

2019 FOREIGN AND INTERNATIONAL LEGISLATIVE REVIEW

By
Daryane Couto*

This Review offers an analysis of foreign and international animal protection legislation enacted or proposed in the year 2019. Included are propositions by categorically international actors, such as CITES and the UN, for regulating international wildlife trade and drafting a high-seas conservation treaty. Additionally, this Review reports how some countries, such as Slovakia, Colombia, and the United Kingdom, are finally putting an end to cruel, archaic animal practices. Finally, the recognition of animal sentience in the Australian Capital Territory, and legislation that closes the gap in Canada's Criminal Code, are addressed. Together, these changes in foreign and international animal law present a circumscribed picture of efforts made to better the position of animals around the world.

I. INTRODUCTION	535
II. INTERNATIONAL.....	536
A. <i>International Commercial Trade Ban—Asian Small-Clawed Otters, Smooth-Coated Otters, and Indian Star Tortoises</i>	536
B. <i>An International Treaty on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction</i>	538
III. BAN ON ANIMAL PRACTICES	540
A. <i>Ban on Fur Farming—Slovakia</i>	540
B. <i>Ban on Cosmetics Testing on Animals—Colombia</i>	541
C. <i>Ban on the Use of Wild Animals in Circuses—U.K.</i>	542
IV. ANIMAL WELFARE LEGISLATION	543
A. <i>Recognition of Animal Sentience—Australian Capital Territory</i>	543
B. <i>An Act to Amend the Criminal Code (Bestiality and Animal Fighting)—Canada</i>	545

I. INTRODUCTION

In the past year, several countries have enacted or proposed laws that improve the lives of animals by increasing welfare protections. From trade bans to international treaties, this year saw a wide range

* © Daryane Couto is a second-year law student at Lewis & Clark Law School. Daryane graduated with university and top departmental honors from the University of California at Santa Cruz, earning a Bachelor of Arts in Philosophy. She is the co-Form & Style Editor of *Animal Law Review* and a legal intern at Gillapsy & Rhode PLLC.

of legislation, both foreign and international, with countries making historic strides on the journey to protecting animals.

II. INTERNATIONAL

A. *International Commercial Trade Ban—Asian Small-Clawed Otters, Smooth-Coated Otters, and Indian Star Tortoises*

From August 17, 2019 to August 28, 2019, the eighteenth meeting of the Conference of the Parties (CoP18) to the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) took place in Geneva, Switzerland.¹ During the meeting, parties responded to the growing wildlife extinction crisis by accepting proposals to protect those species whose populations have been negatively impacted by the pressures placed upon them by trade.² Parties work to mitigate these pressures through trade regulation.³

Increasing popularity in owning exotic animals as pets has led to high demands in the international pet trade, driving certain species to near extinction.⁴ Among these species are the Asian small-clawed otter, the smooth-coated otter, and the Indian Star tortoise.⁵ While it is true that Asian small-clawed otters and smooth-coated otters are no strangers to exploitation—having faced endangerment in the past, due in part to dwindling habitats and illegal trade of their pelts⁶—it was not until the fad of keeping baby otters as pets placed a high demand in the exotic pet trade that possible extinction became imminent.⁷ In fact, the Asian small-clawed otter and the smooth-coated otter populations have declined by more than 30% in the last thirty years.⁸ Conser-

¹ TANYA ROSEN ET AL., SUMMARY OF THE 18TH MEETING OF THE CITES CONFERENCE OF THE PARTIES: 17-28 AUGUST 2019, 21 EARTH NEGOT. BULL. (Int'l Inst. for Sustainable Dev.), Aug. 31, 2019, at 1, <https://enb.iisd.org/cites/cop18/> [<https://perma.cc/86GR-3Y98>] (accessed Apr. 21, 2020).

² See *id.* (revising “the trade rules for dozens of wildlife species that are threatened by unsustainable trade linked to over harvesting, overfishing, or overhunting” as a way to address the growing wildlife extinction crisis).

³ See *id.* (addressing fifty-seven proposals regarding international trade in wildlife and wildlife products in response to demand for a wide variety of species of flora and fauna).

⁴ Jani Actman, *Exotic Pet Trade, Explained*, NAT'L GEOGRAPHIC (Feb. 20, 2019), <https://www.nationalgeographic.com/animals/reference/exotic-pet-trade/> [<https://perma.cc/QXD6-DWYW>] (accessed Apr. 21, 2020).

⁵ Jani Actman, *Wild Otters Are the Latest Exotic Pet Trend*, NAT'L GEOGRAPHIC (Jan. 10, 2019), <https://www.nationalgeographic.com/animals/2019/01/wild-otters-popular-exotic-pets/> [<https://perma.cc/4UV9-EV82>] (accessed Apr. 21, 2020); *Victory for Otters, Tortoises, Elephants and Many More At-Risk Animals*, WORLD ANIMAL PROT. (Aug. 28, 2019), <https://www.worldanimalprotection.org/news/victory-otters-tortoises-elephants-and-many-more-risk-animals> [<https://perma.cc/KQ7Q-K4HP>] (accessed Apr. 21, 2020).

