

Bill 7, The Polar Bear Protection Amendment Act (International Polar Bear Conservation Centre)

J O S H D I S E N H O U S E *

I. INTRODUCTION

The *Polar Bear Protection Amendment Act (International Polar Bear Conservation Centre)*,¹ which was tabled in 2010, amended the *The Polar Bear Protection Act*.² It sought to establish the International Polar Bear Conservation Centre and create an advisory committee. The main purpose of the bill was to establish a research facility with the capacity to educate the public, and also create a natural environment for orphaned polar bears that could not survive on their own. This legislation was also intended to enhance preservation of the polar bear population, educate the public about the effects of climate change on the species and increase provincial tourism. Manitoba wanted to solidify its position as a world leader in polar bear research and conservation. The amendment bill proceeded through the legislative process without meeting any substantial opposition.

II. POLAR BEARS AND THEIR HABITAT

The polar bear, scientifically known as the *Ursus maritimus* (meaning sea bear), evolved from brown bear ancestors approximately 200,000 years ago.³

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¹ Bill 7, *The Polar Bear Protection Amendment Act (International Polar Bear Conservation Centre)* (5th Sess. 39th Leg, Manitoba 2010) (assented to 9 December 2011), SM 2010, c 48 amending CCSM c P94 [Act or Bill 7].

² *The Polar Bear Protection Act*, SM 2002 c 25.

³ Bear Essentials, *Polar Bear Basics*, online: Polar Bear International <<http://www.polarbearsinternational.org/sites/default/files/pdi/PolarBearsComprehensive.pdf>>.

The polar bear's natural habitat is the Arctic, and therefore only a small number of countries are home to a polar bear population. In total, there are five nations—Russia, Greenland, Norway, the United States and Canada—that have polar bear populations.⁴ Polar bears are the world's largest non-aquatic predators and are atop the Arctic food chain. Although polar bears have no natural predators (other than humans), their survival as a species is not guaranteed. Polar bears have one of the slowest reproductive rates of any mammal, typically producing only five litters over the course of a life span.⁵ Polar bears most commonly give birth to twins, although they occasionally produce singlets or triplets. Such a low birth rate means that large-scale reproduction, whether in the wild or in captivity, is impossible. In light of this and the ever-increasing impact of climate change, conservation of the species has become a very important yet uniquely challenging task.

Due to the decreasing population of the species, the polar bear has been granted various designations by the United States, Canada and Russia. In May of 2008, the United States listed the polar bear as a threatened species under the *Endangered Species Act*. Canada designated the species as a “species of special concern”. Russia has a similar designation.⁶ Between the five polar bear nations, biologists estimate that there are between 20,000-25,000 polar bears in the world, with sixty percent of them living in Canada.⁷ Scientists have concluded that ecological change caused by climate change is the greatest threat facing the polar bear population today.⁸ As the effects of climate change becomes more pronounced, the Arctic ice is beginning to melt earlier each spring. Hudson Bay polar bears have lost approximately six weeks of hunting time. Ice is currently freezing in early December, rather than November, and thawing in early spring. Shrinking ice means a shorter seal-hunting season and these condensed hunting seasons correlate directly with a twenty-two percent drop in the population of Western Hudson Bay

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Bear Essentials, Polar Style, *Current Status*, online: Polar Bear International <<http://www.polarbearsinternational.org/polar-bears/will-polar-bears-survive>>.

⁷ *Ibid.*

⁸ *Ibid.*

polar bears near Churchill, Manitoba since the early 1980s.⁹ This sharp decline in polar bear population is due primarily to starvation.

The Province of Manitoba is recognized as a world leader in polar bear research and conservation. Manitoba participates on the Federal Provincial Polar Bear Technical Committee (PBTC) and the Advisory Committee (PBAC), which meet yearly to discuss polar bear management issues.¹⁰ Approximately 935 polar bears live in the Western Hudson Bay area. Although they are on the ice during the winter, polar bears are forced to relocate during the summer months. The entire polar bear population is forced into adjacent coastal lands from mid-July through mid-November as the ice disappears. The greatest concentration of polar bears during this time occurs near Churchill, Manitoba, which is considered to be the polar bear capital of the world.¹¹ The many issues facing polar bears globally, in addition to the issues facing polar bear tourism in Churchill, pushed the province of Manitoba to enact legislation to aid in the conservation of the polar bear population.

