

Information about Bill C-246

The Modernizing Animal Protections Act

Background

This private member's bill was introduced on February 26, 2016.¹ It aims to achieve three specific measures to improve animal welfare in Canada. **Specifically, the bill consolidates three former pieces of legislation related to animal welfare, and aims to:**

1. Ban the importation of shark fins that have been removed from a shark carcass.

- Shark finning is the practice of cutting off the shark's fin and discarding the remainder of the shark's body back into the ocean. The live finless shark sinks to the bottom of the ocean and drowns.
- A similar bill was introduced by NDP MP Fin Donnelly, supported by the Liberal caucus at the time, and narrowly defeated in 2013 by a vote of 142 vs. 138.²
- An estimated 100 million sharks are killed every year, with fins from up to 73 million sharks used for shark fin soup.³ DNA testing conducted by Dalhousie University on samples from B.C. revealed that endangered and near threatened species are regularly consumed.
- Shark finning has been illegal in Canada since 1994, but importing fins from other regions without such regulations is allowed.
- A number of Canadian municipalities (including Calgary and Toronto) banned the sale and consumption of shark fins beginning in 2011. However, in 2012, a court declared such bans to be outside of their jurisdiction. **Federal action is required.**
- Since the municipal ban was struck down in 2012, consumption of shark fins in Canada has increased from 233,000 pounds in 2012 to 318,000 pounds last year.⁴
- The Chinese government has banned shark fin use at government sanctioned events, bans on shark finning in the U.S. have been led by Chinese-American Senators, and the Toronto ban was led by City Councillor Kristyn Wong-Tam.⁵

¹ The text of Bill C-246 can be found here: <http://goo.gl/6FecAh>

² Private Member's Bill C-380, recorded vote on March 27, 2013 - <http://goo.gl/Y4NWN2>

³ WildAid: <http://wildaid.org/sharks>

⁴ G&M article: "MPs animal welfare bill latest attempt to ban import of shark fin": <http://goo.gl/5GkeWG>

⁵ Toronto Star article: "Banning shark fin soup has nothing to do with discrimination" - <http://goo.gl/HsYFAP>

- 81% of Canadians support a shark fin import ban.⁶

2. Strengthen and modernize the *Criminal Code*'s existing animal cruelty offences.

- Canadians have recently witnessed horrible incidents of animal fighting, and cruel puppy mill operations.⁷
- 92% of Canadians agree that we need to update the *Criminal Code* to make it easier to convict on charges of animal cruelty.⁸
- The offences against animals provisions in the *Criminal Code* have not been changed substantively since 1892, other than increases in penalties.
- The Justice Department drafted these *Criminal Code* amendments in 1999. They were introduced, and amended in part, by Liberal Justice Ministers Anne McLellan and Irwin Cotler between 1999 and 2005.
- Identical *Criminal Code* amendments passed third reading of the House of Commons on three occasions between 1999 and 2005. They also passed third reading of the Senate on one occasion. They have been studied by committees of both houses at length. See Part 6 of this Bill Kit.
- The provisions were subsequently introduced as private members' legislation by Liberals Mark Holland, Hedy Fry, and Irwin Cotler (in his final private member's bill).
- **The main changes:** the bill closes loopholes related to animal fighting and creates a gross negligence offence for animal cruelty to make it easier to prosecute cases such as deplorable puppy mill conditions, where it can be difficult to prove that the owners *wilfully* intended to neglect the animals or to cause harm.
- The bill also creates a new offence for killing an animal "brutally or viciously" regardless of whether the animal dies immediately. For example, in one case an owner killed his dog with a baseball bat, and the judge acquitted on the basis that the dog had died immediately without suffering. This provision closes that loophole.

⁶ 2013 Environics poll: <http://goo.gl/G8YOyK>

⁷ Animal fighting case in Ontario, March 2016: <http://goo.gl/bKjYXt>, and "deplorable" puppy mill case in BC, February 2016: <http://goo.gl/BQ3kbZ>

⁸ June 2015 Environics poll: <http://goo.gl/0qJiW5>

- The bill also defines bestiality as sexual conduct between a human being and an animal. Recently, the British Columbia Court of Appeal interpreted bestiality to require penetration, and indicated that a legislative amendment was required to change this definition.
- The bill also increases the penalty where an individual is convicted of an animal cruelty offence for a second time. A judge may ban that individual from owning an animal for life.
- The bill removes animals from the property section and creates a new consolidated Part in the *Criminal Code* titled “Offences Against Animals”. **There is no change to the status of animals as property at law.**
- **The bill is not intended to affect accepted hunting, farming, fishing, or research practices. In previous analyses of identical *Criminal Code* amendments, the Justice Department and Minister categorically stated that the amendments would not affect these practices.**^{9 10}
- The *Criminal Code* already has provisions related to killing animals. For example, section 444 makes it a crime to kill cattle without a lawful excuse, and section 445.1 makes it a crime to wilfully cause unnecessary pain, suffering, or injury to an animal. These provisions have not stopped hunting, farming, fishing, or research.