⁶ Nina Larson, *CITES Votes to Ban Trade in Two Endangered Otter Species*, PHYS (Aug. 26, 2019), https://phys.org/news/2019-08-cites-votes-endangered-otters_1.html [<https://perma.cc/NLA4-8YG6>] (accessed Apr. 21, 2020).

⁷ *Id.*

⁸ *Id.*; WORLD ANIMAL PROT., SPECIES AT RISK FROM THE PET TRADE 6–7 (2019).

vationists say “this decline is believed to have accelerated significantly in recent years,” and the baby otter pet fad is the culprit.⁹

The Indian Star tortoise is the world’s most seized and “illegally traded species of tortoise.”¹⁰ With at least 100 to 150 Indian Star tortoises illegally smuggled from India to Thailand and Sri Lanka each week¹¹—a total of 8,825 confiscated between February 2016 and December 2017¹²—it comes as no surprise that the Indian Star tortoise represents “11% of global seizures involving these taxa.”¹³ Due to the unique star pattern on their shells, Indian Star tortoises are highly sought after in the international trade for use as exotic pets, where the estimated market value for one live Indian Star tortoise is \$400 USD.¹⁴ Because of the unique shell pattern, these tortoises are easily distinguishable from other tortoises, and thus highly vulnerable to over-exploitation.¹⁵ For Asian small-clawed otters, smooth-coated otters, and Indian Star tortoises, increased protection from exploitation was accomplished by ‘up-listing,’ or transferring the listing of each species from CITES Appendix II to Appendix I.¹⁶

Prior to the 2019 CoP18 meeting, Asian small-clawed otters, smooth-coated otters, and Indian Star tortoises were listed under CITES Appendix II¹⁷—a listing that means, while not threatened with extinction, trade of these species must nonetheless be regulated and monitored to avoid utilization that is incompatible with their survival.¹⁸ International trade of the species listed under Appendix II is still possible with an export permit, granted only if the species were legally obtained and if exportation will not be detrimental to the species’ survival¹⁹, or a re-export certificate, issued only if the importation

⁹ Larson, *supra* note 6.

¹⁰ WORLD ANIMAL PROT., *supra* note 8, at 14; *see also* *Victory for Otters, Tortoises, Elephants and Many More At-Risk Animals*, WORLD ANIMAL PROT. (Aug. 28, 2019), <https://www.worldanimalprotection.org/news/victory-otters-tortoises-elephants-and-many-more-risk-animals> [<https://perma.cc/VR7Z-QP9J>] (accessed Apr. 21, 2020) [hereinafter *Victory for Otters*] (“The Indian star tortoise is the world’s most illegally traded species of tortoise.”).

¹¹ *Victory for Otters*, *supra* note 10.

¹² CITES, *Consideration of Proposal for Amendment of Appendices I and II*, at 6–7, 13, CoP18 Prop. 36 (May 23–June 3, 2019), <https://cites.org/sites/default/files/eng/cop/18/prop/060319/E-CoP18-Prop-36.pdf> [<https://perma.cc/58P6-LESE>] (accessed Apr. 21, 2020).

¹³ *Id.* at 2.

¹⁴ *Id.* at 2, 13.

¹⁵ *Id.* at 2.

¹⁶ *Victory for Otters*, *supra* note 10.

¹⁷ Press Release, CITES, CITES Conference Responds to Extinction Crisis by Strengthening International Trade Regime for Wildlife (Aug. 28, 2019), https://www.cites.org/eng/CITES_conference_reponds_to_extinction_crisis_by_strengthening_international_trade_regime_for_wildlife_28082019# [<https://perma.cc/8JMD-V475>] (accessed Apr. 21, 2020); *Consideration of Proposal for Amendment of Appendices I and II*, *supra* note 12 at 7.

¹⁸ *How CITES Works*, CITES, <https://www.cites.org/eng/disc/how.php> [<https://perma.cc/EJ46-57D5>] (accessed Apr. 21, 2020).

¹⁹ *Id.*

was in accordance with CITES.²⁰ In contrast, the species listed under Appendix I *are* threatened with extinction,²¹ and international commercial trade of these species is prohibited.²² The non-commercial trade of Appendix I species is allowed only in exceptional circumstances and requires both an import and export permit.²³ On August 25, 2019, proposals were made at CoP18 to up-list Asian small-clawed otters and smooth-coated otters.²⁴ With the ever-present threat of extinction and rapid population decline in mind, roughly 100 countries voted to transfer Asian small-clawed otters and smooth-coated otters from Appendix II to Appendix I, banning international commercial trade of both species.²⁵ On August 26, 2019, India proposed to transfer the Indian Star tortoise from Appendix II to Appendix I, which the committee adopted by consensus.²⁶

B. An International Treaty on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction

From August 19, 2019 to August 30, 2019, United Nations (UN) delegates gathered for the third substantive session of the Intergovernmental Conference on Marine Biodiversity (the Conference) to begin the initial text-based negotiations over the draft for the first ever high seas conservation treaty.²⁷ The draft treaty concerns the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.²⁸ It contains provisions on marine genetic resources, including the sharing of any benefits; area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and the transfer of marine technology.²⁹ Nearly two-thirds of the world's ocean is beyond national jurisdiction,³⁰ and no legally binding instrument is in place to adequately

²⁰ *Id.*

²¹ *Id.* (emphasis added).

