 Police Statement by 9(2)
DOLI 9 Ferreira

**Facts (cont.)**

The tiger continued to drag Mr Mncube down the fenceline and about this time 9(2)(a) arrived with the cattle prod. As he had run back from the 'Tardis' to Enclosure 9 along the pathway above Enclosures 7 and 8 he had to run around the end of Enclosure 9 to get to the lower side of it where Mr Mncube and the tiger were up against the fence.

9(2)(a) was able to get the cattle prod through the fence and pushed into the face of the tiger. He stated that the tiger seemed to just absorb the shock for perhaps three to four seconds before it released Mr Mncube and jumped back. When it did so he left the cattle prod dangling through the fence above the prone Mr Mncube as a deterrent.

The tiger then came back in and grabbed Mr Mncube again, this time in the upper body area and dragged or flicked him away from the fence. Mr Ferreira then came down to the fence where 9(2)(a) was and they tried to get the cattle prod through but it would not fit, nor could it be thrown over the top of the fence due to the risk of it being damaged.

Both Messrs 9(2) and Ferreira ran to the gate and the cattle prod was passed through. Mr Ferreira then went back towards the tiger and Mr Mncube, as he approached the tiger it started to bite Mr Mncube about the neck and head. Mr Ferreira said he could hear the bones cracking. At this point he said he knew that Mr Mncube was probably dead.

While 9(2)(a) ran to get a firearm from the gun cabinet in the 'Tardis' to shoot the tiger Mr Ferreira used the prod on the tiger to try and get it to move away from the prone Mr Mncube, resulting into the tiger dragging Mr Mncube towards the centre of the enclosure under the trees. A brief discussion between Messrs 9(2)(a) and Ferreira also took place, with Mr Ferreira asking for help and 9(2)(a) saying 'we can't come in as both tigers are still within the enclosure'.

9(2)(a) called for a vehicle to be brought down to Enclosure 9 to carry Mr Mncube out and towards the main gates. 9(2)(a) arrived on a quad bike and 9(2)(a) said 'no, we need an enclosed vehicle' and she left to get a ute from the house above Enclosure 2.

9(2)(a) returned with a shotgun and from the top side of the enclosure looked to see if he could shoot the tiger, but it was not possible. Mr Ferreira asked 9(2)(a) not to shoot the tiger, at least not yet. 9(2)(a) then went around the end of the enclosure to about the position he was in when he had used the cattle prod.

At about the same time 9(2)(a) had arrived at the main gate to the enclosure as she was trained in First Aid. Abu, the tiger had moved away from Mr Mncube and was sitting on the lower of two large rocks and Mr Ferreira was standing alongside the body of Mr Mncube with the cattle prod. Mr Ferreira was asked by 9(2)(a) to attempt CPR on Mr Mncube but said he couldn't as he would have had to have bent down and taken his attention off the two tigers.

Where Evidence Recorded & How Element Proved
DOLI 9 9(2)
DOLI 9 9(2) & Ferreira
DOLI 9 9(2) & Ferreira
DOLI 9 Ferreira
DOLI 9 9(2)
DOLI 9 Ferreira
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)(a)
DOLI 9 9(2)
DOLI 9 9(2)(a)
DOLI 9 Ferreira
DOLI 9 9(2)



**Facts (cont.)**

9(2)(a) said that they did not want to shoot the tiger and that they decided to try and get the vehicle (the ute) into the enclosure. 9(2)(a) said he felt comfortable that he could do that. When they went to open the gate to get the vehicle in the tiger (Abu) “challenged” them. It did not aggressively charge them but did get up immediately and go towards them.

Messrs 9(2)(a) Ferreira and 9(2)(a) talked with others, including having 9(2)(a) calling Mrs P Busch on the radio and asking for permission to shoot the tiger. 9(2)(a) positioned himself along the lower fenceline of the enclosure and fired up at the tiger Abu that was sitting on the lower of two large rocks.

9(2)(a) said he fired the first of three shots at the tiger from this position. The tiger appeared to have been wounded by the shots but was still able to get up and move around, although did not look to be comfortable.

9(2)(a) then handed the shotgun to 9(2)(a) before he could drive the ute in opened the gate and dragged a small log out of the way so it didn't impede the vehicle. 9(2)(a) drove the ute into the enclosure with 9(2)(a) opening to allow him in and immediately closing the gate behind him.

9(2)(a) drove the ute parallel with the bottom fence of the enclosure up to where Messrs Mncube and Ferreira were just on the edge of the trees. When he hopped out of the ute he told Mr Ferreira to watch the tigers and that he would get Mr Mncube into the back of the ute.

