THE HONOURABLE MARTY KLYNE
SENATOR – SASKATCHEWAN

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SÉNATEUR – SASKATCHEWAN

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September 7, 2023

The Honourable Brent Cotter, K.C., Chair
Standing Senate Committee on Legal and Constitutional Affairs
Senate of Canada
Ottawa, Ontario K1A 0A4

By email

Dear Senator Cotter,

Re: LCJC study of Bill S-241 (*Jane Goodall Act*)

I trust you have had a great summer. Looking ahead to the Senate's fall sitting, I am writing as sponsor of Bill S-241, the *Jane Goodall Act*. Based in science and Indigenous values, this legislation would enhance legal protection for wild animals in captivity, uphold public safety, and support wildlife conservation.

As you know, the Legal and Constitutional Affairs Committee (LCJC) received Bill S-241 on June 8, 2023. In addition, the Energy, the Environment and Natural Resources Committee (ENEV) and the Agriculture and Forestry Committee (AGFO) received orders of reference to examine and report on the subject matter of the bill. I am writing to share my perspective on the process ahead, including in consideration of LCJC's substantial legislative agenda.

In my view, ENEV is the Senate committee best suited to conduct a thorough and timely study of the *Jane Goodall Act*. The legislation can fulfill two commitments in the mandate letter of the Minister of Environment and Climate Change: to legislate protection of wild animals in captivity, and to curb wildlife trafficking, including elephant ivory and rhino horn. In addition, Environment and Climate Change Canada would administer the bill's federal licensing framework, including authorizations for zoos, aquariums or sanctuaries meeting specified criteria, as well as the list of wild species designated for protection, via the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA). ENEV studied this statute last year in Part 3 of Bill S-6, a regulatory modernization bill, and Bill S-241 requires a coordinating amendment with that bill.

ENEV's comprehensive study of Bill S-241 may, for example, include scientists, accredited Canadian zoos, Canadian animal advocacy NGOs, and other experts.

With regards to AGFO, I am hopeful that their study may be relatively brief, to confirm Bill S-241's non-application to the agricultural sector.

ENEV and AGFO's studies and reports – including evidence and recommendations on amendments – may subsequently inform clause-by-clause voting at LCJC. Of course, LCJC may also wish to

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examine Bill S-241's legal and constitutional aspects. I welcome the Committee's attention to this matter and am pleased to assist Committee members with any questions.

I am confident that the *Jane Goodall Act*, with the original version and legal framework authored by the Hon. Murray Sinclair, is constitutionally sound. Bill S-241 exercises the federal criminal power, with respect to animal cruelty and public safety, and the federal trade and commerce power over international and interprovincial trade.

The bill's measures for relocating wild animals involved in illegal captures, breeding, or performances are legally analogous to existing measures in the WAPPRIITA and the *Criminal Code* for the seizure and disposition of property involved in offences. The new sentencing measures would both reflect the welfare interests of creatures like dolphins, elephants, and primates and protect public safety.

In anticipation of LCJC's future study, once ENEV and AGFO's studies are further advanced, my office will provide LCJC with witness suggestions. In formulating my submission at the appropriate time, I would appreciate a suggested timeline or thoughts on the potential duration of hearings.

In addition, I am very happy to discuss potential amendments, including ensuring the legislation provides a fair and accessible licensing framework for all Canadian zoos, aquariums, and sanctuaries committed to meeting the bill's legal criteria, including administering the highest professionally recognized standards and best practices of animal care.

To assist LCJC's study of Bill S-241, please find enclosed five documents: a summary of the bill; two letters from elephant experts in support of a national phaseout of elephant captivity, as proposed by the legislation; the list of wild species designated for protection in Bill S-241; and excerpts on jurisdiction relating to Bill S-241.

LCJC's decision on Bill S-241 can be a vital next step towards Canada taking action to protect captive wild animals, uphold public safety, and support wildlife conservation. Thank you for your consideration.

Sincerely,



Senator Marty Klyne

CC: Members of Legal and Constitutional Affairs Committee
Vincent Labrosse, Clerk, Legal and Constitutional Affairs Committee

Enclosed:
1. Bill S-241 summary
2. Elephant experts' letter on Bill S-241 (June 3, 2022)
3. Elephant experts' response to International Elephant Foundation (Jan. 6, 2023)
4. Wild species in captivity protected by Bill S-241
5. Excerpts on jurisdiction relating to Bill S-241

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Summary of Bill S-241 (*Jane Goodall Act*)

Bill S-241, the *Jane Goodall Act*, would establish the world's strongest legal protection for over 800 species of captive wild animals, including phasing out elephants in Canada and banning new captivity of big cats at roadside zoos and as pets. Bill S-241 also addresses wildlife trafficking by supporting action to curb the elephant ivory and rhino horn trades. Based in science and Indigenous values, the legislation would protect the welfare of captive wild animals, uphold public safety, and support wildlife conservation.

In addition, Bill S-241 supports the animal care, conservation, scientific, and public education work of excellent zoos, aquariums, and sanctuaries that administer the highest professionally recognized standards and best practices of animal care.

Bill S-241 represents further development of the original *Jane Goodall Act*, Bill S-218, authored and introduced by the Hon. Murray Sinclair in 2020. Bill S-241 also builds on the whale and dolphin captivity laws adopted by Parliament in 2019 and administered by Fisheries and Oceans Canada.

Changes to *Criminal Code* and wildlife trade statute (WAPPRIITA)

Bill S-241 would amend the animal cruelty section of the *Criminal Code*, as well as the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA), a wildlife trade statute administered by Environment and Climate Change Canada.

In the *Criminal Code*, for animal cruelty and public safety reasons, Bill S-241 would prohibit new unlicenced ownership, including breeding, of wild species including lions, tigers, bears, wolves, many primates, sea lions, and dangerous reptiles, such as crocodiles, anacondas, and venomous snakes. The changes would also prohibit elephant rides and the use of affected species in performances for entertainment.