²² *Id.*

²³ *Id.*

²⁴ ROSEN ET AL., *supra* note 1 at 22.

²⁵ *Id.*

²⁶ *Id.* at 25.

²⁷ Press Release, General Assembly, Delegates Begin Text-Based Deliberations for First-Ever Treaty on Managing Marine Biodiversity Beyond National Jurisdiction Areas, at Start of Conference Session, U.N. Press Release SEA/2108 (Aug. 19, 2019).

²⁸ Intergovernmental Conference on an International Legally Binding Instrument Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, Revised Draft Text of an Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, U.N. Doc. A/CONF.232/2020/3 (Nov. 18, 2019), <https://undocs.org/en/a/conf.232/2020/3> [<https://perma.cc/YW9U-EAGD>] (accessed Apr. 21, 2020).

²⁹ *Id.*

³⁰ Alex Fox, *First Ever High-Seas Conservation Treaty Would Protect Life in International Water*, AAAS: SCI. (Apr. 3, 2019), <https://www.sciencemag.org/news/2019/04/first->

safeguard the essential marine life inhabiting those waters.³¹ These inadequately protected international waters face threats of climate change; ocean acidification; chemical noise, and plastic pollution; destructive fishing practices; and overfishing, without the enactment of such a UN treaty.³² Peggy Kalas, the coordinator of the High Seas Alliance, referred to the UN treaty negotiations as “an historic opportunity to protect the biodiversity and functions of the high seas through legally binding commitments.”³³ According to marine ecologist Douglas McCauley, Director of the Benioff Ocean Initiative at the University of California, Santa Barbara, “The policy opportunity this represents is much rarer than once in a lifetime.”³⁴

The President of the Conference prepared the draft of the treaty following the second session of the Conference, held from March 25, 2019 to April 5, 2019.³⁵ The contents of the draft reflected efforts to strike a balance between the views and proposals of the second session, and the options in the President’s aid to negotiations.³⁶ Its purpose was to facilitate progress in negotiations during subsequent sessions of the Conference by encouraging delegates to consider the provisions and make any textual suggestions if needed.³⁷ Despite the intense work ahead, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs, opened the third session on a positive note: “I’m confident that our common interest in providing future generations with a

ever-high-seas-conservation-treaty-would-protect-life-international-waters [https://perma.cc/5UKJ-8QVA] (accessed Apr. 21, 2020).

³¹ *Id.*

³² 4 WORLD OCEAN REVIEW, SUSTAINABLE USE OF OUR OCEANS – MAKING IDEAS WORK 54 (MARIBUS 2015).

³³ *New Phase Begins in Landmark Treaty Negotiations*, HIGH SEAS ALL.: TREATY TRACKER, <http://highseasalliance.org/treatytracker/2019/08/19/new-phase-begins-in-landmark-un-treaty-negotiations/> [https://perma.cc/E3LX-UJ3A] (accessed Apr. 21, 2020).

³⁴ Fox, *supra* note 30.

³⁵ Intergovernmental Conference on an International Legally Binding Instrument Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, President’s Aid to Negotiations, ¶ 4–5, U.N. Doc. A/CONF.232/2019/1* (Dec. 3, 2018), <https://undocs.org/en/A/CONF.232/2019/1> [https://perma.cc/5UQT-AKDJ] (accessed Apr. 21, 2020); Intergovernmental Conference on an International Legally Binding Instrument Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, Revised Draft Text of an Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, Note by the President, ¶ 4, U.N. Doc. A/CONF.232/2020/3 (Nov. 18, 2019), <https://undocs.org/en/a/conf.232/2020/3> [https://perma.cc/GZ76-97MB] (accessed Apr. 21, 2020).

³⁶ *Revised Draft Text of an Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*, *supra* note 35, ¶ 4.

³⁷ *Id.* ¶ 9.

healthy, resilient and productive ocean will continue to guide delegations in their negotiations.”³⁸

In preparation for the fourth session, having considered comments and textual proposals, the president revised the draft.³⁹ The revisions included eliminating options and incorporating textual edits, and although paragraphs were interchanged, the structure still mirrors that of the original draft.⁴⁰ The fourth and final session of the Conference will be held from March 23, 2020 to April 3, 2020, at UN Headquarters.⁴¹

III. BAN ON ANIMAL PRACTICES

A. *Ban on Fur Farming—Slovakia*

On October 17, 2019, the Slovak National Council approved a ban on fur farming.⁴² The ban passed with an overwhelming majority vote of 107 out of 150,⁴³ making Slovakia “the 15th European country to implement either a total ban or progressive phase-out of fur farms.”⁴⁴ The bill for the ban was initiated by MP Eva Antošová, a member of the Slovak National Party,⁴⁵ in response to a seven-month fur farming ban campaign led by Humánný Pokrok, a nonprofit animal rights organization.⁴⁶ In March 2019, the organization released footage exposing the mistreatment of minks on a northern Slovakian fur farm,⁴⁷ followed by a petition to ban such farms because “they really have no place in the 21st century.”⁴⁸ With the footage circulating online,

³⁸ *Negotiating Legally-Binding Agreement to Provide Future Generations with Healthy, Resilient and Productive Ocean*, UN NEWS (Aug. 20, 2019), <https://news.un.org/en/story/2019/08/1044571> [<https://perma.cc/CQ6L-49BV>] (accessed Apr. 21, 2020).