⁹ Legislative summary of Bill C-50, An Act to Amend the Criminal Code in Respect of Cruelty to Animals, 2005: <http://goo.gl/gPhrFh> - “the Department of Justice stated that the amendments would make no changes to the way the law applies to currently lawful activities involving animals.”

¹⁰ Legislative history of Bill C-15B, An Act to Amend the Criminal Code, 2002: <http://goo.gl/mTrteR> - “The Minister of Justice categorically stated before the Standing Committee on Justice and Human Rights that activities that are currently lawful will continue to be lawful under the new provisions.”

3. Ban the sale of cat and dog fur in Canada, and requires source fur labelling.

- In Canada, there are no labeling requirements for animal fur garments.
- A Toronto Star investigation in 2012 revealed that cat and dog fur is used for trim on coats, the lining in children's boots, the exterior of toys, and other accessories.¹¹
- Similar private members' legislation has been introduced by Liberal Anita Neville, NDP Brian Masse, NDP Bill Siksay, and NDP Libby Davies.
- The United States and European Union have banned the import of cat and dog fur.
- The United States also requires that fur products be labeled.¹²
- A petition (e-123) to ban the import and sale of cat and dog fur in Canada has received almost 13,000 signatures.¹³

¹¹ Toronto Star article: "How Canada gets cat and dog fur from China" - <http://goo.gl/13Hi2L>

¹² US Federal Trade Commission website: <https://goo.gl/eKWUE8>

¹³ Petition e-123, sponsored by NDP Don Davies: <https://goo.gl/iW9Szi>

What the bill does versus what the bill doesn't do

Conservative MP Robert Sopuck published an article nationwide in the *Sun Media* chain claiming that the bill gives animals “human rights”, and a fishing-industry website is claiming that the bill endangers generally accepted fishing, hunting, and farming practices. **These claims are false.**

What does the bill actually do?

- **Removal from property section:** The animal cruelty provisions are removed from the property section in recognition of the fact that animals are different from other kinds of property, such as tables or chairs. **This change was in the original Liberal government bill.** It is a symbolic change, and does not affect the status of animals as property at law (which is a provincial matter). The bill creates a new Part in the *Criminal Code* entitled: “Offences against animals”.
 - **What it does not do:** the removal from the property section does not give animals any “human rights” whatsoever, or change the legal status of animals as property.
- **Definition of bestiality:** The bill defines bestiality as “sexual activity between a person and an animal” in response to a recent British Columbia Court of Appeal case that interpreted bestiality to require penetration.¹⁴
- **Section 182.1(1)(a):** This is not a new section. It uses identical language to the existing *Criminal Code* provisions at sections 444, 445, and 445.1. **This change was in the original Liberal government bill.**
 - **Comparison:**
 - New section, 182.1(1)(a): “Everyone commits an offence who, wilfully or recklessly causes or, being the owner, permits to be caused unnecessary pain, suffering or injury to an animal”.
 - Old section, 445.1(1)(a): “Everyone commits an offence who wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird.”

¹⁴ BuzzFeed article, “Sex acts with an animal may accidentally be legal in Canada”: <http://goo.gl/oElvdy>

- **Sections 182.1(1)(e)(f)(g):** These are not new sections. They replace sections 445.1(1)(d) and (e), and 447(1). **These were in the original Liberal government bill.**
- **Section 182.2(1):** This section creates a new gross negligence offence, and **it was in the original Liberal government bill.** It creates an offence where an individual's conduct is a marked departure from a reasonable standard of conduct, and
 - (a) negligently causes pain, suffering, or injury to an animal, or
 - (b) fails to provide suitable and adequate food, water, air, shelter, or care for it, or
 - (c) injures the animal while it is being conveyed.
 - The section is consistent with the standard for criminal negligence offences throughout the *Criminal Code*. It makes it easier to prosecute animal cruelty offences such as the deplorable puppy mill cases, where it is very difficult for prosecutors to prove "wilful neglect", the standard currently at section 446.
 - **What it does not do:** this section does not criminalize fishing, hunting, farming, or research activities. It also does not criminalize mere incompetence or clumsiness. Gross negligence is a very high standard at law.
- **Section 182.3(1)(a):** Increase penalty that a court may impose for a second animal cruelty offence to allow for a prohibition order from owning or controlling an animal for life.
- **Section 182.4:** This section refers to sections 8(3) and 429(2) of the *Criminal Code* to give assurances to hunters, farmers, fishermen, and researchers that all existing legal justifications and excuses continue to apply.
 - **Example:** Under section 444 of the current *Criminal Code*, "Everyone commits an offence who wilfully kills...or injures cattle." Of course, beef farming still exists, it is considered a lawful activity, and if any crown prosecutor attempted to use this section to stop the killing of all cattle, they would fail on the basis of lawful justification / excuse.

