



The Scottish
Parliament

**Shona Robison MSP
DUNDEE EAST**

12 February 2009

RETURN ADDRESS: 8 Old Glamis Rd, Dundee, DD3 8HP

Kenny MacAskill
Cabinet Secretary for Justice
The Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

JUSTICE SF
16 FEB 2009
PRIVATE OFFICE

Dear Kenny

[REDACTED]

I am writing to you about my constituent as above who has a number of concerns about the forthcoming Criminal Justice and Licensing Bill.

[REDACTED] is totally supportive of the intentions of the Bill in terms of pornography which portrays genuine sexual abuse and torture. However he is concerned that the word "extreme" is too vague and might criminalise pornography which presents consenting adults participating in Bondage, Discipline, Dominance & Submission, Sadism & Masochism.

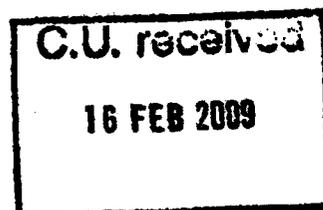
He makes a number of very detailed points in the enclosed email which I would be grateful if you could address.

I look forward to hearing from you.

Yours sincerely

Shona Robison MSP

Ref: SR/AL/090212



Fw: Letter from your constituent [REDACTED]

Page 1 of 4

Anya

From: Shona.Robison.msp@scottish.parliament.uk
Sent: 10 February 2009 23:03
To: anya@dundeesnp.org
Subject: Fw: Letter from your constituent [REDACTED]

Letter to kenny

This email has been sent from a Scottish Parliamentary handheld device.

-----Original Message-----

From: [REDACTED]
To: Robison S (Shona), MSP
Sent: Tue Feb 10 21:57:11 2009
Subject: Letter from your constituent [REDACTED]

[REDACTED]

Email: [REDACTED]

Tuesday 10 February 2009

Dear Shona Robison,

I am a resident of Broughty Ferry and, as my constituency MSP, I am writing to you to express my deep concern at the proposals set out in the forthcoming Criminal Justice and Licensing Bill (CJLB) to make it a criminal offence to possess "extreme" pornography. I have tried to contact you directly via your email address but I suspect that my email has been blocked due to the word "pornography", so apologies if you have already received this.

I understand this bill is intended to target images of genuine sexual abuse and torture, however the way the bill is currently written goes well beyond this and as a result thousands of Scottish adults will potentially be jailed as sex offenders. Innocent people will be treated like rapists and child molesters just for the "crime" of being kinky, into BDSM (a complex acronym covering Bondage & Discipline, Dominance & Submission, Sadism & Masochism) or having other non-mainstream sexual preferences. The tabloid media is already making this association, by claiming that everyone opposed to the law (in England & Wales) is pro-rape and pro-abuse[1]. Worryingly, even the Justice Minister, Mr MacAskill, has expressed a similar viewpoint.

passed. The SNP must not follow this with an even worse law.

The actual intent behind the law is clear – it seeks to criminalise possession of images of rape, torture and sexual abuse as well as images of bestiality and necrophilia. Needless to say, if that was everything that this bill would make it illegal to possess, then I would not be writing to you. The problem is simple – the definition of what is "extreme" is so vague, so widely defined, that images of consensual, legal and safe BDSM play between adults will be deemed illegal. A law criminalising images where people have actually been harmed is a good thing and I support that. However, a law criminalising images where no-one has been harmed (or forced to participate) is immoral and unfair.

Does the SNP really want to introduce a law where two consenting adults can participate perfectly legally in BDSM fantasy roleplay in the privacy of their own homes, yet be jailed as sex offenders for possessing images of the exact same act?

The point I am trying to make in this letter is this – people should not be criminalised for possessing images of consensual adult behaviour, regardless of whether the moral majority believes it to be "abhorrent". BDSM is not well understood and that is the problem here. As with homosexuality 20 years ago, many people see us as "perverts" who (to quote Mr MacAskill) "have no place in civilised society"[2]. Today, it would be inconceivable for the Scottish government to pass a law potentially criminalising many homosexuals, yet it is willing a similar law criminalising adults into BDSM play. Why?

