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Commission du droit du Canada, *La réforme du droit et la frontière entre le public et le privé*, Québec, Les Presses de l'Université Laval, 2003, 285 pages, ISBN 2-7637-7952-2

Line Gosselin-Després, *La preuve d'un abus sexuel en l'absence du témoignage de l'enfant : analyse juridique et empirique des obstacles*, Montréal, Wilson & Lafleur, 2 pages, ISBN 2-89127-582-9

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This work is a collection of six works detailing recent developments in the distinction between private and public aspects of law as governed by the Law Commission of Canada. The Commission is quick to point out that the opinions contained in the articles are those of the authors and not of the Commission.

The first article, by Lisa Philipps, suggests a reality where essential support work done by individuals staying at home is taken seriously as an economic activity. Such work is often trivialised as menial and unimportant; Philipps suggests that in the absence of such a support network workplaces would inevitably suffer. As such, Philipps suggests that we economically acknowledge that work and eliminate the fallacy that unremunerated work done at home cannot have economic value. Philipps' suggested reform involves employers compensating essential home workers for their duties which benefit their employees, subsequently reducing racial, sexual and socio-economic discrimination by acknowledging the importance of home work in the way that matters most — financially. Philipps continues in suggesting that benefiting from home workers without compensating them financially is a form of parasitism that needs eliminating. Until that compensation arrives, Philipps believes home workers should "strike". Next, Philipps believes work at home and work in the office should be integrated to acknowledge their respective value. Finally, Philipps suggests that putting this into effect would require more than minimal changes but a true overhaul of the legal system, one that acknowledges home work not in vague, sentimental terms but with financial compensation, since as Philipps sees it, home work represents a tangible economic benefit to the workplace for which payment is overdue.

The second article, by Damian C. A. Collins and Nicholas K. Blomley, examines the issue of public begging in Canadian metropolises and how doing so involves bringing the private needs of the beggar into the public arena. Collins and Blomley point out that the problem is not solicitation itself — we are faced with it constantly in advertising, charity requests and street theatre. It is generalised hesitation to the social situation it creates that incites awkwardness and disdain in many. What preoccupies us most is not the typically neglible amount of money being

requested but the messenger whose presence annoys and whose motives we question. Many American municipalities forbid camping, loitering or begging in public areas, and comparable regulations can be found in many Canadian municipalities as well. Imposing such regulations, in Collins and Blomley's view, brings up the difficulty of making the distinction between private and public spaces as well as what constitutes proper governance of what constitutes a private economic transaction. One American case suggested that regulating on such matters is discriminatory and that financial transactions of the homeless are to be regarded as equivalent to the private financial transactions of a non-homeless person and that regulating otherwise would limit personal freedoms. Collins and Blomley ask whether begging itself is protected by the Charter of Human Rights and Freedoms as a form of expression and for better classification of what constitutes private and public interests and how one draws the line between bettering city life and exclusive elitism.

The third article, by Nathan Brett, examines the distinction between that which is public and private in the context of biotechnology. Patent claims are in the millions and there is great difficulty in determining what constitutes a private invention as opposed to something in the public domain. For example, Brett cites a recent incident where a company was denied a patent for a cloned mouse since the Canadian Patent Board determined that a mouse could not qualify as an invention. The equivalent British board, however, granted an American company a patent for a genetically modified human embryo, and a third company is currently seeking to patent those genes which predispose women to breast cancer. Patenting is inevitably a type of privatisation, one that can affect millions. HIV medication that is cheap to produce generically has not reached much of South Africa due to patent laws on the medication. Brett asks to what extent such privatisation can be ethically justified and when private interests start to affect the public, as well as whether one must be the original author of a thing to call it one's invention or whether a new kind of combination of previously existing elements should be enough to qualify.

The fourth article, by Darrin Barney, deals with recent digitisation of the public domain and to what extent sensitive personal information is truly private anymore. The matter is often discussed in the media and is of great concern to many. Barney puts forth two dichomotous interpretations of what constitutes our society, one of a more democratic nature and the second that caters more to the elite and what private life means in both settings. Barney suggests we currently live in a more elitist society that is economy driven where political opinion and human rights matter less than apolitical commercial activity, inevitably relegating concerns for privacy to the backburner.