Despite his best efforts 9(2)(a) was unable to lift the body of Mr Mncube and so Mr Ferreira helped him. 9(2)(a) got back into the drivers seat and Mr Ferreira got in behind him but on the same side. He then reversed down towards the bottom corner of the enclosure (effectively a three point turn) before driving back towards the gate.

9(2)(a) opened the gate again to allow the ute with Messrs Mncube, 9(2) and Ferreira back out. 9(2)(a) stopped briefly to make sure that they got the gate was closed again. As soon as he was sure the gate was locked he drove off towards the front gates of the Park.

9(2)(a), who had come down to the main gate to care for the visitors and coordinate things and saw the Ambulance coming down the road as Messrs 9(2)(a) Ferreira and Mncube arrived. 9(2)(a) unlocked the gate to allow the Ambulance in.

The Ambulance personnel examined Mr Mncube who was still in the back of the ute and observed that he had significant head, facial and throat injuries, along with multiple puncture wounds to the upper body. They found him to be unconscious / unresponsive with no respiratory effort or palpable pulse. When they placed a monitor on Mr Mncube it showed asystole. Based on their observations they believed that life was extinct and did not attempt resuscitation.

Where Evidence Recorded & How Element Proved
DOLI 9(2)(a)
DOLI 9(2)(a), Ferreira 9(2)(a) DOLI 11/21 Police scale plan
DOLI 9(2)
DOLI 9(2) DOLI 9(2)(a)
DOLI 11/21 Police scale plan DOLI 9(2)
DOLI 9(2) DOLI 11/21 Police scale plan
DOLI 9(2)
DOLI 9(2) DOLI 9(2)
DOLI 11/12 St John Patient Report Form
Add to Glossary Asystole

**Facts (cont.)**

Notification & Response

The tiger attack on Mr Mncube was reported by phone to the Department of Labour's Contact Centre by Police and Mrs P Busch at approximately 11.30 a.m. as a serious harm event and promptly passed to the Whangarei office of the Department for action. Mr Holland also notified Health and Safety Inspector Mark Montgomery (Mr Montgomery) of the attack personally.

Whangarei based Health and Safety Inspectors Mr Montgomery and Shona Kelly (Ms Kelly) were tasked by their Service Manager, Ian Baxter (Mr Baxter) with the investigation into this event with Mr Montgomery to be the lead.

Before they could respond to the site confirmation was received from Police that Mr Mncube had died because of the injuries he had received in the attack. Mr Montgomery contacted Rachelle Linwood (Ms Linwood), Team Manager, Animal Imports from MAF Head Office and informed of the attack and the resulting death. Ms Linwood asked that they be kept informed and that she would be back in touch with details of the MAF response to this event.

Mr Montgomery and Ms Kelly arrived at ZWG at approximately 12.10 p.m. Once on site they met with the Police Officer-in-charge Inspector Paul Dimery (Inspector Dimery) and discussed what had occurred, the location of all witnesses and the safety of other people along with the animals (on behalf of MAF) within the facility. They also discussed the status of the tiger involved and confirmed with Police that it had been shot and killed by park employees just after Police had arrived on scene.

It was agreed that for the initial investigation they would form a joint Investigation Team comprising Mr Montgomery, Ms Kelly and Inspector Dimery and that they would ensure that throughout the various agency investigations that they would keep each other informed.

The body of Mr Mncube was still in the rear of the ute he had been brought down to the gate in and this was parked just off to the side of the main entrance. The Investigation Team walked to the enclosure where the attack had taken place. They viewed and photographed the dead tiger that had been dragged out of the den by ZWS employees after it was killed so that the female tiger Rewa could be secured.

They also looked at the general setup in the enclosure without entering it. Employees of ZWS had managed to get the female tiger Rewa secured in the den after removing the body of Abu. Inspector Dimery advised that he had called for the Police photographers to attend and for the Serious Crash Unit (SCU) to record the scene within the enclosure and trajectories of the shots fired.

Where Evidence Recorded & How Element Proved
DOLI 11/1
DOLI 11/1
DOLI 11/3 Notebook Entries - Montgomery
DOLI 9 <b>9(2)</b> & Ferreira
DOLI 21 Police Photos _MG_8642 to 8645
DOLI 10 Exhibit NTH/498/0002
DOLI 11/21 Police scale plan

**Facts (cont.)**

After viewing the body of Mr Mncube at about 12.40 p.m. the Investigation Team agreed that they needed to have a detailed look at the scene within the enclosure. Inspector Dimery, Mr Montgomery and the Police Photographer entered Enclosure 9 at about 12.55 p.m. Arrangements were made for them to be guarded whilst in the enclosure by **9(2)(a)** who would be armed with the Magnum rifle.

