

While child pornography may not now be generally available on a commercial basis in Canada, we know that it is home-made by paedophiles who have communication networks and exchange clubs. These are persons who share an interest in sexual activity involving children and commonly exchange photographs they have taken of children who have been the objects of their abuse. These photographs and videos are palpable evidence of the sexual abuse of these children.

By making simple possession of child pornography an offence it is our intention to dissuade such activity. We have been urged to take this step by many, including law enforcement personnel who have seen the lack of an offence for the simple possession of such materials as a barrier to curbing the flow of child pornography.

• (1510)

In addition, by creating an offence for simple possession and introducing legal sanctions against the consumer, we attack any commercial market for these materials such as videos, magazines or computer programs which involve or depict children engaged in explicit sexual activity and reduce the incentive for their production.

The definition proposed refers to a photographic, film, video, or other visual representation whether or not it was made by electronic or mechanical means that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaging in explicit sexual activity.

Hon. members will note that the proposed definition refers to a person who is or is depicted as being under the age of 18 years. We have chosen to include depiction of persons as being under the age of 18. That is because failing to include depictions would be seen as failing to address an issue of concern to many Canadians, that the children not perceived as appropriate objects of sexual interest including depictions in the definition serve to prohibit pseudo child pornography, that is where adult models are presented to appear as children which is more openly distributed than other forms of child pornography, but still nonetheless promotes the sexual abuse of children.

It is important to protect children who directly suffer the harms of sexual abuse and exploitation in the

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production of child pornography, but also others, by denouncing the message that child pornography conveys to the consumer of these materials: that children are somehow appropriate sexual partners.

In limiting the proposed definition of child pornography to visual representations, we have focused on those materials which most clearly require or motivate the sexual use and exploitation of children in order to protect them from child sexual abuse and related harms.

Written materials will continue to be dealt with under the current provisions of the Criminal Code, as upheld by the Supreme Court of Canada decision in *R. v. Butler*.

Offences have been created for the production, distribution and sale of child pornography which are subject to terms of imprisonment to a maximum of 10 years. In addition, the possession of child pornography is subject to a term of imprisonment not exceeding five years. These offences are hybrid. That is, they can be made on an indictable or a summary conviction offence, depending of course on the circumstances of each particular case.

The defence of artistic merit or an educational, scientific or medical purpose in Bill C-128 is not one which places a persuasive burden on the person charged with one of the child pornography offences. The availability of such a defence is important for ensuring that the reach of the legislation does not extend to forms of expression which the courts consider beneficial to society, such as health education.

It is essential to include this defence in the proposed legislation in order to protect the freedom of expression rights which are clearly entrenched in the Canadian Charter of Rights and Freedoms. There may be materials which depict children under the age of 18 which may represent some artistic merit or for some other purpose and, as such, deserve the protection of the Criminal Code.

We have also introduced consequential amendments to the Criminal Code which would serve to include the child pornography offences in the definition of offence in part VI of the Criminal Code so that the electronic surveillance provisions will apply. In the definition of enterprise crime offence of the Criminal Code they will fall under the proceeds of crime provisions as well.