The fifth article, by Stepan Wood, refers to fully voluntary environment initiatives made by the private sector and how it has gone

largely unnoticed by the media and NGOs (Non-Governmental Organisms). This lack of attention has been mostly for political reasons which often dismiss private companies as money-hungry and largely unconcerned with the environment. Wood feels that the public/private distinction does more harm than good in this context since it ignores real initiatives made for reasons which are mostly unjustified.

The sixth article, by Christian Brunelle, suggests that recent economic trends have rendered workers' unions almost obsolete; especially the case in the USA but rearing its head in Québec and the rest of Canada as well. A union, which seeks to protect public interests in a limited sense, those of employees, finds itself up against private companies that must answer to their shareholders. No longer is a company extolled for creating jobs; instead, being able to perform a job with as few employees as possible has become the true measure of success. As such, Brunelle feels workers have become more and more expendable since private interests have eclipsed those of employees.

The six articles bring up interesting aspects of private and public realities about very varied issues that might not come to mind otherwise in a readable and accessible manner. A reader with even limited legal background could find merit in all six articles.

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Line GOSSELIN-DESPRÉS, *La preuve d'un abus sexuel en l'absence du témoignage de l'enfant : analyse juridique et empirique des obstacles*, Montréal, Wilson & Lafleur, 2002, 151 pages, ISBN 2-89127-582-9.

The main objective of Després' work is to determine if article 85.5 of the YPA (*Youth Protection Act*, also known as LPJ, *Loi sur la protection de la jeunesse*) favours the protection of inapt children as well as those relieved from testifying in matters where the child is a victim of sexual abuse. Després strongly criticises conclusions made in the *Rapport du comité sur les infractions sexuelles à l'égard des enfants et des jeunes* (1984). She goes on to suggest that reforms made to the YPA are insufficient, requiring further corroboration to the child victim's testimony for it to be deemed valid. Prior to the reform, this was not the case. In Després' assessment of existing provisions made in the YPA, the victim of sexual abuse is on one hand given preferential status but that status is immediately put to the test in that his testimony requires further corroboration. Després feels this inevitably favours the accused over the victim, a fact she believes goes against the very spirit of the Law. In the very trying case of child abuse, Després suggests that this required corroboration creates a major obstacle in determining culpability, particularly since by its very nature, child sexual abuse is most often a crime without witnesses.

To better highlight obstacles found in article 85.5 of the YPA,

Després presents the reader with rigorous and detailed empirical studies which analyse legal briefs in Québec on the subject over the past ten years. Of marked interest is that much of these findings had not been published prior to Després' research. Després highlights how the courts evaluated those elements extrinsic to extrajudiciary statements and how such declarations were, ultimately, used as indicators of the reliability of the child victim's testimony. Després does not hesitate to conclude that in the majority of cases, based on analysis of her findings, the child victim of sexual abuse is made unable to testify.

To conclude, Després suggests that the burden set forth in the current YPA be softened and amended to now state : "La déclaration de l'enfant est admissible en preuve si elle présente des garanties suffisamment sérieuses pour s'y fier.". Those "garanties suffisament sérieuses" might thus take many forms, thereby allowing better protection of child victims of sexual abuse by allowing more statements to be admissible, whether or not they are capable of rendering testimony. Després goes on to suggest that if the true goal of youth protection is to allow victims to be heard and protected in an appropriate and effective manner, this amendment is an inevitability. Such a change would thus eliminate the current obstacle to the child victim's demonstrating that he truly is a victim of sexual abuse.

One might suggest Després arrives at her conclusion too quickly; however, she cannot be faulted for feeling so strongly about a form of social injustice so heavily loaded. Sexual abuse, particularly that involving children, leaves much controversy in its path. Therefore, it follows that bureaucratic amendments, or the lack thereof, ought not to put aside social justice as a whole when seeking to rectify other injustices. Després study does an excellent job of suggesting to the legal community that more leeway be granted to the victim while maintaining protection of the accused.

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