administratives sont invitées à prendre en compte lorsqu’elles établissent des partenariats avec les entreprises.

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Christopher Nowlin

There is a saying that one man’s meat is another man’s poison. As Christopher Nowlin rightly indicated, based on one’s education, beliefs, cultural background and experiences, all of us may have different perceptions of a situation. Whereas one person may perceive an information or activity to be pleasant or to be to his advantage, another person may consider the same information or activity to be unpleasant or to be to his disadvantage. However, where there is a well-established standard against which one can measure the social acceptability of the information or activity in question, there will be no gray areas between meat and a poison. This is the case provided the factors taken into consideration for establishing the standard remain the same. Hence, if there are doubts about the factors underpinning the standard, further assessment of the factors would be called for.

In countries governed by the rule of law, laws are one set of standards against which activities of citizens are judged as to whether they conform to social norms or not. However, it is known that over a period of time due to changes in societal values and other factors, these laws have to be refined to conform to contemporary issues.

In Judging Obscenity: A Critical History of Expert Evidence, Christopher Nowlin is not only challenging the objectivity of expert witness testimony, but he is also making us aware that in the face of established laws on obscenity some members of the public are engaged in activities, which push the boundaries of these laws. At no time in history have we been bombarded with images of sexual nature than today. In the street, in cinema houses, on television, dancing theatres and art museums there is always a question of whether what is before us is obscene or not. The criminal justice system is being called upon frequently to examine these scenes for prosecution purposes. It is the controversy surrounding the extent of obscenity of these activities that calls on judges to get involved. Based on his extensive experience as a barrister and as a highly informed academic, Christopher Nowlin has observed how judges, on several occasions, have consulted extra-legal professionals to advise them.

Christopher Nowlin basically challenges the validity of the information provided by these extra-legal experts when the applicability of a
constitutional law is questioned in obscenity litigation. He aims to disabuse North American courts of the perception that social scientific data exclusive of political and moral consideration can be relied on as legislative facts to deal with obscenity cases. In effect, he is claiming that expert evidence about obscenity is not wholly dependable and cost-effective. To make his point, Christopher Nowlin takes us through experiences in the United States and Canada. On the American front, he cites the established common law rule or legislative act called the police power, by which American federal and state governments are licensed to intrude into the private lives of Americans. He then gives us examples of cases in which the constitutionality of the police power has been challenged, dating from 1895, and judges' deference to expert evidence. On the Canadian front, he cites the Oakes test, which asks whether the social problem, which has infringed the legislation in question, is sufficiently pressing and substantial to justify restricting it. In a spirit of comparative analysis, he is able to establish the similarities and differences of this test to the American police power. What Christopher Nowlin is doing here is to create awareness of the basic doctrines that govern the reception of evidence in American and Canadian constitutional challenges.

To foster understanding of what he is talking about, Christopher Nowlin clarifies two main 'facts', legislative facts and adjudicative facts, which are important in understanding his argument of the validity of such facts in deciding court cases. The essence of his point being that at times judges struggle with the interpretation of the law, which causes them to seek background facts, social or economic, to aid the broader meaning of the law in question. He explains that it is at this point that a judge may have to consult with expert witnesses. Christopher Nowlin's bone of contention is the validity, reliability, helpfulness and reasonableness of such legislative fact in relation to the admissibility standard in courts. Citing well-known authorities, he terms these 'facts' opinions and arguments, which are biased and subjective and which cannot hold water. He continues that where judges give such data too much credibility and weight, they delegate their decision-making function to non-legal professionals. Furthermore, there is a potential harm of unreliable, oversimplified and politically interested social science information dominating law reform.

Christopher Nowlin does not stop at making us aware of the dangers to civil society of expert testimony. Though he points out that the increasing complexity and advanced technology of the modern world underlie deference to expert evidence, he questions whether such a venture is in line with the political ideal of a free and democratic society. He advances the cause of pluralistic vision of democracy, which means that consultation to determine obscenity must be wide and incorporate laypersons. Unfortunately, only a narrow body of scientists is privileged to provide expertise evidence. He stresses his point by citing several American and Canadian obscenity cases, which have challenged constitutional laws and have employed the services of expert evidence. The crux of the cases cited is
the determination of the extent of obscenity. Within the American context, this requires the courts to ask whether 'the average person, applying the contemporary community standards' would find that the material in question appeals to prurient interest. To Christopher Nowlin "the average person" means that expert evidence is not needed. In the Canadian context, he takes note of the 1962 deviation from the British Hicklin obscenity test, which asks about the tendency or potential of a material in question to deprave or corrupt its reader, to the Canadian Criminal Code, which expects the courts now to inquire about the degree of exploitation of sex involved in the material and extent to which the material concerned itself with sexual exploitation relative to the material's other themes. In all these cases, Christopher Nowlin points out that various methods have been used to establish the obscenity of a material. These have ranged from judges themselves, juries, social and natural scientists to marketplace evidence.

One important observation is that the author mentions all sorts of obscene materials ranging from books, newsprint, artistic materials, films, sadomasochistic images involving both heterosexuals and homosexuals, exposed female breasts to child pornography. He did not, however, dwell on images of sexual relationship between human beings and animals.

In the final analysis he notes that some Canadian judges now give second thoughts to claims of expertise testimony in constitutional matters. Christopher Nowlin does not claim to have presented an expert opinion of expertise evidence, being fully aware that no scholarly research is beyond criticism. He is not only a pragmatic practicing lawyer, but he is also a University lecturer with a number of publications on similar issues to his credit. Anybody with an interest in legal matters will find this book educative, lucid, penetrating and absorbing. The permissiveness of the Western world has caused so much gray areas with respect to moral values that a book like this would be needed to heighten our awareness of the difficulty in distinguishing these gray areas.

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