In addition, Bill S-241 would establish new sentencing measures for illegal capture, breeding, or performance, providing for judicial discretion to relocate wild animals involved in these offences. These measures are legally analogous to existing measures in the *Criminal Code*, such as s. 490.01, and s. 19 of the WAPPRIITA, providing for the seizure and disposition of property involved in offences. These measures would both reflect the welfare interests of creatures like dolphins, elephants, and primates and protect public safety.

Bill S-241 would amend the WAPPRIITA to prohibit the unlicenced import, export, or interprovincial transport of affected species. Changes to the WAPPRIITA include a framework for individual licensing of new captivity for the purposes of wild animals' best interests – regarding individual welfare and species conservation – or non-harmful scientific research. Bill S-241 would also establish the federally administered 'animal care organization' licensing framework for zoos, aquariums, and sanctuaries meeting the criteria (see below).

Jurisdiction

Bill S-241 exercises the federal criminal power, with respect to animal cruelty and public safety, and the federal trade and commerce power over international and interprovincial trade. For additional information, see: "Excerpts on jurisdiction relating to Bill S-241" (enclosed).

Elephant captivity phaseout

More than 20 captive elephants live in Canada at four locations, with most located at African Lion Safari near Hamilton, Ont. Leading elephant scientists and other experts have endorsed the bill's policies to

grandfather in a phase out elephants in Canada, including in considering the country's harsh winters. The Granby Zoo and Edmonton Valley Zoo have committed to phase out elephants. For additional information, see: "Elephant experts' letter on Bill S-241," "Elephant experts' response to International Elephant Foundation," and "Wild species in captivity protected by Bill S-241" (enclosed).

Great ape conservation and science

Great ape captivity can have conservation and scientific value. On Dr. Jane Goodall's recommendation, Bill S-241 would licence new great ape captivity for these reasons at the Toronto Zoo, Calgary Zoo, and Granby Zoo. For additional information, see Senator Klyne's second reading speech and "Wild species in captivity protected by Bill S-241" (enclosed).

Wild species designated for protection

For information and reasons on Bill S-241's priority designations of wild species, see: "Wild species in captivity protected by Bill S-241" (enclosed). The protection of captive big cats, with over 7,000 lions, tigers, and leopards estimated to be privately held in Canada, is a priority of accredited Canadian zoos and Canadian animal advocacy NGOs. The addition or removal of wild species on the bill's list of protected species would require an order of the Governor in Council. Any such decision would require a federal cabinet to consider factors such as wild species' intelligence, social needs, public safety risks, use in performance, ability to engage in natural behaviour in captivity, and evidence of harms in captivity.

Animal care organizations

Zoos, aquariums, and sanctuaries may obtain federally administered 'animal care organization' status in the Act, with authorizations to breed and transport designated wild species, subject to potential conditions. This framework does not apply for elephants or great apes. The five main criteria for this status are to:

1. Administer the highest professionally recognized standards and best practices of animal care;
2. Establish whistleblower protection;
3. Refrain from activities that mispresent or degrade captive, wild animals, such as performances for entertainment (educational demonstrations are allowed);
4. Acquire wild animals in a manner that does not harm wild populations; and
5. Maintain any other standards established by the Minister, following expert consultations, based on the best available scientific, veterinary, animal care or animal welfare information.

Amendments

Senator Klyne recommends several technical amendments, as well as incorporating Environment and Climate Change Canada's 2023 elephant ivory and rhino horn regulations into the WAPPRIITA by amendment. Senator Klyne welcomes discussion of other potential amendments, including ensuring the legislation provides a fair and accessible licensing framework for all Canadian zoos, aquariums, and sanctuaries committed to meeting the bill's legal criteria.

Government election commitments

The *Jane Goodall Act* can fulfill two government election commitments reflected in the mandate letter of the Minister of Environment and Climate Change: to legislate protection of wild animals in captivity, and to curb wildlife trafficking, including elephant ivory and rhino horn.

June 3, 2022

Senator Marty Klyne
The Senate of Canada
Ottawa, ON
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Re: Bill S-241 – The Jane Goodall Act

Dear Senator Klyne,

We, the undersigned, are distinguished international elephant specialists, representing a wide range of disciplines, including natural science, conservation, elephant behaviour and psychology, veterinary medicine, animal welfare, academia, and animal care and management.

We are pleased to support Bill S-241 – the *Jane Goodall Act* – which would phase-out the display of elephants for entertainment and the domestic trade in elephant ivory and trophies. We applaud you for introducing this important bill to improve protection for elephants, among other wild animal species. We stand ready to contribute our specialist expertise on elephants to assist the Senate's review and consideration, and to discuss solutions for the management of the remaining elephants.

As specialists on elephant well-being, we can attest that public display facilities keeping captive elephants are no longer supported or justified by the growing body of science on their socio-biological needs. In these situations, elephants endure conditions that are inadequate to meet their needs, as they lack essential components of wild ecosystems and inhibit expression of natural behaviours.

Scientific and experiential evidence indicates that the use of elephants as performers, riding objects, and exhibit specimens can be physically and psychologically detrimental to these highly intelligent, sensitive, and self-aware animals. Confinement, restraint, travel, harmful training practices, exhibition, isolation, noise, performing, and exposure to the public while living in unnatural environments can adversely affect elephants' health and welfare.

