Bill S-241 [the Jane Goodall Bill] and Why It's Worthwhile

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Executive Summary

1. The Exotic Animal Multi-Problem
(a) Overview
(b) The Illegal Wildlife Trade and International Conservation
(c) Animal Welfare
(d) Human Health and Zoonotic Diseases
(e) Human Safety and Animal Attack
(f) Agricultural Animal Health and Zoonotic Diseases
(g) Invasive Species

2. Legal Jurisdiction Over Exotic Animals in Canada
(a) Overview
(b) Federal Jurisdiction over Exotic Animals
(c) Provincial Jurisdiction Over Exotic Animals (Ontario)
(d) Municipal Jurisdiction over Exotic Animals
(e) The 'Precautionary Principle' of Canadian Environmental Law
(f) The Canadian Legal Doctrine of 'Paramountcy'
(g) Summary

3. Bill S-241 Explained
(a) Overview
(b) Bill S-241's Phase-in of Species ['Bill-Covered Species']
. "Marquee" Species
. "Bill Schedule" Species
. 'Cabinet-Declared' Species
(c) The Existing CCC Cetacean Provisions
(d) Bill S-241's Criminal Code Amendments
. Overview
. Substantive Bill Amendments
. 'Best Interest of the Animal' Orders and the Role of 'Animal Advocates'
(e) The Existing WAPPRIITA

(f) Bill S-241 WAPPRIITA Amendments
. Substantive Bill Amendments
. The Role of 'Animal Welfare Organizations' (AWOs)

4. Why Bill S-241 is Worthwhile
(a) Overview
(b) Bill S-241, Animal Welfare and Morality
(c) Bill S-241 and the Future of the Exotic Animals Problem
(d) Bill S-241 is Legislatively Efficient
(e) Bill S-241 Doesn't Restrict Other Jurisdictions from Exotic Animal Legislation
(f) Summary

Executive Summary

Exotic animals are non-indigenous animals. Their presence in Canada, and the fact that they got here in the first place (often through the international illegal wild animal trade), poses serious problems in the public policy areas of international wildlife conservation, animal welfare, human health and safety, agricultural animal health, and local (Canadian) wildlife conservation by the increasing problem of invasive animals. All levels of Canadian governments have near-complete acknowledged jurisdiction over exotic animals and the problems they create.

Bill S-241 advances two primary legislative amendments, through the Criminal Code (CCC) and through the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA).

The Bill's CCC amendments extend on the existing cetacean ban, to add sequentially several further groups of species to it. Exceptions to these bans are legally-minimal and justifiable. As well, the Bill creates ongoing federal-cabinet authorizations for further species to be added to the ban regime. Also added by the Bill are the adding of novel roles of recognized animal advocates in the criminal penalty phase, and new 'best interests of the animal' orders by sentencing judges.

The WAPPRIITA Bill amendments build on the existing CITES-based regime to support and supplement the CCC bans, setting out new permit regimes for the new Bill-covered species, and any that may come afterwards through federal-cabinet authorization. As well, the WAPPRIITA amendments authorize recognized zoos and similar bodies to care for exotics under the new Bill permit regimes.

Practically, S-241's contribution to the exotics problem would be huge, and reach fully across the numerous serious public policy areas of animal welfare, international conservation, human health and safety, agricultural animal health and the growing Canadian conservation and environmental problem of invasive species. It's hard to imagine a statutory amendment that can lay claim to such broad and

beneficial effect in a single legislative act.

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1. The Exotic Animal Multi-Problem

(a) Overview

'Exotic animals' ("exotics") are non-indigenous animals that are typically wild in their natural habitats. Their international and local (within Canada) trade poses numerous and serious public policy problems.

(b) The Illegal Wildlife Trade and International Conservation

The organized criminal world trade in wildlife is estimated to be of a value in the magnitude of $8-20 billion USD [https://www.hsi.org/issues/wildlife-trade/]. It is considered the second largest threat to wildlife conservation after habitat destruction [https://wwf.panda.org/discover/our_focus/wildlife_practice/problems/illegal_trade/].