The Investigation Team received advice that the Northland Coroner Brandt Shortland (Coroner) had arrived and leaving the Police Photographer under armed guard in Enclosure 9, made their way back to the main gate. The Investigation Team met with the Coroner and briefed him on the facts available to them at that time.

They worked with the Coroner to ensure his needs were met in terms of the Coronial Investigation. After viewing the body of the deceased the Coroner and the investigation Team made their way down to Enclosure 9. Again they briefed the Coroner on what had occurred there.

To allow the Senior Constable from SCU to adequately survey and map the scene inside Enclosure 9, Police asked Mr Holland if it was possible to relocate the remaining tiger Rewa to another enclosure. After some discussion it was agreed that the employees on-site had neither the equipment required nor their heads in the right space to attempt this at present. Agreement was reached that fixing heavy steel mesh across the front of the den would provide adequate protection for the SCU whilst undertaking the survey, and ZWS employees did this.

After further discussions with Mr Holland it was agreed that the Auckland Zoo veterinary team would be on-site the following day to tranquilise the remaining tiger, Rewa, in Enclosure 9 so that the final part of the scene examination could be completed.

During discussions with Police and MAF Mr Montgomery had raised concerns regarding maintaining the welfare of the cats. He had checked with Mr Holland if anything urgently needed to be done and was advised that there was no immediate need for employees to enter enclosures for the next 24 hours at least.

MAF Team Manager, Operations & Facilities Howard Hamilton (Mr Hamilton) telephoned Mr Montgomery to confirm that they had directed that the facility close to the public pending further investigations. Mr Hamilton also advised that he and his manager would be in Whangarei and visiting the site the following day as part of MAF's investigations.

Mr Montgomery discussed the investigation with both Mrs P Busch and Mr Holland at about 1.30 p.m. He verbally directed that effective immediately no employees or other persons were to enter any enclosure where the animals were not able to be isolated by being locked away in dens or another area away from the primary enclosure, and that this would be reviewed the next day with MAF officials.

**Where Evidence Recorded & How Element Proved**

DOLI 10 Photo Exhibits  
NTH/498/0003-0004,  
0006-0007, 0009-0011  
DOLI 21 Police Photos  
\_MG\_9654 to \_MG\_8696

DOLI 10 Photo Exhibit  
NTH/498/0012

DOLI 11/3

**Facts (cont.)**

As it was unclear what may have lead to the attack on Mr Mncube by the tiger Mr Montgomery sourced (through MAF) a specialist animal pathologist to undertake a full necropsy on the tiger the next day to determine if there was anything physiologically or chemically wrong with it.

Mr Montgomery ensured that his Manager Mr Baxter was kept informed. He also kept in touch with MAF, primarily through Ms Linwood. The Investigation Team were aware of the high level of media interest with TV crews arriving by road and helicopters flying over the scene to film it.

Ms Kelly took contemporaneous notes and brief statements from some of the witnesses. Police interviewed the visitors who had made up the tour group, in some cases with the assistance of interpreters.

Mr Montgomery explained to Mr Holland and Inspector Dimery that he had arranged for a necropsy on the dead tiger by a person recommended to him by MAF for the following day. He directed that the body of the tiger be removed from its current location and placed in a chiller (not freezer) and not be disturbed.

After confirming with Mr Holland that the body of the tiger was secured Mr Montgomery informed him that they would be back the next day to continue the investigation. The Investigation Team then met in the retail shop at the main gate to discuss what might be provided to the waiting media, to debrief and discuss the investigation going forward.

Inspector Dimery advised that they had arranged for a number of the ZWS employees to travel to the Whangarei Police Station the following morning to be formally interviewed, and that the Department was welcome to observe and assist.

With the debriefing completed Mr Montgomery and Ms Kelly left the site for the day. They returned to their Whangarei office to brief Mr Baxter and commence the formal internal reporting processes.

On 28 May 2009 Mr Montgomery met with Mr Hamilton and his manager, Clive Gower-Collins (Mr Gower-Collins), MAF Group Manager, Operations & Facilities, at the Department's Whangarei offices and discussed with them the previous day's events and showed them the photographs taken by him. It was agreed that they would meet up and discuss matters during the course of the day at ZWG.