Elephants are extremely intelligent animals, with multifaceted physical, social and spatial needs. Elephants are large-brained mammals who display complex cognitive capabilities[1], great intelligence[2], sentience[3] and empathy, with the ability to understand the intentions and emotions of others [4,5]. Elephants are also self-aware.[6] Along with dolphins, great apes and humans, they can recognise themselves in a mirror, implying a sense of self.[7] Elephants form and use tools[8], and solve problems by insight. They have a sense of death and mourn dead family members.[9] Elephants can recognise at least 100 other elephants by their voices[10], and they can determine the ethnicity, gender and age of humans from acoustic cues.[11]

Elephants live in unusually large social networks, with a highly organized structure involving strong family bonds that can last a lifetime.[12,13] Relationships among females radiate out from the mother-offspring bond through family, bond group, clan, and sub-population, and among independent

adult males through male groups of kin and non-kin[14]. They form alliances and coalitions with other elephants and can work together to solve problems.[15] Elephants have a highly developed communication system using all their senses in a wide range of tactile, olfactory and visual signals, seismic and acoustic communication.[16]

Elephants are adapted to living in a variety of landscapes and walking long distances. Home range sizes have been shown to extend to 10,000 square kilometres or more for African elephants and to 400 square kilometres or more for Asian elephants.[17,18] They have exceptional long-term memory and mapping skills to locate food and water over vast distances and time periods[19], with matriarchs referred to as "repositories of social knowledge".[20] Elephants' daily activities involve intellectual and cognitive challenges centred on their use of space: locating and manipulating a wide variety of food, remembering locations of water and seasonal food items, searching for mates, and avoiding potential danger.

The ability – and need – to express these many highly regarded qualities conflict with the inadequate physical and social conditions found in captive environments, resulting in compromised welfare with long lasting detrimental psychological and physical effects.[21,22]

Captive environments do not meet elephants' complex physical needs.
The restrictions that captivity imposes on an animal's behaviours are increasingly recognised as being deleterious to cognitive development, normal social development, and, later in life, on reproduction and health.[23] Captive living conditions differ drastically from those for which elephants are adapted. Over millions of years, elephants have evolved to forage in expansive home ranges, moving with their family groups or bull associations. Elephants' musculoskeletal system and feet are adaptations for walking long distances.[24] Walking and other exercise has essential health benefits vital for humans and other animals, not only for muscle development, welfare and physical health[25] but for development of the brain.[26] Voluntary exercise can increase levels of brain derived neurotrophic factor (BDNF) and other growth factors, stimulate neurogenesis, increase resistance to brain insult and improve learning and mental performance.[27] Lack of movement and poor substrates are also associated with serious health problems (see below).

In captive environments, outdoor spaces for elephants are orders of magnitude smaller in size than elephants' ranges in the wild, with limited variety of natural vegetation and substrates on which to walk. Indoor spaces are even smaller than those outdoors and may contain hard substrates such as concrete[28]. Due to Canada's climate and cold weather, elephants may spend most of their time indoors and possibly chained during that time. The tethering or chaining of elephants is meant to immobilize and control the animal. Chaining can be temporary or continuous. Elephants in traveling shows may spend up to 23 continuous hours on chains[29], including during transport and at performance venues.

In sum, captive environments simply cannot approximate the spatial and environmental conditions necessary for the health and welfare of elephants.

Elephant health problems in captive conditions.
Serious health problems and decreased life span in captive-held elephants are well documented.[30,31] Captive elephants may suffer arthritis, osteoarthritis, hernia (*Hernia perinealis*), swelling of the knee joints (*Bursitis praepatellaris*), skin calluses (*Tyloma olecrani*), and abscesses.[32]

Blackleg (bacterial inflammation with necrosis) and foot problems, such as pathological lesions in the pads and nails, split nails, abscesses, torsion, ulcerations, and overgrown cuticles, are common in captive-held elephants because of inactivity and lack of access to natural substrate to keep foot pads and nails supple and naturally trimmed.[33] Musculoskeletal impairments are one of the major health issues in captive-held elephants, including degenerative joint disease, low bone density[34], and ensuing lameness[35]. Although the causes of these problems can be varied, they all indicate poor husbandry systems.[36]

Captive elephants are also subject to infectious diseases. A highly fatal haemorrhagic disease, the Endotheliotropic Elephant Herpesvirus (EEHV) occurs in both Asian and African elephants in captive situations, with some cases found among Asian elephants in their natural range countries.[37] The disease, while largely asymptomatic in the wild, particularly devastates neonatal and weaning-age elephants in captivity.[38] Tuberculosis (TB) is a pervasive problem in captive elephants. The human variant is transmitted by humans to elephants, and an elephant can infect other humans and elephants on close contact, indicating two-way transmission.[39,40] Most occurrences of human TB in zoos have been discovered in Asian elephants, although there is some evidence that it occurs in African elephants as well.[41,42]

Conclusion

Elephants are not suited to any form of captivity, as no captive facility can fulfil the basic biological, social, spatial, cognitive and intrinsic requirements of elephants. The keeping of elephants in captivity in Canada should be brought to an end, with every effort made to ensure those elephants that remain in captivity are provided with the best possible conditions to meet their welfare requirements and ensure their well-being for the remainder of their lives.

