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Legislative Summary

BILL S-15: AN ACT TO AMEND THE CRIMINAL CODE AND THE WILD ANIMAL AND PLANT PROTECTION AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT

44-1-S15-E

16 September 2025

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Legislative Summary of Bill S-15
(Preliminary version)

44-1-S15-E

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LEGISLATIVE SUMMARY OF BILL S-15: AN ACT TO AMEND THE CRIMINAL CODE AND THE WILD ANIMAL AND PLANT PROTECTION AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT

1 BACKGROUND

Bill S-15, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act[1] was introduced in the Senate by the Honourable Senator Marc Gold, **then** government representative in the Senate, on 21 November 2023. It received first reading the same day. The bill's sponsor **was** Senator Marty Klyne.

After being read a second time in the Senate, Bill S-15 was referred to the Standing Senate Committee on Legal and Constitutional Affairs (LCJC committee) on 19 March 2024. On 20 June 2024, the LCJC committee presented its initial report on the bill to the Senate. It made a number of substantive amendments, including an expansion of the bill's scope to include non-domesticated animal species, which the Governor in Council could designate to be granted protections similar to those that would have applied to elephants and great apes in captivity in Canada (a provision the LCJC committee called the "Noah clause").[2]

On 10 October 2024, in response to a point of order raised by the bill's critic, the Speaker of the Senate ruled that some of the amendments the LCJC committee had adopted were out of order, "to the extent they go beyond the bill's original focus on elephants and great apes."[3] The LCJC committee reviewed its initial report, restored the bill's scope to elephants and great apes held in captivity in Canada – including by removing the "Noah clause" – retained other amendments and modified its observations.[4] The Senate concurred in the LCJC committee's second report on 17 December 2024 and passed Bill S-15 as amended, on division, that same day.[5]

The House of Commons did not have an opportunity to consider Bill S-15, as it died on the *Order Paper* when Parliament was prorogued on 6 January 2025.

The bill creates various *Criminal Code*[6] offences in relation to elephants and great apes,[7] including:

- possessing, breeding or impregnating elephants or great apes in captivity;

- possessing an elephant or great ape that is kept in captivity and failing to take reasonable measures to prevent natural breeding; and
- participating in any activities that involve elephants or great apes kept in captivity being used for entertainment purposes.

There are a number of exceptions to these offences, including one that covers a designated animal already in someone's possession when the law comes into force.

As amended, Bill S-15 also amends the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA),[8] limiting the reasons for which the Minister of the Environment (the Minister) can issue a permit to import or export an elephant or great ape to scientific research **for conservation purposes**, **a** conservation **program** or animal welfare purposes.

One listed commitment set out in the **then** minister of Environment and Climate Change's December 2021 mandate letter is to introduce legislation "to protect animals in captivity," in addition to "[w]ork[ing] with partners to curb illegal wildlife trade and end elephant and rhinoceros tusk trade in Canada."[9]

Bill S-15 is similar but not identical to Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals) (short title: Jane Goodall Act), which **was also** sponsored by the Honourable Senator Marty Klyne.[10] Bill S-241's predecessor, Bill S-218, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals)[11] was introduced in November 2020 by former senator Murray Sinclair but did not move beyond second reading in the Senate. Bill S-241 was referred to the **LCJC** committee on 8 June 2023. As part of a motion adopted at second reading of the bill in the Senate, both the Standing Senate Committee on Agriculture and Forestry and the Standing Senate Committee on Energy, the Environment and Natural Resources were also authorized to study the subject matter of Bill S-241.[12] On 12 February 2024, the Senate adopted a motion to withdraw Bill S-241, discharge the bill from the **LCJC** committee and discharge the subject matter studies of the bill from the other two committees.[13] None of the three Senate committees had held meetings to study the bill before it was withdrawn.