³⁹ *Revised Draft Text of an Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*, *supra* note 28, ¶ 4.

⁴⁰ *Id.* ¶ 8.

⁴¹ *Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction*, UNITED NATIONS, https://www.un.org/bbnj/content/home?Is%20Featured=All&language=EN&sort_order=DESC&sort_by=created&page=1 [<https://perma.cc/6C3D-V3SE>] (accessed Apr. 21, 2020).

⁴² *Slovakia Next Country to Close Down Fur Farms*, FUR FREE ALL. (Oct. 17, 2019), <https://www.furfreealliance.com/slovakia-next-country-to-close-down-fur-farms/> [<https://perma.cc/R45Z-8YLB>] (accessed Apr. 21, 2020).

⁴³ *Id.*

⁴⁴ *Slovakia Approves Ban on Fur Farming Following Nation-Wide Campaign*, KAFKADESK (Oct. 22, 2019), <https://kafkadesk.org/2019/10/22/slovakia-approves-ban-on-fur-farming-following-nation-wide-campaign/> [<https://perma.cc/URU4-5Z55>] (accessed Apr. 21, 2020).

⁴⁵ *Slovakia Joins Other Countries and Bans Fur Farming*, SLOVAK SPECTATOR (Oct. 23, 2019), <https://spectator.sme.sk/c/22243235/slovakia-joins-other-countries-and-bans-fur-farming.html> [<https://perma.cc/F5NL-RJ7R>] (accessed Apr. 21, 2020).

⁴⁶ *Slovakia Joins Other Countries and Bans Fur Farming*, *supra* note 42.

⁴⁷ *Id.*

⁴⁸ *Petition for Fur Breeding Ban*, IDE O CHLP, <https://ideochlp.sk/> [<https://perma.cc/UP95-YELB>] (accessed Apr. 21, 2020).

Humánný Pokrok's petition collected more than 77,000 signatures, earning the support of more than 1.4% of the Slovakian population.⁴⁹ With 68% of the population considering fur farming to be unacceptable,⁵⁰ it is no surprise that Humánný Pokrok's fur farming ban campaign became the second largest in Slovakian history.⁵¹ The new legislation is set to go into effect in 2021.⁵² By 2025, the nine fur farms that currently exist in Slovakia will be phased out.⁵³

B. *Ban on Cosmetics Testing on Animals—Colombia*

In August 2018, Columbian House Representative Juan Carlos Losada Vargas introduced Bill 120/2018,⁵⁴ with the main purpose of “stop[ping] animal suffering in the cosmetics industry and enabl[ing] Colombian companies to enter the European market, a region that has for years rejected such tests.”⁵⁵ Nearly eight months later, in April 2019, the House of Representatives voted unanimously for approval of the bill.⁵⁶ This historic bill aims to prohibit the use of “animal testing in the manufacture of cosmetic, grooming and absorbent products . . .” in Colombia.⁵⁷ Speaking in support of Bill 120/2018, Representative Ángel María Gaitán added that “Colombia must become a world leader in prohibiting practices that harm animals.”⁵⁸ The bill works toward achieving that goal by offering incentives and facilities for scientific research programs that develop alternative models of testing and for the marketing and export of any untested products.⁵⁹

According to the provisions of Bill 120/2018, the manufacturing prohibition includes “the research, processing and marketing of cosmetics, grooming and absorbent products.”⁶⁰ The ban applies not only to products and their ingredients manufactured in Colombia, but also to those imported into the country.⁶¹ In addition to banning cosmetics testing on animals, the law will require all cosmetic, grooming, and

⁴⁹ *Slovakia Joins Other Countries and Bans Fur Farming*, *supra* note 42.

⁵⁰ *Id.*

⁵¹ Charlotte Pointing, *Slovakia Has Passed a Ban on Fur Farming*, LIVEKINDLY (Oct. 18, 2019), <https://www.livekindly.co/slovakia-ban-fur-farming/> [<https://perma.cc/64JN-6JCU>] (accessed Apr. 21, 2020).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Colombia's Lower Chamber Agrees Ban on Cosmetics Animal Testing*, CHEMICAL WATCH (Apr. 5, 2019), <https://chemicalwatch.com/76005/colombias-lower-chamber-agrees-ban-on-cosmetics-animal-testing#overlay-strip> [<https://perma.cc/Q82R-Z3BD>] (accessed Apr. 21, 2020).

