

Wilson J (Jim)

From:**Sent:** 09 October 2008 19:56**To:** Oxley AB (Ann); McLaughlin GA (Gery); Down P (Patrick); Lamont P (Philip)**Subject:** Goals for the CJLB and extreme porn

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 has been swept for the presence of computer viruses.

Dear Sexual Offenses Team,

Since Jim Wilson directed your email addresses to my inbox, I was wondering a bit about the background and justification for placing the section on extreme pornography in the bill.

As for background, other than the Westminster Criminal Justice and Immigration Bill of 2008, the Scottish consultation of 2005, and frequent complaints from the Scottish Women Against Pornography (SWAP), I see no other mention of the extreme pornography bill as it currently stands anywhere on the Scottish government web pages. What am I missing? Where did this section come from, and how did it get into the CJLB?

Looking at the foreword from Kenny MacAskill, combined with statements he made in Jan 2007 (press release, your webpage), I get the impression that extreme pornography has been linked to organised crime. I'm quite curious as to the cases that brought this to MacAskill's attention, and would very much like to read them myself. I then wonder, if indeed extreme pornography is linked to organised crime, why is the consumer punished for that fact if she or he was unaware of its link to organised crime? And if an otherwise law-abiding resident made some similar photos of themselves for their home collection, why should they be punished the same as someone who is supporting organised crime?

The examples given above simply underscore in my mind how ineffective this section is at fulfilling the goals of the CJLB.

(taken from <http://www.scotland.gov.uk/Topics/Government/programme-for-government/2008-09/bills-briefing#a7>)

- The courts and prosecutors through sensible reforms to the criminal law and court procedures - ensuring the interests of justice are served;
- Following conviction, deliver a flexible and coherent penal policy where prison remains the right disposal for serious and violent offenders;
- Take action to make sentences served in the community swifter, tougher and more visible to local communities ; and
- Increase public confidence and victims's understanding of the sentencing process and decisions taken by our courts through a system of sentencing guidelines, developed by a judicially-led Sentencing Council, that help deliver more consistent and transparent sentencing.

To address these point by point:

- 1) How is this section in the interest of justice if the picture is not a picture of a crime? (For example, it is not a crime to play dead and have sex at the same time.) The wording does not differentiate between those who commit an actual crime and those who may simply pose for a crime for their own sexual pleasure. If I pretend to shop lift and am caught on CCTV, can I be arrested for the same crime as an actual shoplifter?
- 2) How is this "flexible"? If by "flexible", you mean, all-encompassing so that it can be bent to mean anyone is guilty, then, yes, it is flexible. 3 years for a lonely goth couple with a vampire thing or a middle-aged middle class couple who play with needles and rope? Right. Serious and violent.
- 3) Ok, yes, this is swifter and tougher, but so are public hangings. Is a fringe minority being

persecuted just to give peace of mind to the conservative majority? I am wary of consumers of pornography being arrested simply because police cannot find the creators of the pornography in question.

4) The wording on this section is so vague and subject to personal opinion (as I've pointed out before with the addition of the term "realistically depict") that there is no possible way that it could ever be consistent and transparent. Like obscenity laws, cases will be brought up only to be accepted or rejected based upon someone's individual opinion of whether or not the picture is of a non-violent rape.

Given that this act meets only one of the goals set out, I question its importance as a section of the CJLB. More important, I feel, is the attention that you are paying to the problem of alcohol. In a 2006 study on the adult entertainment industry in Scotland (<http://www.scotland.gov.uk/Publications/2006/04/24135036/0>), most complaints about lap dancing clubs revolved around litter, bawdy advertisements, and drunken groups of young men (see section 4.8). This shows to me that while people might have moral objections to erotic activities, practical and tangible objections are usually the cause of outside causes: careless flyering, disregard for public decency, and alcohol. I fear that the extreme pornography section of the CJLB is laid out because of moral reasons and not tangible reasons. And even if it is, if the root causes of these complaints is not addressed, the problems will simply materialise somewhere else. (Compare the above complaints about lap dancing clubs to common complaints about the Edinburgh Festival and an average night on the Grassmarket.)

Reading through the rest of the CJLB, I find most sections laudable. Child pornography, human trafficking, these are crimes that should be abolished. And the general effort to clarify the legal system is fantastic and I think will improve Scotland greatly. But this section on extreme pornography, what is the justification? Where is the average Scot protected? These are questions a growing number of Scottish people want to know.

Sincerely,

Supporter of CAAN (<http://www.caan.org.uk>),

Subject: RE: Possession of extreme pornography section
Date: Wed, 8 Oct 2008 08:01:42 +0100
From: Jim.Wilson2@scotland.gsi.gov.uk
To:
CC: Ann.Oxley@scotland.gsi.gov.uk; Gery.McLaughlin@scotland.gsi.gov.uk;
Patrick.Down@scotland.gsi.gov.uk; Philip.Lamont@scotland.gsi.gov.uk

Thank you for your email of 7 October. The Sexual Offences Team forms part of Criminal Law and Licensing Division. This branch deal with a variety of topics, ranging from Human Trafficking, Prostitution (Public Places) (Scotland Act), Sexual Offences, Pornography, Indecent Images of Children, Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and the Sexual Offences Bill.