On 8 August 2024, the Office of the Parliamentary Budget Officer published a costing note for Bill S-15. The bill would have cost an estimated $8 million over five years, beginning in 2025–2026, including the costs of policy development and permitting, enforcement and data management.[14]

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1.1 JURISDICTION OVER ANIMAL CRUELTY

The *Criminal Code* and provincial legislation govern animal cruelty and the welfare of animals in human care, including marine mammals held in aquariums for public display, entertainment, rehabilitation and research. Jurisdiction to pass laws concerning animal cruelty in Canada is shared between the federal and provincial legislatures. Parliament's jurisdiction is based on the criminal law power set out in section 91(27) of the *Constitution Act, 1867*.[15] This power has been used to enact sections 444 to 447.1 of the *Criminal Code*, which make it an offence, among other things, to willfully cause or permit to be caused unnecessary pain, suffering or injury to an animal, or to neglect to provide a domestic animal or animal in captivity with adequate food, water, shelter or care.

Provincial jurisdiction derives from the authority to pass legislation concerning property and civil rights, set out in section 92(13) of the *Constitution Act, 1867*.[16] In addition to jurisdiction over animals, which are considered to be property,[17] the provinces also have jurisdiction over kennels and pet shops and some aspects of farming operations. Each province has its own legislation that protects animals from cruelty and neglect and that designates an enforcement agency. For example, in British Columbia, the *Prevention of Cruelty to Animals Act*[18] is enforced by the British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA). Ontario's *Provincial Animal Welfare Services Act, 2019*[19] is enforced by Animal Welfare Services (AWS) within the Ministry of the Solicitor General. When an animal is reported to be in distress, the BC SPCA and the AWS have the legal authority to take action (inspection, assessment and enforcement) to protect the animal.

Provincial legislation regarding animals is enacted primarily to ensure their protection from harm rather than to punish those who mistreat and abuse them. Where an animal is harmed, the degree of harm determines the legal regime that may apply. Prosecutors need to decide whether a person's treatment of an animal warrants criminal sanction.

Apart from the issue of animal cruelty, with respect to the trade in wildlife, the federal government has jurisdiction to regulate the international and interprovincial trade of wildlife and does so under the WAPPRIITA.

2 DESCRIPTION AND ANALYSIS

Bill S-15**, as amended,** contains **11** clauses. Key clauses are discussed below.

First, the LCJC committee amended a number of paragraphs in the preamble to the bill while it was considered by the Senate.

The statement in the first paragraph of the preamble, that "Parliament recognizes the evolution of public opinion on the captivity of certain animal species that are not domesticated," was removed.

The second paragraph of the preamble initially stated that "Parliament is of the view that the science establishes that certain animals, particularly elephants and great apes, should not, because of the cruelty it represents, be kept in captivity." The LCJC committee removed the reference to science by deleting the words "the science establishes" and modified the end of the paragraph to add the notion of "risk" of animal cruelty.

The LCJC committee also amended the wording of the final paragraph of the preamble to specify that keeping elephants and great apes captive "may be justified" in certain circumstances, replacing the initial wording "is justified."

2.1 AMENDMENTS TO THE *CRIMINAL CODE* (CLAUSE 1)

Section 445.2 of the *Criminal Code* currently contains offences relating to the treatment of cetaceans (whales, dolphins and porpoises), including ownership of a cetacean. Clause 1 of Bill S-15 amends the *Criminal Code* to create similar offences relating to elephants and great apes in captivity. Exceptions to the offences relating to cetaceans are included for persons who owned cetaceans when the prohibitions came into force, have custody of a cetacean "for the purpose of providing it with assistance or care or to rehabilitate it following an injury or another state of distress," or are authorized to keep a cetacean in captivity for its best interest. These offences were established when Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins) received Royal Assent in 2019.[20] Bill S-203 also amended the *Fisheries Act* to add provisions for the protection of cetaceans.[21]

The offences relating to elephants or great apes include possessing, breeding or impregnating these animals in captivity (new sections 445.3(1)(a)(i) and 445.3(1)(a)(ii)), and possessing such an animal and failing to take reasonable measures to prevent their natural breeding (new section 445.3(1)(a)(iii)). It is also an offence to participate in any activities relating to these animals being used for entertainment purposes **or for conveyance** (new section 445.3(1)(b)).[22] **This last prohibition was added by the LCJC committee to explicitly ban elephant rides.**[23] Persons found guilty of these offences on summary conviction are subject to fines of up to $200,000.