Canada has recognized this reality by implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) [S.C. 1992, c. 52].

(c) Animal Welfare

Most exotics are poorly-suited to human captivity wherever they are. The typical reason that they are taken into captivity is for pet use, private zoos or entertainment - interests that do not require or focus on their well-being. When the animal exhausts their limited purpose (through age, injury, disease, lack of novelty, public concern or otherwise) there are no adequate facilities to care for them and they become (at best) a burden on the state, are doomed to often cruel living arrangements or are just abandoned where they are.

(d) Human Health and Zoonotic Diseases

Zoonotic diseases are diseases occurring in animals but also transmissible to humans. Ten years ago the classic example of zoonotics would have been rabies, but now COVID is the stellar example. The leading theories on the origin of COVID are that SARS-CoV-2 originated in bats [https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/animals.html], with an epicentre in the Wuhan, China live animal market [https://www.bbc.com/news/science-environment-62307383]. The ongoing risk of further zoonotic disease transmission is clear as long as exotics intermingle with humans.

(e) Human Safety and Animal Attack

While not posing the same quantum risk as disease-transmission, animal attacks do occur from public and private zoos, or from pet use of exotics. Keeping of exotics in private settings as pets (ie. in homes,

and even apartments) is still legally tolerated in much of Canada.

(f) Agricultural Animal Health and Zoonotic Diseases

Canadian law has legislatively recognized and addressed the zoonotic risk to Canadian farm animals, both at the federal Health of Animals Act (S.C. 1990, c. 21) [https://www.laws-lois.justice.gc.ca/eng/acts/H-3.3/page-1.html#h-253047] and the provincial level in the Animal Health Act, 2009, S.O. 2009, c. 31 [https://www.ontario.ca/laws/statute/09a31].

(g) Invasive Species

Exotics intermingling with the North American environment poses not only a zoonotic risk, but the threat of the establishment of breeding populations of invasive species that compete and interfere with native wildlife, flora and eco-systems.

While wild pigs (added as restricted species to Ontario's Invasive Species Act, 2015 [S.O. 2015, c. 22] on 01 January 2022) may be the 'poster-animal' for the invasive species problem [https://www.ontario.ca/page/invasive-wild-pigs-ontario], the problem is huge and of long-standing across all classes of animals [https://en.wikipedia.org/wiki/List_of_invasive_species_in_North_America].

Provincial jurisdiction over the environment and wildlife conservation is well-established (eg. Environmental Protection Act [R.S.O. 1990, c. E.19] and the Fish and Wildlife Conservation Act, 1997 [S.O. 1997, c. 41]).

2. Legal Jurisdiction Over Exotic Animals in Canada

(a) Overview

In Canada, the federal government and the provinces (including most municipalities) have all already legislated in all of the public policy areas that include exotics, and their problems (above).

(b) Federal Jurisdiction over Exotic Animals

As noted above, Canada has implemented the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) [S.C. 1992, c.52]. This is our primary law dealing with conservation and the illegal wildlife trade.

The Criminal Code [CCC] has long-standing jurisdictional occupation of animal welfare through it's animal cruelty provisions [CCC 445-447.1]. This was added to in 2019 by the addition of s.445.2 banning the possession, ownership and trade in cetaceans (whale, dolphins and porpoises).

Human health and safety risk are accepted as ancillary federal jurisdictions under the general 'peace, order and good government' (POGG) powers [Constitution Act, 1867, s.91 (preamble)] and ancillary

powers [Constitution Act, 1867, s.91(29)]. Animal health is the central purpose of the federal Health of Animals Act S.C. 1990, c. 21.

While the federal Canadian Environmental Protection Act, 1999 [S.C. 1999, c. 33] is generally limited to federally-owned and controlled lands, the environment has been recognized as a matter of federal POGG jurisdiction at least since 1988 [R v Crown Zellerbach (SCC, 1988), para 40].