Signed

Dr. Lucy Bates, Lecturer, Centre for Social Learning and Cognitive Evolution, University of St Andrews; U.K.
Scott Blais, CEO and Co-founder, Global Sanctuary for Elephants
Carol Buckley, CEO, Elephant Aid International; USA
Dr Richard Byrne FRS Edinburgh, Emeritus Professor, Centre for Social Learning and Cognitive Evolution, University of St Andrews; UK
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Dr. Cynthia Moss, Founder and Director of the Amboseli Trust for Elephants; Kenya, USA
Dr. Joyce H. Poole, Co-Founder and Scientific Director, ElephantVoices; Member of the Board and Founding Member, Global Sanctuary for Elephants; USA, Norway, Kenya, Mozambique
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Ingo Schmidinger, Director of International Operations, Global Sanctuary for Elephants
Dr. Jan Schmidt-Burbach, PhD, Wildlife veterinarian and elephant specialist, World Animal Protection; Germany
Peter Stroud, independent zoological consultant, former zoo Curator and Director; Australia
Will Travers OBE, Elephant expert and Chair of Species Survival Network Elephant Working Group, Born Free Foundation; U.K.
Antoinette van de Water, PhD candidate, Director Bring the Elephant Home.; Thailand, South Africa
Dr. Hilde Vanleeuwe, WCS/ DCF grant coordinator and research associate, Member of IUCN-SSC African Elephant Specialist Group and the in-situ/ ex-situ taskforce; USA, Kenya

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6th January 2023

Senator Marty Klyne
The Senate of Canada
Ottawa, ON
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Re: Jane Goodall Act (S-241) – Response to claims made by the International Elephant Foundation

Dear Senator Klyne,

We, the undersigned, are distinguished international elephant specialists, representing a wide range of disciplines, including natural sciences, conservation, elephant behaviour and psychology, veterinary medicine, animal welfare, academia, and animal care and management. On June 3, 2022, we sent you a letter of support for Bill S-241 – the Jane Goodall Act – to phase-out the display of elephants for entertainment and end the domestic trade in elephant ivory and trophies.

The following information is intended to rebut misleading or incorrect information provided in a letter by the International Elephant Foundation (IEF) in regard to the proposed Jane Goodall Act. The signatories to this letter hope the following information will contribute to a fuller understanding of the issues.

Keeping elephants in zoos does not necessarily lead to conservation action by patrons.

IEF's claims that zoos serve as source of inspiration for visitors, and that this inspiration will automatically convert to conservation action, have been made for decades by zoos. Still, no substantial evidence exists to support this claim. The IEF quotes two studies: The first one featured participants already predisposed to support conservation, and it only gauged the expression of their desire to become involved in conservation. No follow-up was carried out to determine if action was taken, despite the inherent bias of participants. The second study is a college student's study-abroad thesis and it has never been peer reviewed.

In comparison, a 2016 study[1] found that statements of intent by zoo visitors did not convert to action. Following a zoo visit, no significant increase in pro-sustainability behaviour was found, despite participants having stated that they 'felt' they had changed their behaviour. The study concludes that zoo visits 'fail to lead to actual sustainable behaviour change'.

A similar result was found in a 2007 study of 1,000 people at six UK zoos. The authors concluded that they 'found very little evidence, in the zoos that we sampled, of any measurable effect of a single informal visit on adults' conservation knowledge, concern or ability to do something useful.'[2]

Other studies have shown similar minimal or non-existent behaviour change in zoo visitors when it comes to conservation.[3,4,5] This was also found when specifically exploring the impact of interactions with 'ambassador' species.[6] A recent paper assessed 19 peer-reviewed studies on the outcomes of zoos' animal ambassador encounters. These are activities where zoo visitors directly interact with an animal, and they are often considered by zoos to be the most impactful. However, the paper found that most studies 'lacked rigour and claims were based on the absence of negative impacts rather than evidence of benefits'. The authors concluded that in order to justify continuation of animal ambassador encounters, 'animal welfare costs must be proven to be minimal whilst having demonstrable and substantial visitor educational value.'[7]

Conservation funds generated by zoos do not justify keeping sentient beings in inadequate captive environments.

Zoos may contribute funds to conservation projects, however, this does not justify confining sentient and complex species in captivity. In fact, when compared to the operational budgets of zoos, contributions to conservation are shockingly small. In 2000, a study concluded that zoos and aquaria belonging to the AZA only spent 0.1% of their operational budgets on conservation related projects.[8] If conservation is supposed to be the primary purpose of zoos, this is an incredibly ineffective and, considering the costs on the animal side, unethical way of generating funds.

Zoos' scientific contributions largely relate to overcoming captive management problems.

The IEF claims that the elephants living in Canada have made a direct contribution to 'valuable discoveries and insights that help all elephants around the globe'. However, the list of studies conducted at African Lion Safari shows that these studies overwhelmingly were related to reproduction. Elephants in the wild do not have a problem reproducing, so this research has no relevance to in situ conservation. It is purely aimed at the preservation of elephants in captivity, who are subject to a variety of reproduction-related problems including infertility (females stop cycling at an early age), dystocia (birth complications), and stillbirths.[9,10]

References to research that has led to knowledge advancement regarding the elephant endotheliotropic herpesvirus (EEHV) are also primarily relevant to the management of elephants in captivity. While the virus does occur in the wild, there has been no evidence to show that its presence presents a significant threat to current populations. This is quite contrary to captive populations, where a large percentage of captive-born elephants succumb to EEHV-related symptoms.[11] Tentative figures indicate that in North American zoos 66% of Asian elephant deaths are due to EEHV.[12] It seems that a captive environment leads to a much higher likelihood of developing clinical signs after an EEHV infection, which most likely points to the unnatural conditions of captivity.

Elephants are still captured in the wild to populate zoos displays, exposing the shortcomings of zoos.

To date there has not been a single case of captive elephants boosting conservation or wild populations. On the contrary, wild elephants are still taken out of the wild to boost captive populations that are otherwise unsustainable.

The IUCN-SSC African Elephant Specialist Group, composed of leading conservation practitioners, has noted in its 2003 position statement that "Believing there to be no direct benefit for in situ conservation of African elephants, the African Elephant Specialist Group of the IUCN Species Survival Commission does not endorse the removal of African elephants from the wild for any captive use."

Elephants are not well suited to living in cold weather conditions.