Clause 1**, as amended,** outlines several exceptions to these offences, including when the animal is already in someone's possession when the law comes into force (new section 445.3(3)) or when the animal is born after a gestational period that includes the day the law comes into force (new section 445.3(4)), possession for

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welfare, **in connection with a** scientific research **for conservation purposes or a** conservation **program** (new sections 445.3(5)(a), 445.3(5)(b)**, as amended**, 445.3(5)(c) and 445.3(5)(d)) and for veterinary care (new section 445.3(5)(e)). These exceptions are contingent on permits issued by the Minister under the WAPPRIITA or licences from competent provincial authorities, depending on the circumstances.

When it considered the bill, the LCJC committee expanded the range of restrictions on the captivity of elephants and great apes in Canada.

The bill initially authorized possession of these animals in connection with a "scientific research program." The LCJC committee amended new section 445.3(5)(b) of the *Criminal Code* to add that such a program must be "for conservation purposes" and therefore be clearly linked to improving the long-term viability of the species in the wild. This amendment addressed concerns raised by some witnesses, who argued that captivity under a scientific research program that has no conservation objective would have been an overly broad exception.[24] Consequential amendments were made to the WAPPRIITA (clause 5, which amends sections 10(1.1)(a) and 10(1.2)(b) of the WAPPRIITA).

The LCJC committee also amended clause 1 to replace the definition of "great ape," which originally referred to any species of the *Hominidae* family except the genus *Homo* (new section 445.3(10)). Drafted in clear and accessible language, the new definition of "great ape" provides a list of the species included: "any species of the genus *Gorilla*, *Pan* or *Pongo*, including a gorilla, bonobo, chimpanzee or orangutan."

Finally, the LCJC committee amended clause 1 by adding new section 445.4 to the *Criminal Code* in order to include a series of orders a court can make if a person is convicted of an offence under sections 445.2(2), 445.2(4) or section 445.3(1) – the offences relating to cetaceans (including whales, dolphins and porpoises) kept in captivity in Canada or the new offences respecting elephants and great apes introduced in Bill S-15.[25] For instance, a court could order an offender, at the offender's cost, to take one or more actions that are necessary in the best interests of the animal involved in the offence, including:

- **modifying the physical conditions in which the animal is kept;**
- **relocating the animal to another facility or sanctuary;**
- **modifying the social conditions in which the animal is kept; or**
- **forfeiting ownership of the animal and surrendering the animal to an animal welfare authority named in the order.**

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Under new section 445.4(2) of the *Criminal Code*, in determining whether to make one or more orders under sections 445.4(1)(a) to 445.4(1)(d), the court "must ask for and consider expert evidence on the individual animal's welfare and conservation of its species." In addition, under new section 445.4(3), the court could extend the application of the order beyond the animal involved in the offence committed by the offender to other animals of the same species or a "closely related" species. For example, if the original offence involved the illegal possession of orangutans, the order modifying the physical or social conditions of its captivity or relocating it could also apply to gorillas in the offender's possession.[26]

2.2 AMENDMENTS TO THE *WILD ANIMAL AND PLANT PROTECTION AND REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE ACT* (CLAUSES 2 TO 10)

Clauses 2 to 9 amend the WAPPRIITA whose stated purpose "is to protect certain species of animals and plants, particularly by implementing the Convention [on International Trade in Endangered Species of Wild Fauna and Flora (CITES)] and regulating international and interprovincial trade in animals and plants" (section 4). The CITES came into force in 1975 and contains three appendices that list: species threatened by extinction and for which trade is generally prohibited (Appendix I); species that may be threatened by extinction without trade regulations (Appendix II); and species that are protected in at least one country and for which that country has requested that other parties assist in controlling trade in that species (Appendix III).[27]