III. LEGISLATIVE BACKGROUND AND INTERNATIONAL AGREEMENTS

Prior to recent provincial legislation aimed at the protection of Manitoban polar bears, the federal government of Canada, along with four other countries, signed an *Agreement on the Conservation of Polar Bears*.¹² Alongside Denmark (on behalf of Greenland), Norway, Russia, and the United States, this agreement was signed by Canada in 1973 as a measure to aid in the conservation of the global polar bear population in the wake of an increasing number of polar bear hunts.¹³

⁹ Bear Essentials, Polar Style, Climate Change, online: Polar Bear International <<http://www.polarbearsinternational.org>>.

¹⁰ Wildlife and Ecosystem Protection, *Agreements, Legislation, and Policy for the Protection of Polar Bears in Manitoba*, online: <http://www.gov.mb.ca/conservation/wildlife/spmon/pbear/pl_agreements.html>

¹¹ Bear Essentials, Polar Style, *Attacks and Encounters*, online: Polar Bear International <<http://www.polarbearsinternational.org>>.

¹² Oslo Agreement on Conservation of Polar Bears, 1973, 13 ILM 13.

¹³ Bear Essentials, Polar Style, History, online: Polar Bear International <<http://www.polarbearsinternational.org>>.

Since the 1973 international agreement, the province of Manitoba has passed four pieces of provincial legislation. This legislation has earned the province the title of “world-leader” regarding the conservation and protection of polar bears. For example, section 8(1) of *The Endangered Species Act* provides that the Lieutenant Governor in Council may declare an indigenous species endangered if it is determined that such species is threatened with “imminent extinction or extirpation throughout all or a significant portion of its Manitoba range.”¹⁴ On 7 February 2008, the polar bear was designated as “threatened” under *The Endangered Species Act*. The polar bear is provided with further protection by section 20 of *The Wildlife Act*, which provides that “no person shall hunt, trap, kill or capture a wild animal of a species or type that is listed or designated as a protected species under the Act.”¹⁵ The polar bear is listed as a protected species.¹⁶ In addition to polar bears being designated as a threatened and protected species, *The Resource Tourism Operators Act* and *The Polar Bear Protection Act*, are two additional pieces of legislation that provide polar bears with enhanced protection.¹⁷ Although it does not explicitly mention polar bears, *The Resource Tourism Operators Act* indirectly provides greater protection to the species as it restricts the construction, modification or establishment of accommodation facilities, such as campgrounds, lodges, outcamps and portable camps.¹⁸

The Polar Bear Protection Act, which came into force in 2003, afforded greater protections to the Manitoban polar bear population. The legislation’s purpose was to preserve and maintain polar bears in their natural habitat. Situations occasionally arise, such as the need for medical intervention or the conduction of scientific research, where a polar bear must be removed from its environment. When this occurs, the Act aims to ensure that proper care facilities for a polar bears’ long-term care is provided. Section 3 of the Act sets out factors that must be considered by issuing authorities before granting a permit to possess a polar bear. One such factor is whether the applicant requires a polar bear for a legitimate scientific, educational or conservation

¹⁴ *The Endangered Species Act*, CCSM 2011, c E111 s 8(1).

¹⁵ *The Wildlife Act*, CCSM 2010 c W130, s 20.

¹⁶ *Ibid* at Schedule A, Div 6.

¹⁷ Wildlife and Ecosystem Protection, Polar Bear Fact Sheet, online: <<http://www.gov.mb.ca/conservation/wildlife/sar/fs/pbear.html>>.

¹⁸ *The Resource Tourism Operators Act*, SM 2002 c 46.

purpose.¹⁹ Section 4 provides that applicants will not receive a permit unless they have an agreement with the issuing authority as to the conditions in which polar bears will be kept while under their control.²⁰ In addition, section 6 of the Act provides that:

A person who is in possession of a polar bear under a permit issued under this Act must ensure that the bear

- (a) is kept, at all times, in a facility that meets the standards set out in the regulations; and
- (b) receives care that meets the standards set out in the regulations.²¹

Although the Act requires that a polar bear be kept in a facility that meets certain standards and regulations, no such facility was created by the legislation. This was a significant shortcoming of the Act, as there was no specific facility to enforce the standards and regulations set out by the Act. The introduction of Bill 7 addressed this legislative gap and also enabled the province of Manitoba to establish such a facility and enforce compliance with the standards set out in *The Polar Bear Protection Act*.

IV. THE POLAR BEAR PROTECTION AMENDMENT ACT (INTERNATIONAL POLAR BEAR CONSERVATION CENTRE)

The Polar Bear Protection Amendment Act, amended its predecessor *The Polar Bear Protection Act* by creating two new entities: the International Polar Bear Conservation Centre and a Polar Bear Conservation Centre Advisory Committee.²² The Conservation Centre will be established in Winnipeg's Assiniboine Park Zoo and the advisory committee will make recommendations pertaining to its operations. The Conservation Centre will create an environment that meets the standards for possession of a polar bear as set forth by *The Polar Bear Protection Act*.