Mr Montgomery and Ms Kelly went to the Whangarei Police Station at 9 o'clock to meet with Inspector Paul Dimery and his team to discuss and observe the interviews with ZWS employees as arranged yesterday with ZWS and ZWG management.

**Where Evidence Recorded & How Element Proved**

DOLI 11/3

DOLI 11/21

DOLI 10 Photo Exhibit  
NTH/498/0014

**Facts (cont.)**

When the ZWS employees did not turn up as arranged Mr Montgomery contacted Mr Holland to try and find out what was happening. Mr Holland advised that the Auckland Zoo team are on-site and staff cannot be released. Inspector Dimery determined that Police will go to park in numbers and complete the required interviews on-site.

Mr Montgomery and Ms Kelly follow Police to ZWG site. They meet with Auckland Zoo team and observed the processes for relocating the required animals. After the Auckland Zoo veterinary team had tranquilised and removed Rewa the remaining tiger from the Enclosure 9 den. Once Rewa was removed Mr Montgomery examined the den, measuring and taking photographs of the interior of it.

Mr Montgomery spoke with Mr Nalder and determined his role in the work at ZWG. Mr Nalder confirmed he could speak on behalf of the companies (ZWS and ZWG) and Mr Montgomery recorded his contact details and advised that he would arrange a formal interview in due course.

Messrs Montgomery, Hamilton and Gower-Collins and Ms Kelly, accompanied by Messrs Holland and Davis, met and walked through the entire site to look at each enclosure and determine what needed to be done to bring it up to MAF standards and to be able to lock the animals it contained away while employees entered for the purposes of cleaning, etc.

During the examination of the enclosures it was agreed that pending changes made so that each and every enclosure contained a separate area in which to lock the animals, where it was currently not possible to lock the animals away then a minimum of four (4) employees would need to be involved in any entry, two of whom would be armed with suitable firearms.

Mr Montgomery confirmed with Mr Holland and the MAF officials that the Department would prepare and serve Improvement Notices to that effect before the end of the day.

Dr Keith McSporrان (Dr McSporrان) arrived from Auckland to perform the necropsy of the dead tiger Abu. Mr Montgomery met with him and briefed him on what the Department required and established what assistance, if any he needed. After looking at where the tiger was stored he agreed that he would work on the floor directly in front of the chiller as it was shaded and could be easily cleaned.

Mr Montgomery and Ms Kelly observed the start of the necropsy then left Dr McSporrان to continue with the necropsy while they did other work around the site.

Dr McSporrان completed the necropsy at about 2.20 p.m. and Mr Montgomery discussed with him his observations and asked what samples he was taking, recording this in his notebook, so he could prepare a Notice under Section 33 of Act to serve on ZWS.

**Where Evidence Recorded & How Element Proved**

DOLI 10 Photo Exhibits  
NTH/498/0015-0020  
DOLI 11/3  
DOLI 10 Sketch  
NTH/498/0005

DOLI 11/3 ZWG Enclosure  
ID annotated

DOLI 10 Photo Exhibits  
NTH/498/0023-0028

DOLI 11/3  
DOLI11/26

**Facts (cont.)**

Consent had to be obtained from MAF and ERMA for these samples to be removed from site for further analysis, and this was granted verbally by Mr Hamilton.

After advising Mrs P Busch and Mr Holland that Improvement Notices would be served on ZWS once they were prepared, Mr Montgomery and Ms Kelly left the site at approximately 3 o'clock.

Mr Montgomery believing that ZWS employees were not safe when required to enter big cat enclosures where animals were unable to be securely isolated by being locked in dens or similar returned to the Department's offices where he prepared two (2) Improvement Notices under Section 6 of the Act requiring ZWS to:

1. Ensure all enclosures met MAFBNZ standards so that any adult big cat in the enclosure can be isolated to ensure the safety of any employee required to work in there; and
2. As an interim measure, pending the upgrade of enclosures as per the first Improvement Notice, that any employee required to enter any enclosure where any big cat cannot be securely isolated, must be guarded by two (2) employees with loaded firearms.

Mr Montgomery personally served these on Mrs P Busch at the office of ZWS at 7.51 p.m. on the 28 May 2009, in the presence of **9(2)(a)**

Once these Improvement Notices were deemed to have been complied with, and after confirming with MAF that their requirements in respect of the enclosures had been met Mr Montgomery, on 17 June 2009 prepared, affixed and served on ZWS a Prohibition Notice requiring that all activities that put employees (including volunteers) into direct contact with adult lions, tigers or leopards are to be eliminated.