⁵⁵ Press Release, Animal Def's Int'l (ADI), *Bill to Ban Cosmetics Testing on Animals in Colombia Heads to Senate After Unanimous Plenary Vote* (Apr. 6, 2019), http://www.ad-international.org/about_us/go.php?id=4692&si=12 [<https://perma.cc/7RYZ-EUAV>] (accessed Apr. 21, 2020).

⁵⁶ *Id.*

⁵⁷ L. 120/2018 (Colom.).

⁵⁸ Press Release, ADI, *supra* note 55.

⁵⁹ L. 120/2018, art. 4, (Colom.).

⁶⁰ L. 120/2018, art. 2, (Colom.).

⁶¹ Press Release, ADI, *supra* note 55.

absorbent products produced, imported, or exported in Colombia to have a ‘Not Tested on Animals’ stamp.⁶² Bill 120/2018 has been sent off to the Senate, where it must survive two debates before becoming law.⁶³ If passed, the law must be enforced within one year of the date of passage.⁶⁴

C. Ban on the Use of Wild Animals in Circuses—U.K.

Seven years after the commitment to ban the use of wild animals in circuses was first made,⁶⁵ the Wild Animals in Circuses (No.2) Bill was finally introduced to the House of Commons on May 1, 2019.⁶⁶ On July 24, 2019, the bill received Royal Assent from the U.K. Parliament, becoming the Wild Animals in Circuses Act 2019 (the Act).⁶⁷ By ending the use of wild animals in traveling circuses—an outdated practice that has no place in modern society—the bill sought to ensure that the U.K. maintained world leadership when it comes to safeguarding and respecting animals.⁶⁸ In 2012, a commitment was made to introduce a ban on the use of wild animals in travelling circuses, but due to the amount of time that primary legislation takes, interim welfare regulations on licensing were put into place in the meantime, using powers available under the Animal Welfare Act 2006.⁶⁹ However, the Welfare of Wild Animals in Travelling Circuses (England) Regulations 2012⁷⁰ were set to expire in 2020, and without this Act there would have been a gap in the protection of wild animals in circuses.⁷¹ No restrictions on their use made this bill time sensitive.⁷² The bill had strong support across the parties, reflecting “the Government’s view that seeing wild animals in circuses does nothing to further the understanding or conservation of wild animals.”⁷³ Additionally, the public supported the bill because modern society recognizes the intrinsic value in animals, and respects their natural behavior; a behavior not possible when an animal behaves in a “comic or superficial setting.”⁷⁴

⁶² L. 120/2018, art. 3, (Colom.).

⁶³ Press Release, ADI, *supra* note 55.

⁶⁴ L. 120/2018, art. 5, (Colom.).

⁶⁵ 659 Parl Deb HC (6th Ser.) (2019) col. 499, 505 (UK).

⁶⁶ BILL STAGES—WILD ANIMALS IN CIRCUSES ACT 2019, UK PARLIAMENT (2019), <https://services.parliament.uk/Bills/2017-19/wildanimalsincircusesno2/stages.html> [<https://perma.cc/YGP6-SW3B>] (accessed Apr. 21, 2020).

⁶⁷ 799 Parl Deb HL (2019) Royal Assent (UK).

⁶⁸ 659 Parl Deb HC (6th Ser.) (2019) col. 497 (UK).

⁶⁹ *Id.*

⁷⁰ The Welfare of Wild Animals in Travelling Circuses Regulations 2012, SI 2012/2932 (Eng.); 659 Parl Deb HC (2019) col. 499 (UK).

⁷¹ 659 Parl Deb HC (6th Ser.) (2019) col. 499 (UK).

⁷² 659 Parl Deb HC (6th Ser.) (2019) col. 518 (UK).

⁷³ 798 Parl Deb HL (5th Ser.) (2019) col. 787 (UK).

⁷⁴ 659 Parl Deb HC (6th Ser.) (2019) col. 502 (UK).

The Act prohibits travelling circuses in England from using wild animals.⁷⁵ “Wild animals,” as defined in the Act, are “animals of a kind which are not commonly domesticated in Great Britain.”⁷⁶ “Use” of a wild animal in a circus pertains to any performance by the animal and any exhibition of an animal that is part of the circus.⁷⁷ Section 3 of the Act makes a consequential amendment to Section 5(2) of the Dangerous Wild Animals Act 1976,⁷⁸ which provided an exemption from licensing requirements for dangerous wild animals kept in a circus.⁷⁹ Circuses in England and Scotland are no longer exempt, while the exemption is still in place for circuses in Wales.⁸⁰ The Act went into force on January 20, 2020.⁸¹

IV. ANIMAL WELFARE LEGISLATION

A. *Recognition of Animal Sentience—Australian Capital Territory*

On October 10, 2019, the Animal Welfare Legislation Amendment Bill 2019⁸²—after being passed by the Legislative Assembly and notified on the Legislation Register⁸³—became the Animal Welfare Legislation Amendment Act 2019.⁸⁴ On October 17, 2019, the law of the territory commenced.⁸⁵ With this new law, the Australian Capital Territory (ACT) became the first jurisdiction in Australia to recognize animal sentience.⁸⁶

The Act sought to amend the Animal Welfare Act 1992, updating the Section 4 objects of the 1992 Act to incorporate the modern notion

⁷⁵ Wild Animals in Circuses Act 2019, c.24, Explanatory Notes ¶¶ 1, 6 (UK), http://www.legislation.gov.uk/ukpga/2019/24/pdfs/ukpgaen_20190024_en.pdf [<https://perma.cc/TYP8-78X8>] (accessed Apr. 21, 2020).