A. First and Second Reading

There appeared to be two primary reasons behind the introduction of the bill. First, in 2009 the provincial government announced that it would invest

¹⁹ *Supra* note 2, s 3.

²⁰ *Ibid*, s 4.

²¹ *Ibid*, s 6.

²² *Supra* note 1.

\$31 million in the Conservation Centre at the Assiniboine Park Zoo.²³ The bill enabled the development of the Conservation Centre, which allowed the provincial investment to be properly allocated. Second, the amendment bill would fulfil the “intent[ion] of Manitoba to continue to pursue excellence in polar bear conservation and to maintain its leadership role in climate change mitigation.”²⁴

The bill passed second reading without any opposition. Members of the Legislative Assembly (MLA) were united in their support, as they appeared to accept that the bill would continue Manitoba’s pursuit of being a world leader in polar bear conservation, and a leader in climate change education and mitigation.²⁵ The MLAs noted that the polar bear had become an important symbol of Manitoba and its subarctic region and developing the Conservation Centre in Manitoba would therefore be a logical course of action. Furthermore, the Conservation Centre would allow for greater research on polar bears and would also create an educational centre for the public to learn more about polar bears, their preservation, and the general population’s role in addressing climate change.²⁶

Although during house debates some MLAs stated that one intention was for the bill to aid in the mitigation of climate change (global warming), the bill itself did not speak to any tangible means of mitigation. The bill exclusively pertained to the creation of the Conservation Centre and the advisory committee, with no legislative mention of climate change, nor any mechanisms addressing global warming. The MLA’s suggested climate change education as an element they would like to see implemented into the Conservation Centre, but the content of such education remains to be seen.

During second reading debates, discussion gravitated to speculation that the Conservation Centre might increase tourism to Winnipeg and Manitoba.²⁷ Certain Ministers noted the legion of tourists from Germany, Britain and Japan, who visit Churchill to see polar bears in their natural

²³ Manitoba, Legislative Assembly, *Official Report (Hansard)*, 39th Parl, 5th Sess, Vol LXIII No 6 (23 November 2010) at 157.

²⁴ *Ibid.*

²⁵ Manitoba, Legislative Assembly, *Official Report (Hansard)*, 39th Parl, 5th Sess, Vol LXIII No 11B (30 November 2010) at 366.

²⁶ *Ibid.*

²⁷ Manitoba, Legislative Assembly, *Official Report (Hansard)*, 39th Parl, 5th Sess, Vol LXIII No 12 (1 December 2010) at 399.

habitat.²⁸ They believed that establishing the Conservation Centre would create a great destination for domestic and international tourists. Minister Andrew Swan stated that the Conservation Centre would be a “jewel for tourism here in Manitoba, here in the city of Winnipeg but also in the wonderful northland.”²⁹ Although it was not outwardly stated as a reason for the bill, at the conclusion of the second reading, tourism had emerged as another underlying purpose of the bill.

B. Committee Stage

Mr. Bob Williams, Chairperson of Polar Bears International, was the only person to speak on the bill at committee stage. In supporting the bill, Williams described how his organization grew primarily from a group of photographers to an organization whose goal was to fund research so lawmakers would have at their disposal information to aid in the decision making process.³⁰ From this approach emerged the Polar Bear International motto: “conservation through research and education.”³¹ Mr. Williams emphasized Manitoba’s longstanding leadership in polar bear preservation. He cited two specific examples; first, the Polar Bear Alert Program, established approximately thirty years ago, which saved thousands of polar bears that had wandered into residential areas of Churchill from being shot by locals.³² Second, he spoke to what has become known as the “Manitoba Standard” of polar bear protection. Through Manitoba Conservation, the provincial government has established unparalleled research on polar bears but has also developed a protocol for captivity that is the minimum standard for keeping polar bears at zoos in North America. Both the American and Canadian Zoological societies state that in order to keep polar bears, one must meet or exceed the “Manitoba Standard.”³³ In passing Bill 7, Mr. Williams believed that Manitoba would be able to solidify its position as a world leader in polar bear preservation. He also noted that the current polar

²⁸ *Ibid* at 400.

²⁹ *Ibid* at 401.

³⁰ Manitoba, Legislative Assembly, *Standing Committee on Justice*, 39th Parl, 5th Sess, Vol LXIII No 1 (7 December 2010) at 2.

³¹ *Ibid*.

³² *Ibid*.