I have copied your email to my divisional colleagues – Ann, grateful if you could respond direct to with contact details for your team.

Regards,

Jim

23/02/2009

Jim Wilson
Scottish Government

Criminal Law and Licensing Division
Criminal Justice Directorate

Scotland's licensing laws are changing. To access important information on the Licensing (Scotland) Act 2005 please click on the licensing micro site at:

<http://www.infoscotland.com/licensingact/>

From:

Sent: 07 October 2008 16:07

To: Wilson J (Jim)

Subject: RE: Possession of extreme pornography section

This email has been received from an external party and
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Dear Mr. Wilson,

As further clarification, who exactly is handling the sexual offences part of the CJLB? Who are the Sexual Offences Branch and what do they cover? I would hate to bog you down with emails regarding an issue you cannot resolve and I expect you'll be getting more than a few objections to the bill. Do you have contact information so that I (and others) can reach them directly?

Sincerely,

Subject: FW: Possession of extreme pornography section

Date: Thu, 2 Oct 2008 16:55:53 +0100

From: Jim.Wilson2@scotland.gsi.gov.uk

To:

Please see message below – I've re-sent as my original email was bounced back.

Regards,

Jim

Jim Wilson
Scottish Government

Criminal Law and Licensing Division
Criminal Justice Directorate

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<http://www.infoscotland.com/licensingact/>

From: Wilson J (Jim)

Sent: 02 October 2008 07:16

To:

23/02/2009

Subject: RE: Possession of extreme pornography section

I am emailing you to acknowledge receipt and thank you for your email response below. I have forwarded your message on to our Sexual Offences Branch for consideration.

Regards,

Jim

Jim Wilson

Scottish Government

Criminal Law and Licensing Division

Criminal Justice Directorate

Scotland's licensing laws are changing. To access important information on the Licensing (Scotland) Act 2005 please click on the licensing micro site at:

<http://www.infoscotland.com/licensingact/>

From:

Sent: 01 October 2008 18:55

To: Criminal Justice and Licensing Bill

Subject: Possession of extreme pornography section

This email has been received from an external party and has been swept for the presence of computer viruses.

Dear Scottish Government,

Reading the section of the new Criminal Justice and Licensing Bill (CJLB), the section on Possession of Extreme Pornography seems to me unclear to the point of being useless. The main issue with the bill is that it threatens the harmless entertainment of a portion of the Scottish population, those who are kinky, into BDSM, fetish, or any other form on non-mainstream sexuality. While I recognise that this bill was proposed to help reduce the number of people forced into pornography and to protect children from viewing pornography, this bill hardly accomplishes those purposes and instead vilifies individuals who are harming no one.

The main problem with the bill is the phrase "realistically depict". While most of the wordings of the bill do not threaten the entertainment and home photos/movies of law abiding Scottish residents, the term "realistically" allows the media in question not to be judged on its own merit, but instead on the gut reactions of whomever happens to be viewing it.

Take, for example, the phrase "appear likely to cause severe injury". One common form of play in BDSM is bondage. While bondage is typically quite harmless, in the wrong hands a rope too tight across the wrists could cut off circulation to the hands. Conversely, a master of bondage could easily tie someone up in very tight ropes over their entire body and still not harm them. How are we, the viewer of this media, to know the skill level of the person performing the act? Many dangerous sports and work carry the phrase "only to be attempted by professionals", surely this applies to BDSM as well. A person may be seriously injured sky diving if they don't know what they're doing, yet a skilled person would be perfectly safe. There is no way to tell from looking at a picture.

The same applies to acts such as "Rape and other non- consensual penetrative sexual activity, whether violent or otherwise". As was commented on the Register, http://www.theregister.co.uk/2008/09/30/scotland_extreme_pr0n_law/ , "How exactly are they planning on telling the difference between non-consensual, non-violent sex and consensual non-violent sex *just* *by* *looking* *at* *a* *picture* ?" Nobody argues that documenting a rape is a crime, but unless it is proved that the rape occurred, there is no proof that the photo (or what have you) is depicting a rape. Further, completely consensual activity (such as BDSM) may be misconstrued as rape simply because the person

looking at the media does not have the full information. Is there a difference between consensual violent sex and non-consensual non-violent sex? Again, it goes back to "realistically depict".

Obviously the best solution would be to remove this section from the bill entirely. But I realise that many religious and feminist groups may object strenuously to that. They argue that crimes should not be documented. In that case, just say, a documentation of a sex crime is a crime in itself. Rape is already illegal in Scotland (though I understand the issue of male rape hasn't yet been addressed in law). Strengthen those laws before you commit yourself to vague nonsense that may affect art and otherwise law abiding residents. If they want to ban pornography, ban ALL pornography, starting with Page 3 girls. The CJLB will only cause confusion, prejudice and injustice.

Sincerely yours,

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