⁷⁶ *Id.* ¶ 1.

⁷⁷ *Id.* ¶ 7.

⁷⁸ *Id.* ¶ 12.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Wild Animals in Circuses Act 2019, c. 24, § 4 (Eng.), <http://www.legislation.gov.uk/ukpga/2019/24/section/4/enacted> [<https://perma.cc/Z9P7-Y8YX>] (accessed Apr. 21, 2020).

⁸² Animal Welfare Legislation Amendment Bill 2019 (ACT) pt 1 ss 1, 3 (Austl.), https://www.legislation.act.gov.au/View/b/db_60107/20190516-71199/PDF/db_60107. PDF [<https://perma.cc/MMU9-ZW77>] (accessed Apr. 21, 2020).

⁸³ Animal Welfare Legislation Amendment Bill 2019 (ACT) (Austl.), https://www.legislation.act.gov.au/b/db_60107/ [<https://perma.cc/58XE-PV3Q>] (accessed Apr. 21, 2020).

⁸⁴ *Animal Welfare Legislation Amendment Act 2019* (ACT) pt1 s 1 (Austl.), <https://www.legislation.act.gov.au/View/a/2019-35/current/PDF/2019-35> [<https://perma.cc/WHJ3-DKAU>] (accessed Feb. 18, 2020).

⁸⁵ Revised Explanatory Statement, Animal Welfare Legislation Amendment Bill 2019 (ACT) 12 (Austl.), https://www.legislation.act.gov.au/View/es/db_60140/20190926-72294/PDF/db_60140.PDF [<https://perma.cc/2KG6-83KF>] (accessed Apr. 21, 2020).

⁸⁶ Jake Evans, *Animal Sentience Recognised for the First Time Under New ACT Laws*, ABC NEWS (updated Sep. 26, 2019), <https://www.abc.net.au/news/2019-09-26/act-animal-sentience-recognised/11550946> [<https://perma.cc/WCG7-B7C8>] (accessed Apr. 21, 2020).

of animal welfare—described as “how an animal is coping both mentally and physically”⁸⁷—including a formal recognition of animals as sentient beings—that animals have the ability to “subjectively feel and perceive the world around them.”⁸⁸ The Amended Section 4A makes clear that the Act’s overarching objectives are to recognize that animals are sentient beings, “have intrinsic value, and deserve to be treated with compassion.”⁸⁹ By recognizing animal sentience, Chris Steel, ACT City Services Minister, said ACT was “simply recognizing what we already know about animals.”⁹⁰ Furthermore, Amended Section 4A recognizes that “people have a duty of care for the physical and mental welfare of animals.”⁹¹

The Act sought to give effect to this animating principle by incorporating amendments that equip ACT with an effective regulatory system, up-to-date animal welfare and management laws to promote the highest welfare standards, and the ability to use best practices when protecting and promoting the welfare of animals.⁹² The Act criminalizes offenses constituting a failure to take appropriate care of an animal, with noted offenses ranging from neglect to abuse.⁹³ Furthermore, the Act provides amendments that will improve the framework for the Animal Welfare Authority, thereby ensuring that ACT has an effective regulatory scheme and strengthening animal welfare protections.⁹⁴ According to Chris Steel, ACT City Services Minister, “[The Act] . . . will allow our inspectors and the RSPCA to issue on-the-spot fines for more minor duty-of-care or cruelty offences in addition to the existing serious offences,”⁹⁵ and “with stronger penalties and enforcement powers,” the regulatory framework is one of the Act’s key features.⁹⁶ In addition to amending the Animal Welfare Act 1992, the Animal Welfare Legislation Amendment Act 2019 amended the Animal Welfare Regulation 2001, the Discrimination Act 1991, the Domestic Animals Act 2000, the Domestic Animals Regulation 2001, the

⁸⁷ Revised Explanatory Statement, *supra* note 85.

⁸⁸ *Id.* at 12.

⁸⁹ *Animal Welfare Act 1992* (ACT) pt 1 s 4A (Austl.).

⁹⁰ Evans, *supra* note 86.

⁹¹ *Animal Welfare Act 1992* (ACT) pt 1 s 4A (Austl.).

⁹² *Animal Welfare Legislation Amendment Act 2019* (ACT) pt 2 s 4A (Austl.), <https://www.legislation.act.gov.au/View/a/2019-35/20191017-72390/PDF/2019-35.PDF> [<https://perma.cc/AP7C-GVDG>] (accessed Apr. 21, 2020).

⁹³ *Animal Welfare Legislation Amendment Act 2019* (ACT) pt 2 ss 6B, 8 (Austl.), <https://www.legislation.act.gov.au/View/a/2019-35/20191017-72390/PDF/2019-35.PDF> [<https://perma.cc/F7Q3-D5MF>] (accessed Apr. 21, 2020).