³³ *Ibid*.

bear research centre resides in the San Diego Zoo, and with the establishment of the Conservation Centre, the research centre should be able to shift to Manitoba.³⁴

C. Third Reading and Royal Assent

Third reading occurred on 9 December 2010 and Royal assent was received on the same day. Two opposition MLA's, Jon Gerrard (Liberal) and Mr. Larry Maguire (Progressive Conservatives) rose to speak at third reading. Although both used the opportunity to make suggestions for implementation after the formal passing of the Bill, they were ultimately supportive of the bill as it stood.

V. ANALYSIS OF DEBATES

There were issues that were conspicuously absent from debates that could have been raised and would have added value to the discussion. First, there was no debate on budgetary concerns. Even though the government had previously announced its investment of \$31 million in the project, there was no discussion as to whether any additional funds would be needed for construction or for continued maintenance of the facility. Mr. Gerrard mentioned at third reading that he would be reviewing the departmental budget to make sure that funding was being received from both the private and public sectors, but neither he nor anyone else, raised the issue of budgetary concerns in any previous stages where more substantial debate could have taken place.

Also absent from debates was any mention of the bill's effects on Aboriginal rights. The Conservation Centre was touted not only as a conservation centre but a centre for education on polar bears. A discussion on whether it would be important to include educational information about polar bears in the context of Aboriginal history and current Aboriginal rights with regards to polar bears (i.e. hunting and pelt trade) was conspicuously lacking.

³⁴ *Ibid.*

VI. POLAR BEAR HUNTING IN MANITOBA AND CANADA

Given the importance of hunting to Aboriginal populations in Manitoba, it is surprising that legislative measures designed to aid in the conservation of the polar bear population did not address Aboriginal rights. In Canada, hunting polar bears is restricted to Aboriginal people or sport hunters guided by an Aboriginal person. It is required that this guide harvest by traditional means and also be in accordance with sound conservation practices based on the best available scientific data.³⁵ Even though Aboriginals are allowed to hunt polar bears in general, Environment Canada has designated the management of Canadian polar bears as the responsibility of individual provinces and territories.³⁶ Therefore, hunting restrictions for Aboriginal and sport hunters differ from province to province. Manitoba has continued to strengthen its reputation as a world leader in polar bear conservation by outlawing hunting of the species within its borders. The 2011 Manitoba Hunting Guide (the “Guide”) implemented restrictions intended for conservation and safety purposes that apply to both status Indians and licensed hunters. The Guide states that “status Indians may not hunt protected wildlife for which all hunting is prohibited, such as eagles, hawks and polar bears.”³⁷ This position distinguishes Manitoba from other provinces across Canada, as Aboriginals are allowed to hunt polar bears in places such as Nunavut and the Northwest Territories.

The Guide further complements *The Polar Bear Protection Amendment Act* and the International Polar Bear Conservation Centre, by introducing another system in which the conservation of the polar bear species is paramount. In addition to the Guide, section 11(1) of *The Endangered Species Act* permits a person to:

- “apply to the minister for, and the minister may issue to [that] person, a permit authorizing [that] person to
- i. kill, take, collect or capture
 - ii. collect or capture and hold alive;

³⁵ Environment Canada, *Conservation of Polar Bears in Canada*, online: Environment Canada <<https://www.ec.gc.ca/default.asp?lang=En&xml=67371055-7315-4837-A5B6-C29433747D12>>.

³⁶ *Ibid.*

³⁷ *Manitoba Hunting Guide*, (2011) at 58, online: Government of Manitoba <http://www.gov.mb.ca/conservation/wildlife/hunting/pdfs/huntguide_2011.pdf>.

members of an endangered or threatened species for scientific purposes or for purposes related to the protection or reintroduction of endangered, threatened or extirpated species.³⁸

Since polar bears are listed as a threatened species under the Act in Manitoba, the hunting and killing of polar bears for harvest by Aboriginals would not fall under the permitted reasons in section 11(1).

The lucrative pelt trade is another complicating factor affecting the hunting of polar bears in Canada. In the past, raw, untreated polar bear skins would sell for \$5,000, whereas over the last two years the price has increased by over two hundred percent.³⁹ Canada is a signatory member of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between numerous governments. Its aim is to ensure that international trade of wild animals and plants does not threaten their survival.⁴⁰ Appendix II of the Convention lists those species that are not currently endangered, but may be subject to overexploitation if their trade is not regulated. The Convention permits commercial trade in these species, provided that the country of origin has issued an export permit. The exporting country may not issue an export permit unless the proper governmental agency has certified that the export will not be detrimental to the species' survival. The polar bear is a Canadian species listed under this Appendix.⁴¹

In 2010 the United States lost its bid to “uplist” polar bears to Appendix I, which would provide the species with the designation that would put an end the commercial sale of their parts to the world market.⁴² Canada opposed the bid for such designation arguing that the trade poses no risk to the species and a prohibition would do economic harm to Aboriginals.⁴³ In

³⁸ *Supra* note 14, s 11(1).