All Canadian environment-related law is subject to the 'precautionary principle', which the Supreme Court of Canada adopted in the Quebec municipal pesticide case of 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town) (SCC, 2001):

> 31 The interpretation of By-law 270 contained in these reasons respects international law's "precautionary principle", which is defined as follows at para. 7 of the Bergen Ministerial Declaration on Sustainable Development (1990):
>
> > In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(c) Provincial Jurisdiction Over Exotic Animals (Ontario)

The Fish and Wildlife Conservation Act, 1997 [S.O. 1997, c. 41] is Ontario's long-standing native wildlife conservation statute, and all other provinces have an equivalent statute. More recently, the Invasive Species Act, 2015 [S.O. 2015, c. 22] addresses the problem of exotics being released into Ontario.

Ontario has had animal welfare jurisdiction under its long-standing OSPCA Act, recently replaced by the Provincial Animal Welfare Services Act, 2019 (PAWS). The present PAWS Act has provisions for prescribing "prohibited" [s.18] and "restricted" animals [s.20], although lists of these are not yet prescribed in the Regulations.

Human health is undeniably a provincial jurisdiction as testified by numerous statutes ranging from the Health Protection and Promotion Act [R.S.O. 1990, c. H.7], to the Public Hospitals Act [R.S.O. 1990, c. P.40]. The same can be said of safety as a public policy concern, with statutes ranging from the Occupational Health and Safety Act [R.S.O. 1990, c. O.1] to the Fire Protection and Prevention Act [1997, S.O. 1997, c. 4]. Agriculture is recognized by the numerous agricultural provincial statutes, including the Animal Health Act, 2009 [S.O. 2009, c. 31].

Ontario's Environmental Protection Act, as do other provincial environmental statutes, applies to both private lands and provincially-owned and controlled lands, and as such is a broader statute than the federal Canadian Environmental Protection Act, 1999. The issue of exotics establishing themselves amongst wild indigenous species ('invasives') is plainly within provincial jurisdiction.

(d) Municipal Jurisdiction Over Exotic Animals

It's a trite Canadian law that 'municipalities are creatures of the province', meaning that municipalities derive their jurisdictions wholly from their province. A necessary implication of this is that a municipality can only have jurisdiction within the province's division-of-powers public policy areas.

In Ontario, municipalities have exotic animal-relevant jurisdiction over:

> . "environmental well-being of the municipality" [Municipal Act, 2001: s.10(2)5, 11(2)6; City of Toronto Act, 2006: s.8(2)5],
>
> . "health, safety and well-being of persons" [Municipal Act, 2001: s.10(2)6, 11(2)6; City of Toronto Act, 2006: s.8(2)6], and
>
> . "animals" [Municipal Act, 2001: s.10(2)9, 11(3)9; City of Toronto Act, 2006: s.8(2)9].

The term "animals" does include some of the traditional jurisdiction over nuisance dogs and impounding of trespassing animals [Municipal Act, 2001, s.103,105 ; City of Toronto Act, 2006: s.106-107], but it is not expanded further in the municipal legislation. It is not until we get to the Provincial Animal Welfare Services Act, 2019 (PAWS) that we see that the municipal jurisdiction over "animals" includes animal welfare and prevention of cruelty [PAWS s.67]:

> Conflict with municipal by-laws
>
> 67 In the event of a conflict between a provision of this Act or of a regulation made under this Act and of a municipal by-law pertaining to the welfare of or the prevention of cruelty to animals, the provision that affords the greater protection to animals shall prevail.

This statutory clarification that municipal jurisdiction over "animals" includes that over 'animal welfare and cruelty', should not be read as limiting. The PAWS clarification indicates that it will be read expansively to allow other substantial animal-related public policy themes.

Multiple Ontario municipalities have legislated substantially over exotic animals to date. Some examples are:

> . City of Toronto, Bylaw 349, 349-1 "prohibited animals" (def'n), Schedule A;
>
> . City of Hamilton, By-law No. 12-031, Part 10.0 "Prohibited Animals";
>
> . City of Ottawa, "Animal Care and Control" By-law No. 2003-77, s.83, Sched.B.