⁹⁴ Revised Explanatory Statement, *supra* note 85.

⁹⁵ Press Release, Minister for City Services Chris Steel, Australian First—ACT to Recognise Animal Sentience in Law (May 5, 2019), https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/chris-steel-mla-media-releases/2019/australian-first-act-to-recognise-animal-sentience-in-law [<https://perma.cc/HS7Q-9V9N>] (accessed Apr. 21, 2020).

⁹⁶ *Id.*

Major Events Act 2014, the Nature Conservation Act 2014, and the Public Pools Act 2015.⁹⁷

B. An Act to Amend the Criminal Code (Bestiality and Animal Fighting)—Canada

On June 18, 2019, Bill C-84, an Act to amend the Criminal Code (bestiality and animal fighting), passed the Senate of Canada without amendment,⁹⁸ and received Royal Assent by the Governor General just three days later, on June 21, 2019.⁹⁹ Bill C-84 aimed to address “gaps in the criminal law regarding bestiality and strengthen laws around animal fighting.”¹⁰⁰ Acting as criminal justice reform legislation, Bill C-84 sought to close the gaps in Canada’s criminal laws by proposing to amend Sections 160 (Bestiality), 445.1(1)(b), and 447 (Cruelty to Animals) of the Criminal Code.¹⁰¹ With widespread support from the public, “child protection stakeholders,” and “animal-welfare advocates,”¹⁰² the amendments aimed to “strengthen protections for children, other vulnerable individuals, and animals by broadening the scope of the bestiality and animal fighting offenses.”¹⁰³

The bill was originally introduced by the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, on October 18, 2018.¹⁰⁴ This bill was a direct response to the Supreme Court of Canada’s 2016 decision in *R v. D.L.W.*,¹⁰⁵ where the Court held that bestiality offenses were limited only to penetrative sexual

⁹⁷ *Animal Welfare Legislation Amendment Act 2019* (ACT) pt 1 s 3 (Austl.), <https://www.legislation.act.gov.au/View/a/2019-35/current/PDF/2019-35.PDF> [<https://perma.cc/JG5H-GGQ3>] (accessed Feb. 15, 2020).

⁹⁸ An Act to Amend the Criminal Code (Bestiality and Animal Fighting), C-84, 42nd Parliament (2019) (Can.), https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=bill&Id=100829_96&View=0 [<https://perma.cc/Z6KD-GPJA>] (accessed Apr. 21, 2020).

⁹⁹ Canada, *Debates of the Senate*, No. 308 (21 June 2019) at 8845, https://sen.canada.ca/Content/SEN/Chamber/421/Debates/pdf/308db_2019-06-21-e.pdf [<https://perma.cc/CLV3-JXMP>] (accessed Apr. 21, 2020).

¹⁰⁰ *Bestiality and Animal Fighting (Bill C-84)*, DEP’T OF JUST. CAN., <https://www.justice.gc.ca/eng/cs/sj/pl/baf-bca/index.html> [<https://perma.cc/C257-4PXA>] (accessed Apr. 21, 2020).

¹⁰¹ *Id.*

¹⁰² Canada, House of Commons, *Evidence*, No. 126 (Jan. 32, 2019) at 2, <https://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV10292484/JUSTEV126-E.PDF> [<https://perma.cc/MC2U-3Q33>] (accessed Apr. 21, 2020).

¹⁰³ Press Release, Dep’t of Just. Can., Government of Canada Announces Measures to Strengthen Legal Protections for Children, Vulnerable Individuals, and Animals (Oct. 18, 2018), <https://www.canada.ca/en/department-justice/news/2018/10/government-of-canada-announces-measures-to-strengthen-legal-protections-for-children-vulnerable-individuals-and-animals.html> [<https://perma.cc/2VSS-4QVK>] (accessed Apr. 21, 2020).

¹⁰⁴ JULIAN WALKER, LIB. OF PARLIAMENT, PUB. NO. 42-1-C84-E, LEGISLATIVE SUMMARY OF BILL C-84 1 (2018), <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/42-1/c84-e.pdf> [<https://perma.cc/6D2C-AYPL>] (accessed Apr. 21, 2020).

¹⁰⁵ Canada, House of Commons, *Evidence*, No. 126 (Jan. 31 2019) at 1, <https://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV10292484/JUSTEV126-E.PDF> [<https://perma.cc/6S37-ADQQ>] (accessed Apr. 21, 2020).