- The previous Liberal government bill also included an explicit reference to section 8(3) of the *Criminal Code* to assure fishermen, hunters, farmers etc. that the amendments would not prevent them from engaging in said activities.
- The exclusion of the defences available under section 429(2) of the *Criminal Code* was a major concern for several witnesses who appeared before the Standing Committee on Justice and Human Rights in its study of Bill C-15B, and I have included a reference to that section to specifically address that concern.
- **Section 182.5:** This section specifically provides that nothing in the bill shall “abrogate or derogate from the protection provided for existing aboriginal or treaty rights”. **This change was in previous Liberal government legislation.**

Political support: polls, petitions, and endorsements

1. Polls:

- a. **81% of Canadians** support shark fin import ban: Environics 2013
- b. **92% of Canadians** support updating *Criminal Code* to make it easier to convict for animal cruelty offences: Environics 2015

2. Petitions:

- a. **More than 34,000 signatures** received in support of Bill C-246 through an online petition started in early March 2016¹⁵
- b. **Almost 13,000 signatures** received in support of a ban on the import and sale of cat and dog fur in Canada through petition e-123 sponsored by NDP Don Davies, and created in January 2016

3. Endorsements:

- a. **Toronto Star editorial**, “Parliament should ban importation of shark fin into Canada”, February 2016: “MP Erskine-Smith’s private member’s bill...deserves wide support.”¹⁶
- b. **Toronto City Councillor Kristyn Wong-Tam**: “Proud to support Nathaniel Erskine-Smith’s animal protection bill.”
- c. **Canadian Federation of Humane Societies**, CEO Barbara Cartwright: “If we all work together and raise our voices in support of this bill, the change that animals need will be possible.”
- d. **Humane Society International**, Executive Director Rebecca Aldworth: “For far too long, animals in Canada have lacked even the most basic federal protections. We are proud to support Bill C-246, which would help save millions of animals from the worst kinds of cruelty and neglect.”

¹⁵ Change.org petition: <https://goo.gl/g4bbyN>

¹⁶ Toronto Star editorial: <http://goo.gl/SBzZ5h>

History of the *Criminal Code* amendments

These amendments have passed the House of Commons on three occasions, and passed the third reading at the Senate on one occasion as discussed below:

1. First introduction: The *Criminal Code* amendments were first introduced by Justice Minister Anne McLellan in 1999 through Bill C-17. The bill died when Parliament was dissolved in October 2000.

2. Passes House of Commons and second reading in Senate:

The amendments were re-introduced through Bill C-15, an omnibus bill in March 2001. The bill went to second reading, and was subsequently split into two parts, the animal cruelty portion becoming Bill C-15B.

The House of Commons Standing Committee on Justice and Human Rights began hearings in October 2001. Certain fur and farming associations were concerned about possible lawsuits, and the bill was therefore amended to ensure that the principles of common law that render any circumstance a legal justification or excuse for an act or a defence to a charge would continue to apply to offences against animals. **My private member's bill includes this same provision.**

In December 2001, the bill passed clause-by-clause examination, and passed third reading in the House of Commons and first reading in the Senate in June 2002.

The bill also passed second reading in the Senate in June 2002, but did not proceed further as Parliament was prorogued at the end of June.

3. Passes House of Commons again and third reading in Senate:

On October 9, 2002, the amendments were reintroduced as Bill C-10. That same day, the new legislation - identical to predecessor - passed all three readings in the House of Commons.

On October 10, 2002, it passed first reading in the Senate, and on November 2002, it passed second reading in the Senate.

The Senate Legal and Constitutional Affairs Committee split the bill, and it became Bill C-10B.

In May 2003, it passed third reading in the Senate, subject to four proposed amendments:

- Change definition of animal **(a definition not inserted, to avoid this dispute, as there is no current definition in the Code)**
- Remove the offence of killing an animal without lawful excuse **(kept this because it is already in the Code)**
- Include a non-derogation clause which would give special treatment to traditional Aboriginal practices **(included this clause)**
- Include defences for legal justification, excuse, and colour of right **(included this clause at 182.4)**

The bill was passed back and forth between the House and Senate with disagreement over the proposed amendments. On November 12, 2003, Parliament was prorogued.

4. Passes House of Commons again, and second reading in Senate:

Bill C-10B was reintroduced as Bill C-22 in spring 2004, and again passed all three readings in the House of Commons.

It passed first and second reading in the Senate before Parliament dissolved.

5. Final Liberal government attempt

Bill C-50 was introduced by Justice Minister Irwin Cotler in May 2005, but Parliament dissolved in November 2005.

Bill C-50 took into consideration the Senate's proposed amendments, and Bill C-246 is based upon that legislation.