³⁹ Nicholas Kohler, “We’re Shooting Polar Bears!?!: International fur buyers snatching up pelts at record prices” (16 February 2012), online: <<http://www2.macleans.ca/2012/02/16/were-shooting-polar-bears/>>.

⁴⁰ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, online: CITES <<http://cites.org/eng/disc/what.php>>.

⁴¹ Lynn P. Marshall, “Canada’s Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites): The Effect of the Biodiversity Focus of International Environmental Law”, (1999) 9 JELP-CAN 31 at page 40.

⁴² Kohler, *supra* note 39.

⁴³ *Ibid.*

contrast to Canada's policy, Manitoba has restricted the sale of any pelts of threatened species listed in schedule A, which includes polar bears. Section 46(3) *The Wildlife Act* provides that:

All property, rights, title and interest in and to any species of wildlife listed in Schedule A or in the regulations taken under this section are vested in the Crown, and no person shall sell or barter or offer or attempt to sell or barter or otherwise make use of the pelt, carcass, skin or any other part thereof unless he first obtains a permit therefor from the minister.⁴⁴

While Manitoba has taken the position that preservation and conservation are crucial to the existence of the species, Canada has adopted a more moderate point of view. The federal government has recognized that climate change has had a detrimental effect on polar bears but maintains different management plans than Manitoba. For example, Canada believes that CITES is not an appropriate tool to protect polar bears and is only a regulatory mechanism to prevent extinction of species affected by international trade.⁴⁵ Furthermore, Canada has maintained a quota system with regards to hunting polar bears, which is reviewed and adjusted with a view to ensuring a sustainable harvest,⁴⁶ as opposed to the action taken by Manitoba in declaring an outright ban. The management philosophies differ between the federal government and the government of Manitoba and the latest piece of legislation, Bill 7, exemplifies Manitoba's strong desire to preserve the polar bear species by any means possible.

VII. POLAR BEAR PROTECTION IN THE MEDIA

In addition to legislation and public awareness in Manitoba, campaigns to protect polar bears and mitigate climate change have been prominent on the global stage. The establishment of the International Polar Bear Conservation Centre, is an example of what these campaigns are aiming to accomplish, namely to help protect polar bears and educate society on the effects that climate change has on the species. Large corporations such as Coca-Cola have used the polar bear as a symbol in assisting in their fight

⁴⁴ *Supra* note 15, s 46(3).

⁴⁵ Polar Bear Administrative Committee, *Management and International Trade of Polar Bears from Canada*, online: Polar Bears Canada
<http://www.polarbearcanada.ca/documents/current_facts_on_polar_bears.pdf>.

⁴⁶ *Ibid.*

against climate change. Recently, Coca-Cola Company teamed with the World Wildlife Foundation and launched a polar bear and Arctic preservation campaign, known as “Arctic Home.” The campaign aims to raise awareness and funds to preserve and protect the polar bears’ natural habitat.⁴⁷

In addition to Coca-Cola Company and World Wildlife Fund, there have been other campaigns presented by the media to help spread the message that climate change is deleteriously affecting polar bears. One such campaign, promoted by the Canadian Broadcasting Corporation, is the International Polar Bear Day (IPBD). IPBD takes place on 27 February and is organized by Polar Bears International. Its goal is to raise awareness about the effects of warmer temperatures and reduced sea ice on the global bear population.⁴⁸ At third reading Minister Jennifer Howard noted that the polar bear has become a symbol of environmental preservation, a symbol that forces discussion on climate change.⁴⁹

VIII. CONCLUSION

The Polar Bear Protection Amendment Act will allow Manitoba to continue as a world leader in polar bear preservation by establishing the International Polar Bear Conservation Centre. One hopes that the unanimous support in the Manitoba legislature is a positive sign that a real consensus exists in the province on the importance of taking action.

⁴⁷ Max Paris, “Polar Bear Campaign Seeks “Last Ice” Arctic Preserve” (26 October 2011), online: CBC News <<http://www.cbc.ca/news/politics/story/2011/10/26/pol-environment-polar-bears-relocation.html>>

⁴⁸ George Stroumboulopoulos, “Bundle Up: It’s International Polar Bear Day” (27 February 2012), online: CBC <<http://www.cbc.ca/strombo/social-issues/bundle-up-its-international-polar-bear-day.html>>.

⁴⁹ *Supra* note 35 at 398.