The IEF states that elephants are adaptable and can thrive in a variety of settings, including colder climates in Canada. They reference a study by Rowe et al. (2013) without providing context that is critical to properly understanding its aim and results. In fact, the authors did not study the effects of cold on elephants. They looked at heat dissipation in elephants (and dinosaurs), using elephants at the Audubon Zoo in Louisiana who were active in daytime temperatures ranging from about 50 degrees to 95 degrees Fahrenheit (10-35°C). The IEF states that elephants store heat in their core, suggesting they can withstand the effects of cold – which is not entirely true. Elephants can suffer physical damage in cold weather conditions when exposed to them for periods of more than a few hours. Extremities, such as the ears, are especially vulnerable in frigid conditions. One telling example

concerns an elephant named Ruth at the Buttonwood Park Zoo in Massachusetts. In 2014, she escaped from her barn overnight during a blizzard and suffered hypothermia (low body temperature) and frostbite on her ears after a single night's exposure.[13]

Elephants are highly active animals. In nature, they are on the move for about 20 out of 24 hours. Movement is essential to their health and welfare. Cold temperatures during the winter months in Canada preclude the possibility of a meaningful amount of spent time in outdoor areas instead of their much smaller indoor stalls. For example, according to the website Weatherspark: "The *c*old season in Cambridge, Ontario [site of African Lion Safari] lasts for 3.3 months, from December 2 to March 13*,* with an average daily high temperature below 38°F. The coldest month of the year in Cambridge is January, with an average low of 15°F and high of 28°F." This means that for about a quarter of the year it is not possible to allow elephants to spend an extended amount of time outdoors. Instead, they would have to largely remain in indoor areas, greatly restricting the healthful movement elephants need.

Space is important to elephants.

The IEF states that 'elephant welfare is less about available space and more about how that space is utilized', citing a study by Meehan et al., 2016. However, this study contains a caveat by the authors which explains that the results were limited to findings from exhibits at participating zoos in North America and that '*future studies incorporating larger areas could potentially find associations between space and welfare outcomes.'* In other words, researchers may not have found any measurable differences in welfare relating to space because zoo enclosures are relatively similar in size – and several orders of magnitude smaller than elephants' natural home ranges. Welfare studies conducted in much larger areas with suitable habitat would be more reflective of the conditions that are important for optimal elephant welfare.[14]

In the wild, much of elephant behaviour involves cognitively engaging activities that depend on space: locating and manipulating a wide variety of food items, remembering and finding the locations of water and nutrients that vary with seasons, searching for potential mates, choosing areas to associate with or avoid other elephants as social partners. All these space-related cognitive behaviours are missing in captivity, greatly reducing the elephants' welfare.

Holdgate et al. (2016), who gathered data on walking rates in 30 different zoos in North America, concluded that elephants walked far shorter distances than those in the wild.[15] In general, larger enclosures offer more opportunities for movement and larger social groups, making space an important element for welfare. Exercise regimes do not replace the natural requirements of movement for elephants, whose bodies have evolved to walk great distances. They also do not replace cognitive requirements. Although some zoos – a minority, it should be clear – may provide some form of exercise, these opportunities are generally under the close control of keepers and provide no scope for elephants' autonomy and choice.

Elephants are not thriving in zoos.

The IEF claims that 'Elephants in human care do not face the same stresses of drought, lack of food, poaching, human-elephant conflict … as elephants in range countries face.' Despite the lack of these stresses and the provision of food and veterinary care, elephants in zoos do not reproduce well and continue to die prematurely in zoos.[16] In addition, a recent paper by Jacobs et al. (2021) provides support for the hypothesis that captive elephants 'sustain impoverishment-related neural deficits and dysregulation similar to what has been documented in other species.'[17] In other words, these animals' brains are negatively and persistently impacted by the conditions of captivity.

The sanctuary environment benefits elephants.

The IEF suggests that elephants at African Lion Safari would experience undue stress if relocated to a 'sanctuary model' facility. There simply is no evidence to support this statement. In fact, sanctuaries report improvements in elephants following their arrival, including a decrease in frequency of – or the eventual absence of – stereotypies; social bond formation, including between elephants previously held alone; decrease in aggressive behaviour toward keepers; and recovery from abuse and trauma.[18,19]

Conclusion

In conclusion, we would like to reiterate the statement made in our letter dated June 3, 2022: Elephants are not suited to any form of captivity, as no captive facility can fulfil the basic biological, social, spatial, cognitive and intrinsic requirements of elephants. The keeping of elephants in captivity in Canada should be brought to an end, with every effort made to ensure that those elephants remaining in captivity are provided with the best possible conditions to meet their welfare requirements and ensure their well-being for the remainder of their lives.

Signed

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Wild species in captivity protected by Bill S-241 (*Jane Goodall Act*)

1. Statutory protection for elephants and great apes

Bill S-241 proposes to name elephants and great apes for protection directly in the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, as cetaceans (whales, dolphins and porpoises) are currently named in the Criminal Code and the Fisheries Act. Bill S-241 does not propose to licence new elephant captivity in Canada, on the recommendation of elephant scientists and other elephant experts. Bill S-241 proposes to licence new great ape captivity, subject to potential conditions, for conservation and non-harmful scientific research at the Toronto Zoo, Calgary Zoo, and Granby Zoo, on the recommendation of Dr. Jane Goodall.

Species	Number captive in Canada	Justification for protection	Notes
Asian Elephants	• 16 at African Lion Safari as of 2020 • 1 at Edmonton Valley Zoo (Lucy)	• Animal welfare (self-aware, emotional, health and behavioural issues in captivity including high infant mortality and decreased lifespan, social, require large spaces, Canadian winters unsuitable) • Lack of conservation value (two die for each born in North America) • Public safety • Use for performance and rides	Edmonton Valley Zoo has committed to phase out elephants. In recent years, African Lion Safari has used elephants for performance and rides, resulting in an attack and serious injuries to a trainer in 2019, and offered them for commercial sale in 2021 in transactions that would break up mother-daughter pairs, who normally stay together for life. Both zoos have elephants taken from the wild. Calgary previously phased out Asian elephants. Scientists and other experts recommend against licensing new captivity.
African Elephants	• 3 at Granby Zoo • 2 at Parc Safari	• Animal welfare (self-aware, emotional, health and behavioural issues in captivity including high infant mortality and decreased lifespan, social, require large spaces, Canadian winters unsuitable) • Lack of conservation value (two die for each born in North America)	Granby has committed to phase out elephants, in supporting Bill S-241. Four of Canada's five African elephants were taken from the wild. Toronto previously phased out African elephants. Scientists and other experts recommend against licensing new captivity.