(e) The 'Precautionary Principle' of Canadian Environmental Law

All Canadian federal, provincial and municipal environment-related law is subject to the 'precautionary principle', which the Supreme Court of Canada has adopted in the Quebec municipal pesticide case of 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town) (SCC, 2001):

> 31 The interpretation of By-law 270 contained in these reasons respects international law’s

"precautionary principle", which is defined as follows at para. 7 of the Bergen Ministerial Declaration on Sustainable Development (1990):

> In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Confirming that Ontario adopts the 'precautionary principle' on the specific issue of conservation, the province specifically enumerates the 'precautionary principle' in the preamble to its Endangered Species Act, 2007:

> The United Nations Convention on Biological Diversity takes note of the precautionary principle, which, as described in the Convention, states that, where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.

(f) The Canadian Legal Doctrine of 'Paramountcy'

The legal doctrine of paramountcy addresses the possibility of conflict when two (or more) governments legislate on the same policy areas. Currently, the doctrine is quite tolerant of multi-jurisdictional legislation over related subject-matter [D.M. v. The Children's Aid Society of Ottawa (Div Ct, 2021)]:

> [251] The doctrine of federal paramountcy provides that when there are valid, but inconsistent, federal and provincial laws, the federal law prevails and the provincial law is declared inoperative to the extent of the conflict.[82]
>
> [252] However, the fact that the federal government and a provincial government have legislated about the same matter does not create a conflict that precludes the infra vires provincial legislation from operating.[83] Duplicative legislation by itself does not raise issues of paramountcy.[84]There must be a conflict for the doctrine of paramountcy to come into effect.
>
> [253] Two forms of conflict trigger the doctrine of paramountcy: (1) operational conflict, and (2) frustration of purpose.[85] Operational conflict arises when it is impossible to comply with both laws simultaneously.[86] Frustration of purpose arises where although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment.[87]
>
> [254] The circumstance that Parliament has legislated in respect of a matter does not entail that it intended to rule out any possible provincial action in respect of that matter.[88] As Justice Dickson stated in Multiple Access Ltd. v. McCutcheon,[89] which concerned concurrent federal and provincial statutes prohibiting insider trading of corporate securities:
>
> > In principle, there would seem to be no good reason to speak of paramountcy and

> preclusion except where there is actual conflict in operation as where one enactment says "yes" and the other says "no"; "the same citizens are being told to do inconsistent things"; compliance with one is defiance of the other.

This doctrine applies to the potential of municipal conflict as well: 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town) (SCC, 2001), para 38-39.

(g) Summary

All levels of Canadian government (provincial, federal and municipal) have recognized independent constitutional/statutory jurisdiction over exotic animals and the problems they pose, a rarity for government policy issues. With this, and the addition of:

. the 'precautionary principle', which tolerates legislation where certainty of harm is not required, and

. the legal doctrine of 'paramountcy', which tolerates cross-jurisdictional legislation on the same issues as long as direct conflict does not result,

the prospective legislative potential over exotics could not be more generous.

3. Bill S-241 Explained

(a) Overview

Bill S-241 is divided into two parts: amendments to the Criminal Code (CCC) and amendments to the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA). The amendments take sequential effect over different groups of species, as explained next.

(b) Bill S-241's Phase-in of Species ['Bill-Covered Species']

The Bill's amendments, both for the CCC and WAPPRIITA, take sequential effect over different groups of animals. These groups are referred to collectively herein as 'Bill-Covered Species', and are in (likely) temporal sequence: 'Marquee' [author's term], 'Bill Schedule' (there are two Bill Schedules) and 'Cabinet-Declared' animals.

. 'Marquee' Species

These are cetaceans, great apes and elephants.

. 'Bill Schedule' Species

'Bill Schedule' animals can be quite confusing.

The 'Bill Schedule' animals are referred to in Bill S-241 collectively as 'Designated Animals'. There four Bill Schedules - two for the CCC amends (Bill Schedules 1 and 2) and two for the WAPPRIITA amends (Bill Schedules 3 and 4). **But** Bill Schedules 1 and 3 are identical, as are Bill Schedules 2 and 4 - an arrangement meant to facilitate the coming into force of two sets of animals sequentially across both statutes.