On 17 June 2009 Mr Montgomery also served ZWS with four (4) Improvement Notices as follows:

1. Under Section 10(2)(a) of the Act to develop and implement suitable standard operating procedures for any work between employees and the adult lions, tigers or leopard; and
2. Under Section 10(2)(c) of the Act to implement a regime whereby the health and safety of all employees at work is to be routinely monitored to ensure that compliance with the requirements of the Act and the employers Standard Operating Procedures are achieved, and in particular the restriction on direct contact with adult lions, tigers and leopards; and
3. Under Section 12(1)(a)-(d) of the Act to ensure that information on the standard operating procedures developed is provided, in such a form and manner that is reasonably expected to be understood, to all employees who work around the adult lions, tigers and leopards; and
4. Under Section 13(a) and (b) of the Act to take all practicable steps to ensure that suitable training is provided to all employees in respect of the Standard Operating Procedures that have been developed for employees who work around the adult lions, tigers and leopards.

Where Evidence Recorded & How Element Proved
<p>DOLI 11/10</p> <p>DOLI 11/10 Improvement Notice 19853</p> <p>DOLI 11/10 Improvement Notice 19854</p>
<p>DOLI 11/11</p>
<p>DOLI 11/10</p>

**Where Evidence  
Recorded & How  
Element Proved**

**Analysis**

Section 6 of the Health and Safety in Employment Act 1992 (the Act) required ZWS as an employer to take all practicable steps to ensure the safety of employees Messrs Mncube and Ferreira while they were at work, and in particular that while they were at work they were not exposed to hazards arising out of the organisation of things in their place of work.

Section 16 of the Act required ZWG as the person in control of a place of work to ensure that no hazard that is or arises in the place harmed people, Messrs Mncube and Ferreira, who were lawfully at work in the place.

Section 17 of the Act required Mr Holland as a self-employed person to take all practicable steps to ensure that no action or inaction by him while at work harmed him or any other person.

Section 18 of the Act required ZWG as a principal to take all practicable steps to ensure that no employee (Messrs Mncube and Ferreira) of ZWS a contractor, were harmed while doing any work that the contractor was engaged to do.

Section 19 of the Act required Mr Mncube as an employee to take all practicable steps to ensure that no action or inaction on his part caused harm to him or any other person.

Section 19 of the Act required Mr Ferreira as an employee to take all practicable steps to ensure that no action or inaction on his part caused harm to him or any other person.

Hazards Involved

Any situation, whether deliberate or otherwise that allows people to occupy the same space as unrestrained adult lions, tigers or leopards could be deemed a “significant hazard” situation.

This is proven by three separate big cat attacks at the ZWG site in the last two years that have resulted in people being seriously harmed.

Contributing causes

The operations at the ZWG site had grown from a handful of people under the management of its former Operator and Manager, Craig Busch (Mr C Busch). From the outset it appears that the primary focus of the ZWG operations was that Mr C Busch and other people would have direct interaction with the big cats.

ZWG had some documented health and safety systems as were obtained or provided during this investigation. We believe that the day to day operations at the site did not provide for effective health and safety management for persons on the site. Almost all documentation relating to the health and safety systems and the operations manuals for the site appear to bear ZWG rather than ZWS identification, including memos to employees, operations manuals, etc.

DOLI 11/16

DOLI 13

DOLI 13

**Where Evidence Recorded & How Element Proved**

**Analysis (cont.)**

At the time of Mr Mncube's death ZWS as the employer of Mr Mncube was relying entirely on what had previously been developed by ZWG for its health and safety management systems. These systems were not adequate as they did not identify what the hazards or significant hazards that employees were or might be exposed to were, nor were adequate controls in place.

DOLI 13

After a serious harm injury to a volunteer employee Lisa Baxter (Ms Baxter) on 23 April 2008 was reported to the Department by a local newspaper, Mr Montgomery investigated. As a result he identified a number of health and safety shortcomings at ZWS including the lack of effective health and safety management systems. The investigation resulted in a Written Warning being issued to ZWS under Section 25 of the Health and Safety in Employment Act 1992.

DOLI 13

Mr Montgomery had tried to assist ZWS with a view to having them implement steps to improve their health and safety management systems. On the 12<sup>th</sup> of May 2008 he met at ZWG with Mrs P Busch and the then health and safety representative **9(2)(a)**. During the meeting he explained what the Act required of employers, and how ZWG, as an employer, could implement effective health and safety management systems. He provided them with a hard copy of a simple health and safety management policies and procedures document.