Section 6(1) of the WAPPRIITA prohibits importing any animal or plant listed in a CITES appendix that was taken in contravention of any law of a foreign state. That section also prohibits importing any animal or plant or their parts or derivatives that were possessed, distributed or transported in contravention of a law of a foreign state. Sections 6(2) and 6(3) prohibit the importation, exportation and interprovincial transport of animals or plants listed in a CITES appendix without a permit issued by the Minister under section 10(1), subject to the *Wild Animal and Plant Trade Regulations*.[28]

Under section 10(1) of the WAPPRIITA, the Minister can issue a permit to import, export or transport an animal or plant listed in a CITES appendix interprovincially "on such terms and conditions as the Minister thinks fit." Bill S-15 narrows this discretion in relation to elephants and great apes. Specifically, when read together, clause 3(2) (which adds section 6(2.1)) and clause 5 (which adds section 10(1.1), **as amended**) authorize the Minister to issue a permit relating to an elephant or great ape only for reasons relating to scientific research or conservation or in the best interests of the animal's welfare. A permit can also be issued to allow a person to possess such an animal in the best interests of the animal's welfare, or to "possess,

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breed, impregnate or permit natural breeding" of such an animal for scientific research **for conservation purposes** or **a** conservation **program** (new section 10(1.2)**, as amended**). These exceptions reflect the *Criminal Code* exceptions contained in new sections 445.3(5)(a) to 445.3(5)(d) set out in clause 1.

With respect to issuing permits, the WAPPRIITA currently allows the Minister to delegate this authority, including to a provincial minister or government. Clause 5 clarifies that the authority relating to permits for elephants or great apes cannot be delegated to a province. Instead, it can only be delegated to another federal minister or a federal employee (new section 10(5)).

Clause 6 requires a person who possesses an elephant or great ape at the time the law comes into force to notify the Minister of such possession within six months after the day section 445.3 of the *Criminal Code* comes into force (new section 11.1). A person must also notify the Minister within two years after the possession offence comes into force if they possess an elephant or great ape that gives birth to an animal born after a gestational period that includes the day the law comes into force (new section 11.2). Lastly, a person who possesses an elephant or great ape pursuant to a provincial licence must notify the Minister of this possession within 60 days of the licence being issued (new section 11.3). In all three sections in which a person must notify the Minister that they possess an elephant or great ape, they must also provide any information that the Minister requires.

The WAPPRIITA contains two sets of penalty provisions: the first applies to any contravention of the WAPPRIITA, certain provisions contained in regulations or a court order made under this Act (section 22). It is the first set of these penalty provisions that applies to importing or exporting an elephant or great ape without a permit. The range of penalties under section 22 varies depending on whether the offence is carried out by an individual, a small revenue corporation or other persons, and whether it is a first or subsequent offence. For example, for a first offence, an individual who is convicted on indictment is subject to a maximum fine of $1,000,000, imprisonment for up to five years or both. The second set of penalty provisions applies to contraventions of most provisions contained in the *Wild Animal and Plant Trade Regulations* (section 22.01). Clause 9 of Bill S-15 amends section 22.01 of the WAPPRIITA to include contravening the notice requirements under new sections 11.1, 11.2 and 11.3 or the terms or conditions of a permit allowing for the importation, exportation or possession of elephants or great apes. As in section 22, penalties under section 22.01 vary depending on whether the offence is committed by an individual, a small revenue corporation or other persons. For example, for a first offence, an individual who is convicted on indictment is subject to a maximum fine of $100,000.

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Clause 10 sets out coordinating amendments, all of which relate to Bill S-6, An Act respecting regulatory modernization.[29] Clause 10 specifies how Bill S-6 and Bill S-15 are affected if one comes into force before the other. **Note that Bill S-6, like Bill S-15, died on the *Order Paper* when Parliament was prorogued on 6 January 2025.**

2.3 COMING INTO FORCE (NEW CLAUSE 11)

Bill S-15 was to come into force on a day to be fixed by order of the Governor in Council, but no earlier than the first anniversary of its receiving Royal Assent. The LCJC committee added this one-year delay provision in part to give the industry time to adjust its practices and operations to the new criminal and regulatory regime that Bill S-15 introduces.