		• Public safety	
Gorillas	• 4 at Granby Zoo • 6 at Calgary Zoo • 7 at Toronto Zoo	• Animal welfare (self-aware, intelligent, emotional, social) • Endangered and captivity can have conservation value • Public safety	Dr. Goodall recommends licensing for conservation and scientific research. Since 2011, Toronto Zoo has participated in 60 university studies with gorillas and orangutans.
Orangutans	• 7 at Toronto Zoo	• Animal welfare (self-aware, intelligent, emotional, social) • Endangered and captivity can have conservation value • Public safety	Toronto opened a new outdoor orangutan habitat this year. Dr. Goodall recommends licensing for conservation and scientific research. Since 2011, Toronto Zoo has participated in 60 university studies with gorillas and orangutans.
Chimpanzees and bonobos	• 6 at Fauna Foundation	• Animal welfare (self-aware, intelligent, emotional, social) • Endangered and captivity can have conservation value • Public safety • History of exploitation for entertainment and invasive experiments in other countries	Fauna does not breed chimpanzees.

2. Protection by designation on Schedules 1 and 3 (coming into force at royal assent)

The species in all Schedules are designated as priorities for protection based on the animal welfare and public safety recommendations of scientists, Canadian accredited zoos, and Canadian animal welfare NGOs. The Schedules are subject to additions or removals of wild species by GIC order according to factors in the legislation. Schedules 1 and 3 come into force at royal assent, considering immediacy of risks to animal welfare and public safety. Schedules 2 and 4 come into force up to 6 months later, in considering complexities of restricting breeding among social species in established groups, as well as practicalities in relation to marine mammals. Designated animals are subject to the authorizations conferred on 'animal care organizations' in Bill S-241 (i.e. zoos and aquariums with this designation can breed and transport these species, subject to potential conditions). Further consultations indicate that lemurs should be considered for priority designation (aside from six species used in research in Canada) as primates widely held in roadside zoos and as pets.

Species	Number captive in Canada	Justification for protection	Notes
Big cats (lions, tigers, leopards, jaguars, cougars, cheetahs, snow leopards) and nine medium-sized wild cats (e.g. lynx, bobcats)	• Over 7,000 lions, tigers and leopards and tens of thousands of medium-sized wild cats estimated to be privately-held in Canada • Almost 40 Canadian zoos hold big cats	• Animal welfare (large, far-ranging predators) • Report of behavioural issues and inadequate conditions at roadside zoos • Public safety • Record of exploitation for entertainment (e.g. selfies with cubs)	Record of escapes and attacks, including fatal attacks. Banning big cats at roadside zoos and as pets is a priority of Canadian animal welfare NGOs and accredited Canadian zoos. List of medium-sized cats is deliberately under-inclusive, in considering popularity of servals, caracals, and hybrids. Priorities are based on Zoocheck's information on species held in Canada. Protecting cougars and other designated wild species inhabiting the Pacific northwest is important to Coastal First Nations.
Bears (seven species)	• Over 25 Canadian zoos hold bears, some being rescues or bears in conflict with human populations	• Animal welfare (large, far-ranging predators) • Report of behavioural issues and inadequate conditions at roadside zoos (e.g. Ben) • Public safety	Record of public safety incidents and risks. Giant pandas not included, being under China's exclusive jurisdiction. Protecting grizzly bears, black bears, and other designated wild species inhabiting the Pacific northwest is important to Coastal First Nations. Amendment recommended to permit temporary

		• Record of use in entertainment in Canada (e.g. films)	captures of bears without licence to protect safety or property, per Ontario law.
Hyenas (four species)	• Three Canadian zoos keep hyenas	• Animal welfare (large, far-ranging and social predators) • Public safety	
Crocodilians (24 species)	• Nearly 10,000 alligators and crocodiles estimated to be privately-held in Canada	• Primarily public safety	Dr. Andrew Lentini of Toronto Zoo's advice key on dangerous reptiles.
Giant constrictor snakes (11 species and six subspecies)	• Tens of thousands of Burmese pythons and boa constrictors estimated to be privately-held in Canada	• Primarily public safety	Dr. Andrew Lentini of Toronto Zoo's advice key on dangerous reptiles. The list comprises all constrictor snakes that can exceed 3 metres in length. The City of Toronto prohibits all snakes over 3 metres through by-law. In 2013, an African rock python killed two children in New Brunswick.
Venomous reptiles (approx. 600 snake species and five lizard species)	• Unknown	• Primarily public safety	Dr. Andrew Lentini of Toronto Zoo's advice key on dangerous reptiles. Confirmed that these prohibitions will not interfere in the production of anti-venom. Some accredited zoos breed Canadian rattlesnakes for conservation and release.

3. Protection by designation on Schedules 2 and 4 (coming into force after up to 6 months)

Schedules 2 and 4 come into force up to 6 months later, in considering complexities of restricting breeding among social species in established groups, as well as practicalities in relation to marine mammals.