As well, once the Bill Schedules are in force in the statutes, they feed into single statutory schedules - one for the CCC [a single 'Part XI Schedule'], and one for WAPPRIITA.

Bill Schedule 1/3 includes all crocodilia and bears (except pandas), and some cats, lizards, hyenas and snakes. Bill Schedule 2 includes some primates, wild dogs and seals.

. 'Cabinet-Declared' Species

Bill S-241 provides for the addition (or subtraction, for that matter) of species by Order of the federal cabinet. This is done as a result of consultations done "with professionals in animal science, veterinary medicine and animal care and with representatives of groups whose objects include the promotion of animal welfare" [the new 445.3(2)]. These consultations are done respecting "whether the species is capable of living in captivity" and "whether the biological and ecological needs for individual animals of that species *to live a good life* can be met in captivity", the latter criteria including whether:

. "the ability of animals of the species to engage in natural behaviour while in captivity",

. "the intelligence, emotions, social requirements, physical size, lifestyle and potential use in performances of animals of the species",

. "the public safety risks posed by animals of the species", and

. "the evidence of harm to animals of the species in captivity, including stereotypies, health problems in captivity, shorter lifespans and increased infant mortality rates."

These criteria primarily bear on the issues of animal welfare (esp. the "good life" requirement) and human safety. This is good legislative evidence of the purpose of Bill S-241.

(c) The Existing CCC Cetacean Provisions

For comparison, it's useful to note that the CCC amends of Bill S-241 very much follow on the model of the existing cetacean provisions [CCC 445.2] which ban the following:

. ownership, custody or control of cetaceans,

. breeding, and

. possession or seeking "to obtain reproductive materials of cetaceans".

These bans have exceptions for: births when already pregnant at coming into force, ownership

grandparenting and rehabilitation. The cetacean provisions also allow provincial licensing for research, entertainment, and where it is "in the best interests of the cetacean's welfare".

The existing substantive cetacean provisions are repealed and replaced by Bill S-241.

(d) Bill S-241's Criminal Code Amendments

. Overview

Building on the above cetacean provisions, Bill S-241 amends the CCC in a similar fashion. Also noted are the new 'best interest of the animal' orders, and the unique role of animal advocacy groups in the penalty phase.

Note that these Bill amendments take sequential effect over different groups of animal species [as set out in (b) above], thus the animal species are referred to here collectively as 'Bill-Covered Species'.

. Substantive Bill Amendments

The Bill S-241 CCC amendments [the new s. 445.2] ban the following:

. ownership, custody or control of Bill-covered species,

. breeding of Bill-covered species, and

. possession of or seeking "to obtain reproductive materials" of Bill-covered species.

These bans have exceptions for: births when already pregnant at coming into force, ownership/custody/control grandparenting, rehabilitation and government-keeping.

These bans are also excepted for:

. federally WAPPRIITA permitted-animals,

. provincially-licensed non-harmful scientific research,

. provincially-licensed entertainment or conveyance, and

. where keeping is "in the best interests of the animal, with regard to individual welfare and conservation of the species".

. 'Best Interest of the Animal' Orders and the Role of 'Animal Advocates'

In addition to any penalty imposed by law, the Bill also imposes a mandatory duty on a court - on a CCC conviction (or after an absolute or conditional discharge) for violating a Bill-covered species ban or a provincial Bill-covered species entertainment licensing provision - to consider a *'best-interests of the animal' order* with respect to the animal that the offence was committed to [the new CCC s.447.01-47.02, 447.1].

'Best-interest Orders' may be initiated on application made by the prosecutor, the court itself or by an "animal advocate", and may require the offender to carry out actions necessary for the welfare and conservation of the species - including enclosure modifications, re-location, social condition modifications, and as well ownership forfeiture and surrender of the animal. Such orders may also be made with respect to "any other animals in the offender's possession, custody or control if those animals are of the same species as or a species closely related to the animal in respect of which the offence was committed".