acts.¹⁰⁶ The Court reasoned that the Criminal Code failed to statutorily define *bestiality*.¹⁰⁷ According to the Court, when Parliament adopts a term without further defining it, and if the term has a well-understood common law meaning, the Court will use that meaning in statutory interpretation¹⁰⁸ because, “absent clear parliamentary intent to depart from the clear legal definition of the elements of the offence, it is manifestly *not* the role of the courts to expand that definition”¹⁰⁹ or “the scope of criminal liability.”¹¹⁰ The Court concluded that the term *bestiality* “has a well-established legal meaning and refers to sexual intercourse between a human and an animal,” and that “penetration has always been understood to be an essential element of bestiality.”¹¹¹ Therefore, a gap existed under the Criminal Code where “non-penetrative sexual contact with animals [was] not a criminal offense.”¹¹² The bill fills this gap by amending Section 160 of the Criminal Code to define the term bestiality, demonstrating clear parliamentary intent that this offense is to include “any contact, for a sexual purpose, with an animal.”¹¹³ Research to support this amendment comes from the Canadian Centre for Child Protection Inc.’s 2018 report titled “*Bestiality*” as Reflected in Canadian Case Law: Considerations for Protecting Children and Animals After R v. D.L.W.,¹¹⁴ showing that most of the cases did not involve penetrative acts and “[o]f the cases that didn’t involve penetrative acts, all of them involved sexual abuse of a child.”¹¹⁵

In addition to defining bestiality, the bill introduced amendments to Sections 445.1 and 447 to strengthen protections for animals by increasing the scope of animal cruelty offenses relating to animal fighting.¹¹⁶ Pertaining to Section 445.1(1)(b), the bill expands:

[T]he scope of the offence of encouraging, aiding, or assisting at the fighting or baiting of animals or birds so that the offence includes: (1) promoting,

¹⁰⁶ R. v. D.L.W., [2016] 1 S.C.R. 402, 456 (Can.).

¹⁰⁷ *Id.* at 413.

¹⁰⁸ *Id.* at 403.

¹⁰⁹ *Id.* at 437.

¹¹⁰ *Id.* at 405.

¹¹¹ *Id.* at 403.

¹¹² *Parliamentary Committee Supports Animal Justice’s Changes to Bestiality & Animal Fighting Laws*, ANIMAL JUST.: BLOG (Feb. 22, 2019), <https://www.animaljustice.ca/blog/parliamentary-committee-supports-animal-justices-changes-to-bestiality-animal-fighting-laws> [<https://perma.cc/63TT-XBYH>] (accessed Apr. 21, 2020).

¹¹³ An Act to Amend the Criminal Code (Bestiality and Animal Fighting), S.C. 2019, c 17 (Can.).

¹¹⁴ CAN. CTR. FOR CHILD PROTECTION INC., “BESTIALITY” AS REFLECTED IN CANADIAN CASE LAW (Dec. 2018).

¹¹⁵ Canada, House of Commons, *Evidence*, No. 126 (Jan. 31, 2019) at 3, <https://www.ourcommons.ca/Content/Committee/421/JUST/Evidence/EV10292484/JUSTEV126-E.PDF> [<https://perma.cc/HX2X-5DDN>] (accessed Apr. 21, 2020).

¹¹⁶ WALKER, *supra* note 104 at 1, 4–5; Canada, House of Commons, *House of Commons Debates*, No. 344 (Oct. 29, 2018) at 22913–14, <https://www.ourcommons.ca/Content/House/421/Debates/344/HAN344-E.PDF> [<https://perma.cc/7TGT-CZVK>] (accessed Apr. 21, 2020).

arranging, receiving money for or taking part in the fighting or baiting of animals or birds, and (2) the training, transporting or breeding of animals or birds for the purposes of the fighting or baiting.¹¹⁷

The bill also expands the scope of Section 447, which originally prohibited individuals from keeping a cockpit.¹¹⁸ In light of the undeniable truth that dogfighting operations are becoming more prevalent,¹¹⁹ a prohibition on just cockpits makes Section 447 far too narrow. The bill increases the scope to include building, making, maintaining, or keeping an arena for animal fighting—whether the individual did it themselves or allowed others to do it on their property.¹²⁰

Among the amendments approved by the House of Commons Justice Committee in early 2019¹²¹ were the two amendments proposed by Camille Labchuk, animal protection lawyer and executive director of Animal Justice, on February 5, 2019.¹²² To “make bill C-84 even more effective at protecting individual animals,”¹²³ the amendments give courts the ability to prohibit the accused from owning or living with animals for a minimum of five years and order the accused to pay for the cost of the animal’s care.¹²⁴

¹¹⁷ An Act to Amend the Criminal Code (Bestiality and Animal Fighting), S.C. 2019, c 17 (Can.).

¹¹⁸ Canada, House of Commons, *House of Commons Debates*, No. 344 (Oct. 29 2018) at 22914, <https://www.ourcommons.ca/Content/House/421/Debates/344/HAN344-E.PDF> [<https://perma.cc/X5B4-9P7G>] (accessed Apr. 21, 2020).

¹¹⁹ *Id.* at 22950, 229953.

¹²⁰ *Id.* at 22914.

¹²¹ An Act to Amend the Criminal Code (Bestiality and Animal Fighting), S.C. 2019, c 17 (Can.).

¹²² Canada, House of Commons, *Evidence*, No. 127 (Feb. 5, 2019) at 2.

¹²³ *Id.* at 3.

¹²⁴ An Act to Amend the Criminal Code (Bestiality and Animal Fighting), S.C. 2019, c 17 (Can.).