On 19 March 2009 a serious harm injury to a ZWS employee Demetri Price (Mr Price) occurred when he was attacked and bitten by the male tiger Abu. This attack resulted in significant bites to both Mr Price's knee's and occurred while the tigers Abu and Rewa were being relocated from one enclosure to Enclosure 9 where the fatal attack on Mr Mncube occurred on 27 May 2009.

The investigation into the accident to Mr Price was ongoing at the time of Mr Mncube's death, and Mr Mncube had been interviewed by Mr Montgomery as part of that investigation as he was one of the key witnesses, along with other employees and contractors.

At the time of the tragic death of Mr Mncube ZWG as the probable principal to ZWS appeared to have no effective health and safety management systems in place.

Practicable steps that could have been taken

DOLI ??

The Act sets out a hierarchy of control that requires employers to manage significant hazards in a straightforward and specified manner. In Section 8 of the Act employers are first required to take all practicable steps to eliminate significant hazards. This Department does not advocate that the big cats at ZWG should be eliminated.



**Where Evidence Recorded & How Element Proved**

**Analysis (cont.)**

The Act in Section 9 to require employers, where elimination is impossible, to take all practicable steps to isolate the significant hazards from the employees. Practical examples of how industry uses isolation to ensure the safety of employees at work are guarding machinery, the provision of scaffolding, the use of trench shields, etc.

The simple and practicable step that could have been taken to ensure the safety of Messrs Mncube and Ferreira, which was to require that the adult big cats were locked in their dens before they entered the enclosures.

From what the Department has been able to establish all zoo's in New Zealand lock their adult big cats away in dens when employees are required to enter the enclosures. Internationally this is also recognised as a practicable step.

As well as the incidents at ZWG there was an attack by two juvenile lions on an employee at Wellington Zoo on 10 January 2006 that the Department investigated.

Internationally there appears to be a consensus amongst the professional zoo communities that animals such as tigers and lions are best kept isolated from people, including their keepers. This is reflected in such documents as the United Kingdom's Health and Safety Executive publication 'Managing health and safety in zoos'.

ZWS and ZWG were aware of the MAFBNZ Standard 154.03.04 Containment Facilities for Zoo Animals (Zoo Standard) which addressed how large carnivores were to be kept and the steps to be taken to ensure public and employee safety. The Zoo Standard at Schedule 1, 8.2.4 Keeper Safety (page 34) states in point 4:

*All animals shall be removed from their enclosure into night dens / short-term secure holding pens before any animal care personnel shall be allowed to enter the enclosure.*

ZWG documents such as the Park Manual, Version 4, April 20<sup>th</sup> 2006 at 2.3.2 on page 14 required "*Any staff entering enclosures on their own are to ensure that the cats are locked away securely with safety chains / catches in place.*"

The same Park Manual, at page 11 states "*By December 2006, all cat enclosures will contain the following;*"

- *Double door entry*

Clearly ZWS and ZWG were not following either the Zoo Standard or their own rules to ensure the safety of their employees.

**Conclusions**

ZWS, as the employer of Messrs Mncube and Ferreira appears to have breached Section 6 of the Health and Safety in Employment Act 1992 by failing to ensure that they provided a safe place of work.

DOLI 11/15

DOLI 11/16 Park Manual, Version 4

DOLI 3

**Conclusions (cont.)**

Mr Holland, as a self-employed person does not appear to have failed in his duties under Section 15 of the Health and Safety in Employment Act 1992 to ensure that no action or inaction on his part caused harm to any other person.

ZWG was either a person in control of a place of work under Section 16 of the Health and Safety in Employment Act 1992 or a principal to ZWS under Section 18 of the Act and appears to have failed to ensure the safety of Messrs Mncube and Ferreira as persons lawfully in the place of work (Section 16) or as employees of a contractor (ZWS) Section 18).

Messrs Mncube and Ferreira, as employees of ZWS do not appear to have failed in their duties under Section 19 of the Health and Safety in Employment Act 1992.

**Recommendations**

1. That ZWS be prosecuted for the apparent breaches of Section 6 of the Health and Safety in Employment Act 1992.
2. That ZWG be prosecuted for the apparent breaches of Section 16 or 18 of the Health and Safety in Employment Act 1992.

Where Evidence Recorded & How Element Proved
<p style="text-align: right;">DOLI 3</p> <p style="text-align: right;">DOLI 3</p>

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