'Animal advocates' are persons so-designated by the federal Cabinet, or by the court itself where no federally-appointed animal advocate is available in the province. In any event, animal advocates must be either [the new CCC 447.03]:

. "nominated by the animal welfare authority of the provincial government",

. "a representative of a non-governmental organization in the province whose objects include the promotion of animal welfare", or

. "a professional in animal science, veterinary medicine or animal care."

(e) The Existing WAPPRIITA

The purpose of the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act ('WAPPRIITA') is "to protect certain ['listed'] species of animals and plants, particularly by implementing the Convention [on International Trade in Endangered Species of Wild Fauna and Flora] ('CITES') and regulating international and interprovincial trade in animals and plants". As such, WAPPRIITA is primarily concerned with the import, export and interprovincial transportation of CITES-listed species, and the issuance of permits for such activities. WAPPRIITA operates on three categories of species: 'endangered', 'special concern' and 'national concern'.

(f) Bill S-241 WAPPRIITA Amendments

. Substantive Bill Amendments

Bill S-241 operates on a fourth, new set of animals - the same 'Bill-covered species' defined in the CCC discussion [(b) above]. These animals are subjected to a national (Canadian) permit regime which locates enforcement of both international (to Canada) and inter-provincial (within provinces) locally, ie. within Canada. Bill S-241 can be viewed, with respect to these 'Bill-covered species', as an amendment to ban their importation into Canada for any other than a conservation, animal welfare and "non-harmful scientific research" interest.

This is done in Bill S-241 by extracting these 'Bill-covered species' from the existing WAPPRIITA permit regimes, and creating a new permit regime specifically for them [the new WAPPRIITA s.7.1 and 10]. As a necessary consequential amendment, the keeping of such permitted imported animals is further allowed [the new s.10(1.1)].

. The Role of 'Animal Welfare Organizations' (AWOs)

A major aspect of the WAPPRIITA Bill S-241 amendments is the introduction of the role of "animal welfare organizations" (AWOs), who are meant to be the importers and 'keepers' of the new species. AWOs may be designated, on application, by the federal cabinet, and must have organizational (typically corporate) objects as follows [the new 10.1(2)]:

> 10.1(2) An organization may apply to the Minister [SS: of Environment] for designation under subsection (3) if its objects include:
>
> (a) promoting the welfare of non-domesticated animals;
>
> (b) supporting the conservation of non-domesticated animal species;
>
> (c) providing rehabilitation to non-domesticated animals in distress;
>
> (d) offering sanctuary to non-domesticated animals;
>
> (e) conducting non-harmful scientific research on non-domesticated animals; or
>
> (f) engaging in public education related to non-domesticated animals.

Deemed AWOs are [the new 19(1)]:

. the Assiniboine Park Zoo;

. the Calgary Zoological Society;

. the Zoo de Granby;

. the Montréal Biodôme;

. Ripley’s Aquarium of Canada;

. the Board of Management of the Toronto Zoo; and

. the Vancouver Aquarium.

As well, permits for "importation, exportation or interprovincial transportation" for non-harmful research and breeding [new s.10(1)(b)], 'keeping' [the new s.10(1.1)(a)] and 'breeding' [new s.10(1.1)(b)] are deemed to have been issued for:

. the Calgary Zoological Society;

. the Zoo de Granby; and

. the Board of Management of the Toronto Zoo.

Further permits may be issued to AWOs for conservation, animal welfare, import/export, keeping, breeding and scientific research activities [the new s.10.1(5)].

Necessary consequential WAPPRIITA amendments, similar to those of the CCC amendments, are those that allow the adding or removal of species from the 'designated animals' list by the federal Cabinet [the new s.21.2, like the new CCC 445.3].

4. Why Bill S-241 is Worthwhile

(a) Overview

Bill S-241 would be a quantum leap in addressing the extensive problems that exotic animals pose in Canada, and around the world.

(b) Bill S-241, Animal Welfare and Morality

Exotic animals, like all animals, are designed by nature to be suited to their natural environments and to live free in them. Taking them from those environments to reside in foreign captivity for shallow human pet-keeping, unregulated entertainment interests and other similar relatively trivial interests is immoral.