The proposed bill seeks to "criminalise the possession of pornographic images which realistically depict:

- * Life-threatening acts and violence that would appear likely to cause severe injury;

- * Rape and other non- consensual penetrative sexual activity, whether violent or otherwise;"

and will cover materials which would be illegal to publish and distribute in Scotland under the Civic Government (Scotland) Act 1982.

The first problem is the statement that the bill will cover material illegal to publish in Scotland. I note that the word "only" is absent from the wording which implies this bill will, either deceptively or unintentionally, cover material beyond that covered in the Civic Government (Scotland) Act 1982. This bill will also go far beyond the law currently in force in England & Wales. In that law, the image must be "obscene", as defined in the Obscene Publications Act. In the bill proposed, the image only has to be "indecent".

The second problem is the phrase "realistically depict". The majority of BDSM pornography is created using models and is staged, yet "realistically depict" means that there is no certainty as to whether it is "extreme" or not. Consequently, for those of us who are into BDSM, it means we are the only group who cannot enjoy pornography due

it is unfair for adults with such preferences to have to worry about being hauled off to jail for possession of such images.

"Rape and other non- consensual penetrative sexual activity, whether violent or otherwise" is probably the most problematic. Under Scottish Rape law, sexual intercourse is defined as rape if the woman is drunk or under the influence of a substance or if the woman has consented to the act due to violence or the threat of violence. When it comes to viewing an image, how is it possible to determine if the woman in the image is drunk or drugged? Surely this would be grounds for the police to arrest anyone with any pornographic image, as they could simply claim "she looks drunk to me, therefore its rape and therefore its extreme pornography"?

The bill also seeks to criminalise "Non- consensual penetrative sexual activity, whether violent or otherwise". Can anyone be expected to tell, just from looking at an image, whether the sex is consensual or not, if no violence is involved? There is no way, either in a legal sense or in common sense, that anyone could make this distinction. Even though it is unlikely to cover normal pornographic images (although technically it could), if the image involves bondage it would be more likely to be viewed as non-consensual – it must be non-consensual, otherwise why would one person be tied up?

An important aspect of BDSM play is safety. In fact, the phrase "Safe, Sane and Consensual" is regarded as the code BDSM play should follow (the activities must not cause harm or be otherwise dangerous to either participant and both adults must give their consent to the activities, which are usually discussed beforehand). This bill will make it too risky for people to own manuals (especially manuals published only on the web) on BDSM safety. This would leave us in the situation where people can engage in legal BDSM roleplay, but be unable to access important safety advice out of fear of being prosecuted, which may result in unnecessary injuries.

Leaving aside the technical problems of the law, I am intrigued to know just how this law will be enforced. Will there be a division of police officers dedicated to tracking down people viewing "extreme" porn? In England & Wales, it seems that the law will not be actively enforced[3]. It would seem that, if the same approach were to apply here, that it would do little to deter those who want to view images of genuine rape and sexual abuse while simultaneously causing the thousands of adults who enjoy kinky pornography to deny themselves this outlet under fear of arrest and prosecution. In effect, this law would penalise the innocent while not even hindering the guilty.

It would seem from the responses from the Sexual Offences Branch and comments made in the media by the Justice Minister that the Scottish government is not interested in listening to the concerns of people who are going to be turned from normal, innocent citizens into sex offenders overnight. This is not the mark of a democratic government. I am asking you to please visit the websites of the following organisations which have been set up to combat the unintended consequences of this legislation both in Scotland and in England & Wales:

Fw: Letter from your constituent [REDACTED]

Page 4 of 4

Your sincerely,

[REDACTED]

References:

[1] Daily Mail article: "Protesters say it's their right to watch sadistic porn. Tell that to the mother of the girl murdered by a man addicted to it..."

<http://www.dailymail.co.uk/femail/article-1104523/Protesters-say-right-watch-sadistic-porn-Tell-mother-girl-murdered-man-addicted-.html>

[2] Telegraph article: "Scots possessing 'extreme' pornography face jail"

<http://www.telegraph.co.uk/news/newsttopics/politics/scotland/4291494/Scots-possessing-extreme-pornography-to-face-jail.html>

[3] Guardian article: "Police will not target offenders against law on violent porn"

<http://www.guardian.co.uk/politics/2009/jan/26/police-offenders-law-violent-porn>

[REDACTED]
(Signed with an electronic signature in accordance with subsection 7(3) of the Electronic Communications Act 2000.)

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