Species	Number captive in Canada	Justification for protection	Notes
Wolves and other large and medium-sized wild canids and hybrids (11 species)	• Over 30 Canadian zoos keep wolves • Thousands of raccoon dogs estimated to be privately-held	• Animal welfare (large, far-ranging, social, and intelligent predators) • Public safety • Raccoon dogs are invasive species risk	Hybrids of wolves, coyotes and dogs also covered. Dingoes excluded due to semi-domestication (descended from dogs). Amendment recommended to permit temporary captures of wolves and coyotes without licence to protect safety or property, per Ontario law. Protecting wolves and other designated wild species inhabiting the Pacific northwest is important to Coastal First Nations.
Seals, sea lions and walruses (33 species)	• Nine Canadian zoos and aquariums keep seals, sea lions, or walruses	• Animal welfare (large, far-ranging, predatory marine mammals) • Public safety • Use in performance	Marineland uses sea lions for performances for entertainment and keeps seals indoors for extended periods. Marineland previously used walruses in performances for entertainment. Protecting seals, sea lions, and other designated wild species inhabiting the Pacific northwest is important to Coastal First Nations.
Primates (over 100 species of gibbons, monkeys, bush babies, and other species)	• Over 1,300 monkeys estimated to be privately-held in Canada • Common at accredited zoos and roadside zoos	• Animal welfare (intelligent, emotional, social, acrobatic) • Report of behavioural issues and inadequate conditions at roadside zoos • List prioritizes tree-dwelling species, due to their climbing requirements,	Species selection excludes capuchin monkeys (bred as helper monkeys in USA) and all categories of species used in research in Canada, according to data from Canadian Council on Animal Care. Consultations indicate that lemurs should also be prioritized as primates for

		and those commonly found at roadside zoos according to Zoocheck • Public safety, including disease risk	protection, being widely held at roadside zoos and as pets. The following six species of lemur were used in research in Canada in the last five years and should be excluded: black and white ruffed lemurs, Coquerel's sifaka, Jolly's mouse lemur, ring-tailed lemurs, golden brown mouse lemurs, and mouse lemurs. There are over 100 species of lemurs.

Excerpts on jurisdiction relating to Bill S-241

A. Excerpt of Sen. Kutcher's second reading speech of Dec. 1, 2022 on Bill S-241 and jurisdiction
B. Excerpt of *Constitutional Law of Canada* (5th Edition) – Chapter 18 "Criminal Law"
C. Excerpt of Library of Parliament's "The Distribution of Legislative Powers: An Overview"
D. Excerpt of Supreme Court of Canada's *Reference re Firearms Act* (2000)
E. Excerpt of Supreme Court of Canada's *Reference re Genetic Non-Discrimination Act* (2020)

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A. Excerpt of Sen. Kutcher's second reading speech of Dec. 1, 2022 on Bill S-241 and jurisdiction

Bill S-241 proposes animal welfare restrictions on the international and interprovincial transport of live wild animals from affected species by amending the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*. As I understand it, trade across these boundaries is an area of exclusive federal jurisdiction under its trade and commerce power. For an example of animal welfare restrictions in federal trade laws, I refer us to section 23.2 of the *Fisheries Act*, restricting the import and export of live whales and dolphins, which was enacted in 2019.

Bill S-241 also exercises federal jurisdiction over criminal animal cruelty and public safety under federal criminal power.

Since 2019, section 445.2 of the *Criminal Code* has contained captivity-related offences with respect to whales and dolphins, prohibiting unlicensed breeding, as well as performance for entertainment purposes. This section protects these creatures' physical health, psychological well-being and dignity from cruel or degrading treatment.

With this bill, Parliament would expand those captivity offences to provide additional protection for wild species, while allowing licences for justifiable purposes subject to potential conditions. Bill S-241 does not create new criminal offences, but modifies existing ones. Because many of the added species are dangerous, the bill also protects public safety.

Provincial jurisdiction on wild animals in captivity coexists via provinces' property and civil rights power. Provincial legislation covers negligent treatment and patchwork regional ownership restrictions. However, all captive animals have long been subject to federal criminal animal cruelty restrictions on their treatment. In other words, as I understand it, the subject of captive wild animals is an area of both federal and provincial jurisdiction.

The bill's preamble states that the subject of captive wild animals has what is known constitutionally as a double aspect of shared jurisdiction. I understand that the bill allows some dual licencing for that reason, following the same legal model as the whale and dolphin laws.

A committee can hear more, but we have not heard any arguments on debate that the federal trade or criminal jurisdiction is invalid. With Bill S-241, the question is not whether Parliament can help protect wild animals in captivity, the question is whether it should. In my opinion, the answer is that it must.

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B. Excerpt of *Constitutional Law of Canada* (5th Edition) – Chapter 18 "Criminal Law"

> It follows from the *Margarine Reference* that the elusive third ingredient of a criminal law is a typically criminal public purpose. In the Supreme Court of Canada, Rand J., whose reasoning was adopted by the Privy Council, said that a prohibition was not criminal unless it served "a public purpose which can support it as being in relation to the criminal law". And what were the public purposes which would qualify? "Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by that law …"…
>
> The protection of the environment is a public purpose that will sustain laws enacted under the criminal law power. So is the protection of animals from cruelty…
>
> In other words, a purpose that will qualify to sustain a law as a criminal law does not necessarily involve the prevention of harm to other human beings. Indeed, the protection of the environment and the prevention of cruelty to animals (discussed in the previous paragraph) illustrate the point…

*****

C. Excerpt of Library of Parliament's "The Distribution of Legislative Powers: An Overview"

> 3.1 Criminal Law
>
> Under section 91(27) of the *Constitution Act, 1867*, all matters relating to criminal law are under Parliament's exclusive jurisdiction. Parliament has exercised this power when it enacted criminal legislation, notably the *Criminal Code* in 1890, among other criminal laws. However, to be considered a valid exercise of its criminal law power, the federal legislation must
>
> - have a valid criminal law purpose, such as public peace, order, security, health or morality;
> - be connected to a prohibition; and
> - be backed by a penalty for violations.[11]