2.4 COMPARISON OF BILLS S-15 AND S-241

While both Bill S-15 and Bill S-241 aim to enhance animal welfare, Bill S-15 is more focused and specifically targets elephants and great apes, with less emphasis on broader legal mechanisms and additional species. Bill S-241 has a broader scope and covers more animal species, and it includes additional mechanisms, such as provisions for animal advocates and for more comprehensive court orders. Some of the differences reflect the way the amendments were drafted. Bill S-241 revises the existing provisions relating to cetaceans contained in Bill S-203 to include elephants and great apes; Bill S-15 instead adds provisions that apply to elephants and great apes. Some commentaries, including in second reading speeches on Bill S-15 in the Senate, indicate a preference for Bill S-241.[30] Table 1 compares the two bills.

Table 1 – Comparison of Bills S-15 (as amended) and S-241

Differences	Bill S-15 **(as amended)**	Bill S-241
Scope and animals covered	Elephants and great apes	Elephants, great apes and "designated animals," listed in schedules with varying coming-into-force dates, which include other non-domesticated animals, such as big cats, bears, wolves, pinnipeds, non-human primates and dangerous reptiles
Provides authority to add or remove species from protection under the bill	No	Yes
Includes provisions that deem certain organizations as having permits for great ape care and research, and designates specific animal care organizations	No	Yes

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Differences	Bill S-15 **(as amended)**	Bill S-241
Prohibits captivity, breeding and use of specified animals for entertainment	Yes	Yes
Requires owner to take reasonable measures to prevent natural breeding of specified animals	Yes	No
Prohibits possession of reproductive material of specified animals	No	Yes
Makes exceptions for animals already in captivity	Yes	Yes
Makes provisions for animal advocates who can represent the interests of animals in legal proceedings	No	Yes
Allows for court orders for animal welfare	Yes	Yes
Amends the WAPPRIITA to require a permit to import or export an included animal, with permits only for scientific research for conservation purposes or in the best interests of the animal's welfare	Yes	Yes
Amends the WAPPRIITA to require certain notification requirements for persons who possess specified animals	Yes	No
Recognizes Aboriginal and treaty rights	No explicit mention[a]	Yes

Note: a. It is possible that a non-derogation clause was not considered necessary by the Government of Canada when introducing Bill S-15, because **the former Bill S-13, An Act to amend the Interpretation Act and to make related amendments to other Acts, S.C. 2024, c. 30, added** a non-derogation clause that **generally applies** to all federal legislation. Bill S-13 **received Royal Assent on 27 November 2024**.

Sources: Table prepared by the Library of Parliament using information obtained from Bill S-15, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, 44th Parliament, 1st Session; and Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals), 44th Parliament, 1st Session.

NOTES

1. Bill S-15, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, 44th Parliament, 1st Session. See also Government of Canada, *Bill S-15:* An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act – *Charter Statement*, 11 December 2023.

2. **Senate, Standing Senate Committee on Legal and Constitutional Affairs (LCJC), *Twenty-fifth Report*, 20 June 2024.**

3. **Senate, *Journals*, 10 October 2024.**

4. **LCJC, *Thirty-first Report*, 3 December 2024; and Senate, *Debates*, 4 December 2024 (Hon. Brent Cotter).**

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5. **Senate, *Debates*, 17 December 2024.**

6. *Criminal Code*, R.S.C. 1985, c. C-46.

7. Great apes are defined in the **amended** bill as "any species of the **genus *Gorilla*, *Pan* or *Pongo*, including a gorilla, bonobo, chimpanzee or orangutan**" (section 445.3(10)). **Seeking clarity, the LCJC committee replaced the definition in the original bill, which defined "great ape" as "any species of the family *Hominidae*, excluding the genus *Homo*."**

8. *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*, S.C. 1992, c. 52.