Animal welfare is an historically recognized goal of Canadian criminal law. At its heart it is a moral issue, as in most of its statutory forms there is no human benefit from it [the existing CCC 445-447.1].

Morality is a firmly recognized criminal law goal, as recognized in the recent Supreme Court of Canada case of Reference re Genetic Non−Discrimination Act, 2020 SCC 17 (CanLII) [paras 67-69]:

> [67] Section 91(27) of the Constitution Act, 1867 gives Parliament the exclusive authority to make laws in relation to "[t]he Criminal Law". Sections 1 to 7 of the Genetic Non−Discrimination Act will be valid criminal law if, in pith and substance: (1) it consists of a prohibition (2) accompanied by a penalty and (3) backed by a criminal law purpose: Firearms Reference, at para. 27; Reference re Validity of Section 5(a) of the Dairy Industry Act, 1948 CanLII 2 (SCC), [1949] S.C.R. 1, at pp. 49−50 (Margarine Reference), aff'd 1950 CanLII 342 (UK JCPC), [1951] A.C. 179 (P.C.).
>
> [68] There is no dispute that the challenged provisions meet the first two requirements. They prohibit specific conduct and impose penalties for violating those prohibitions. The only issue is whether the matter of ss. 1 to 7 of the Act is supported by a criminal law purpose. As I will explain, a law is backed by a criminal law purpose if the law, in pith and substance, represents Parliament's response to a threat of harm to a public interest traditionally protected by the criminal law, such as peace, order, security, health and morality, or to another similar interest. I conclude that the prohibitions established by ss. 1 to 7 of the Act have a criminal law purpose, protecting several public interests traditionally safeguarded by the criminal law.

> [69] Parliament’s criminal law power is broad and plenary: see RJR−MacDonald, at para. 28; R. v. Hydro−Québec, 1997 CanLII 318 (SCC), [1997] 3 S.C.R. 213, at para. 34; R. v. Malmo−Levine, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 73. The criminal law must be able to respond to new and emerging matters, and the Court “has been careful not to freeze the definition [of the criminal law power] in time or confine it to a fixed domain of activity”: RJR−MacDonald, at para. 28; see also Proprietary Articles Trade Association v. Attorney General for Canada, 1931 CanLII 385 (UK JCPC), [1931] A.C. 310 (P.C.), at p. 324.

Bill S-241 locates the exotics animal welfare problem correctly in criminal law, supplemented by appropriate and corresponding WAPPRIITA regulatory measures.

(c) Bill S-241 and the Future of the Exotic Animals Problem

Given it's initial sequential application to different species, and it's allowance for the further addition of new species by federal Cabinet - "in consultation with professionals in animal science, veterinary medicine and animal care and with representatives of groups whose objects include the promotion of animal welfare" - Bill S-241 allows for measured and gradual growth of the species it applies to.

(d) Bill S-241 is Legislatively Efficient

Right now, exotic animals are legislated 'six ways from Sunday' by hundreds of municipalities, the provinces and the territories - as well this is done for multiple different public policy reasons: conservation, health, animal welfare, the environment and more. Bill S-241 addresses all of these public policy legislative areas centrally in the most senior level of government that we have, the federal - and it does so not only at the federal level, but at it's most serious form: criminal law.

(e) Bill S-241 Doesn't Restrict Other Jurisdictions from Exotic Animal Legislation

While Bill S-241 is efficient, it doesn't prohibit other jurisdictions - who may be more advanced on exotics legislation - from keeping and advancing their own regimes. As long as those other jurisdictions do not create either operational conflict with or stymy the purpose of the competing law and thus invoke the doctrine of paramountcy to frustrate Bill S-241, they can co-exist.

(f) Summary

Practically, S-241's contribution to the exotics problem would be huge, and reach fully across the numerous serious public policy areas of animal welfare, international conservation, human health and safety, agricultural animal health and the growing Canadian conservation and environmental problem of invasive species. It's hard to imagine a statutory amendment that can lay claim to such broad and beneficial effect in a single legislative act.