*****

D. Excerpt of Supreme Court of Canada's *Reference re Firearms Act* (2000)

> **THE COURT**
>
> [29] Not only is the criminal law a "stand-alone" jurisdiction, it also finds its expression in a broad range of legislation. The *Criminal Code* is the quintessential federal enactment under its criminal jurisdiction, but it is not the only one. The *Food and Drugs Act*, the *Hazardous Products Act*, the *Lord's Day Act*, and the *Tobacco Products Control Act* have all been held to be valid exercises of the criminal law power: see *Standard Sausage Co. v. Lee*, [1933] 4 D.L.R. 501 (B.C.C.A.); *R. v. Cosman's Furniture (1972) Ltd.* (1976), 73 D.L.R. (3d) 312 (Man. C.A.); *Big M Drug Mart*, *supra* (legislation struck down on other grounds); and *RJR-MacDonald*, *supra* (legislation struck down on other grounds), respectively. Thus the fact that some of the provisions of

the *Firearms Act* are not contained within the *Criminal Code* has no significance for the purposes of constitutional classification…

[31] Within this context, we return to the three criteria that a law must satisfy in order to be classified as criminal. The first step is to consider whether the law has a valid criminal law purpose. Rand J. listed some examples of valid purposes in the *Margarine Reference* at p. 50: "Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by [criminal] law"…

[37] … The fact that the Act is complex does not necessarily detract from its criminal nature. Other legislation, such as the *Food and Drugs Act*, R.S.C., 1985, c. F-27, and the *Canadian Environmental Protection Act*, R.S.C., 1985, c. 16 (4th Supp.), are legitimate exercises of the criminal law power, yet highly complex…

[38] Furthermore, the law's prohibitions and penalties are not regulatory in nature…

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E. Excerpt of Supreme Court of Canada's *Reference re Genetic Non-Discrimination Act* (2020)

Karakatsanis J. (Abella and Martin JJ. concurring)

[22] This Court's approach to the division of powers has evolved to embrace the possibility of intergovernmental cooperation and overlap between valid exercises of provincial and federal authority. In keeping with the movement of constitutional law towards a more flexible view of federalism that reflects the political and cultural realities of Canadian society, the fixed "watertight compartments" approach has long since been overtaken and the doctrine of interjurisdictional immunity has been limited: see *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at paras. 23, 67 and 77; *Canada (Attorney General) v. PHS Community Services Societ*y, 2011 SCC 44, [2011] 3 S.C.R. 134, at paras. 60-66. Indeed, the more flexible principle of "co-operative federalism" and the doctrines of double aspect and paramountcy have been developed in part to account for the increasing complexity of modern society: *Canadian Western Bank*, at paras. 24, 30 and 37; *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14, [2015] 1 S.C.R. 693, at para. 17; *Reference re Pan-Canadian Securities Regulation*, at para. 18. The modern view of federalism "accommodates overlapping jurisdiction and encourages intergovernmental cooperation": *Reference re Securities Act*, 2011 SCC 66, [2011] 3 S.C.R. 837, at para. 57…

[68] …[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…

[69] Parliament's criminal law power is broad and plenary: see *RJR-MacDonald*, at para. 28; *R. v. Hydro-Québec*, [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] A.C. 310 (P.C.), at p. 324…

[71] …[T]he Court in the *Margarine Reference* established the substantive criminal law purpose requirement. Rand J. famously stated that a criminal law prohibition must be "enacted with a view to a public purpose which can support it as being in relation to criminal law" and identified "[p]ublic peace, order, security, health, morality" as the typical but not exclusive "ends" served by the criminal law: p. 50. Rand J. also stated that criminal prohibitions are properly directed at "some evil or injurious or undesirable effect upon the public", and represent Parliament's attempt "to suppress the evil or to safeguard the interest threatened": p. 49.

[72] Rand J.'s statements in the *Margarine Reference* demonstrate that a law with a valid criminal law purpose has two features. First, it should be directed at some evil, injurious or undesirable effect on the public. Second, it should serve one or more of the "public purpose[s]" or "ends" Rand J. enumerated, or another similar purpose. Rand J.'s notion of public purpose refers to the public interests traditionally safeguarded by the criminal law, and other similar interests.

[73] Many of this Court's decisions illustrate how the criminal law purpose test operates. A law directed at protecting a public interest like public safety, health or morality will usually be a response to something that Parliament sees as posing a threat to that public interest. For example, prohibitions aimed at combatting tobacco consumption and protecting the public from adulterated foods and drugs were upheld because they protect public health from threats to it: see *RJR-MacDonald*, at paras. 30 and 32; *R. v. Wetmore*, [1983] 2 S.C.R. 284, at pp. 288-89, per Laskin C.J., and 292-93, per Dickson J.; *Standard Sausage Co. v. Lee*, [1933] 4 D.L.R. 501 (B.C.C.A.), at pp. 505-7; *Malmo-Levine*, at paras. 73 and 77-78, per Gonthier and Binnie JJ., and para. 208, per Arbour J. In *Reference re AHRA*, McLachlin C.J. referred to laws that "target conduct that Parliament reasonably apprehends as a threat to our central moral precepts" as valid criminal law grounded in morality: para. 50. Targeting conduct that merely implicates central moral precepts will not suffice as a criminal law purpose; the conduct must threaten those precepts.

[74] As these examples demonstrate, the *Margarine Reference*'s first criminal law purpose requirement (that the law target an evil, injurious or undesirable effect) is linked to the second (that the law protect a public interest that can properly ground criminal law). A law will have a criminal law purpose if it addresses an evil, injurious or undesirable effect on a public interest traditionally protected by the criminal law, or another similar public interest.