9. Prime Minister of Canada, *Minister of Environment and Climate Change Mandate Letter*, 16 December 2021. The elephant-tusk and rhinoceros-horn trade was addressed through amendments to the *Wild Animal and Plant Trade Regulations*. The amendments changed the eligibility for permits and came into force on 8 January 2024. See *Wild Animal and Plant Trade Regulations*, SOR/96-263; and *Regulations Amending the Wild Animal and Plant Trade Regulations*, SOR/2023-241, 9 November 2023, in *Canada Gazette*, Part II, 22 November 2023.

10. Bill S-241, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals), 44th Parliament, 1st Session.

11. Bill S-218, An Act to amend the Criminal Code and the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (great apes, elephants and certain other animals), 43rd Parliament, 2nd Session.

12. Senate, *Debates*, 8 June 2023, 1430 (Hon. Marty Klyne).

13. Senate, *Debates*, 12 February 2024.

14. **Eskandar Elmarzougui, Office of the Parliamentary Budget Officer, *Bill S-15 (44-1): Amending federal statutes to regulate activities related to elephants and great apes*, 8 August 2024.**

15. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 91(27).

16. Ibid., s. 92(13).

17. **While provincial provisions on property generally apply to animals, the Quebec government amended the *Civil Code of Québec* in 2015 to provide as follows: "Animals are not things. They are sentient beings and have biological needs." *Civil Code of Québec*, S.Q. 1991, c. CCQ-1991, s. 898.1.**

18. British Columbia, *Prevention of Cruelty to Animals Act*, RSBC 1996, c. 372.

19. Ontario, *Provincial Animal Welfare Services Act, 2019*, S.O. 2019, c. 13.

20. Bill S-203, An Act to amend the Criminal Code and other Acts (ending the captivity of whales and dolphins), 42nd Parliament, 1st Session (S.C. 2019, c. 11).

21. *Fisheries Act*, R.S.C. 1985, c. F-14.

22. Offences include, for example, promoting, arranging or receiving money or taking part in an exhibition or event "at or in the course of which elephants or great apes that are kept in captivity are used, in Canada, for entertainment in a performance **or for conveyance**" (new section 445.3(1)(b)).

23. **Elephant rides have been prohibited for zoos accredited by Canada's Accredited Zoos and Aquariums (CAZA) and the Association of Zoos and Aquariums (AZA) since 2021 and 2011, respectively. Valérie Borde, "Faut-il fermer les zoos?," *L'actualité*, 31 May 2023 [IN FRENCH]. CAZA and its American arm, AZA, are two charitable organizations that set standards for their accredited members in the zoo and aquarium industry. Fifteen percent of Canadian zoos, parks and aquariums are accredited by CAZA or AZA. LCJC, *Evidence* 11 April 2024 (Serge Lussier, Commissioner of Accreditation, Canada's Accredited Zoos and Aquariums).**

24. **Jane Goodall Institute et al., *Bill S-15*, Brief submitted to LCJC, 2 April 2024.**

25. **Note that this new order-making power is consistent with the existing general provisions of the *Criminal Code* regarding seizure and sentencing. LCJC, *Evidence*, 23 May 2024 (Aleksander Godlewski, Counsel, Criminal Law Policy Section, Department of Justice).**

26. **LCJC, *Evidence*, 23 May 2024 (Hon. Paula Simons).**

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27. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, 3 March 1973, art. 2.

28. *Wild Animal and Plant Trade Regulations*, SOR/96-263.

29. Bill S-6, An Act respecting regulatory modernization, 44th Parliament, 1st Session.

30. See, for example, Shannon Nickerson, "Canada Tables Bill to Protect Elephants & Great Apes from Captivity," Animal Justice blog, 23 November 2023; and Senate, *Debates*, 14 December 2023, 1630 (Hon. Rosa Galvez).