SEXUAL REGULATION AND THE LAW: A CANADIAN PERSPECTIVE, RICHARD JOCHELSON AND JAMES GACEK, EDS. (BRADFORD, ONT: DEMETER PRESS, 2019)

Richard Jochelson and James Gacek's edited collection brings into focus many of the unique and controversial ways in which sexual conduct is regulated in Canada. There is currently a dearth of socio-legal Canadian literature advancing our collective understanding of sexual regulation, and this edited collection provides a valuable contribution in this regard. Several important questions are at the heart of the collection.[1] What principles, constitutional or common law, ought to be at the forefront of judicial thinking about sexual regulation? How have digital technologies changed the way in which sexual crimes are committed and regulated? And to what extent do socio-legal thoughts, processes, and interpretations influence judicial understanding of the appropriate relationship between sexuality and the law?

The collection's focus on judicial regulation is important as social taboo of sexual expression makes the topic difficult to regulate via the legislative process.[2] The practice of judicial review is well suited to ensure issues relating to sexual morality are visible, and thus governable, in society.[3] It is no surprise then, that people frequently turn to the judiciary to regulate controversial sexual practices, most recently including issues pertaining to pre-consent to sex,[4] sex work,[5] sadomasochism,[6] polygamy,[7] bestiality,[8] and incest.[9] As hinted at throughout the collection, the judiciary is arguably best suited for this regulation, a key point that I will expand upon below in discussing the editors' path forward for sexual regulation in the Canadian legal context.

The collection opens with one of the editors' contributions discussing the Supreme Court of Canada's shift in governing indecency and obscenity offences in *R. v. Labaye*.[10] Departing from the inherently subjective "community standards" test,[11] the Supreme Court in *Labaye* adopted a "legal norm of objectively ascertainable harm" for assessing culpability.[12] As the Supreme Court observed, developing a theory of harm would not occur in a single case. Instead, courts would need to proceed incrementally based on objective evidence establishing some degree or threat of harm.[13] Proof of harm would not, however, always require expert

---

1 James Gacek & Richard Jochelson, "Introduction: Let's Talk About Sex – Time to Tap Taboo?" in Richard Jochelson & James Gacek, eds, *Sexual Regulation and the Law: A Canadian Perspective* (Bradford, Ont: Demeter Press, 2019) at 7–9 [Jochelson & Gacek, *Sexual Regulation*].

2 *Ibid* at 9.

3 *Ibid* at 9–10.

4 See *R v JA*, 2011 SCC 28.

5 See *Canada (Attorney General) v Bedford*, 2013 SCC 72 [*Bedford*].

6 See *R v Welch* (1995), 25 OR (3d) 665 (CA); *R v Atagootak*, 2003 NUCA 3; *R v Zhao*, 2013 ONCA 293; *R v Barton*, 2019 SCC 33.

7 See *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588.

8 See *R v DLW*, 2016 SCC 22 [*DLW*].

9 See *R v RPF*, 1996 NSCA 72; *R v GR*, 2005 SCC 45.

10 2005 SCC 80 [*Labaye*].

11 *Ibid*, as the Supreme Court observed at para 18:

> [i]n a diverse, pluralistic society whose members hold divergent views, who is the "community"? And how can one objectively determine what the community, if one could define it, would tolerate, in the absence of evidence that community knew of and considered the conduct at issue? In practice, once again, the [community standards of tolerance] test tended to function as a proxy for the personal views of expert witnesses, judges and jurors. In the end, the question often came down to what they, as individual members of the community, would tolerate.

12 *Ibid* at para 14.

13 *Ibid* at para 26.

evidence as in some cases harm would be so obvious as to obviate the need for such proof.[14] Despite early optimism that this approach would facilitate better legal reasoning when considering criminal liability for sexual acts,[15] the authors query whether the *Labaye* test achieved its goal of instilling objectivity into obscenity and indecency law.

As the authors have argued elsewhere,[16] guidance with respect to what cases obviate the need for expert evidence is needed, lest the law slip back towards a subjective judicial assessment of obscenity and indecency standards.[17] Yet, the authors' call for expert evidence in all cases may go too far.[18] Consider the case of *R. c. Desmarais*,[19] wherein the offender exposed himself to a young girl. Risk of psychological harm was found to flow from the nature of the act itself, obviating the need for expert evidence.[20] Similarly, the offender in *R. v. Sheikh*[21] was convicted for putting a condom on in a car in a high school parking lot. He did so with a sex worker in the car, in a well-lit parking lot, with many people walking around the area at the time, and with his penis being visible through the front windshield and driver's side window. Thus, there was a significant risk that their sexual activity may have been observed by anyone, including young persons.

Focusing on whether an act causes harm and, if so, the degree and nature of the harm is a somewhat perplexing approach to governing obscenity and indecency law. In *R. v. Malmo-Levine; R. v. Caine*,[22] the Supreme Court rejected the idea that harm is the sole principle underlying criminal prohibitions.[23] Unfortunately, the Supreme Court did not significantly expand upon what other rationales might underlie criminal offences. It would be fruitful, then, to more deeply engage with criminal law theory when criticizing rules governing obscenity and indecency law. Joel Feinberg's "offence" principle is an obvious candidate. As he famously explained: "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense … to persons other than the actor, and that it is probably a necessary means to that end."[24] If the public exhibitionism at issue in the *Desmarais* and *Sheikh* cases violated the offence principle, in no small part because of the nature of the (potential) victim(s) being children, it becomes much less convincing that expert evidence is necessary to find criminal fault.[25]

---

14 *Ibid* at para 60.

15 See Elaine Craig, "Re-Interpreting the Criminal Regulation of Sex Work in Light of R. c. Labaye" (2008) 12:3 Can Crim L Rev 327 at 328.

16 See Richard Jochelson & James Gacek, "Reconstitutions of Harm: Novel Applications of the *Labaye* Test Since 2005" (2019) 56:4 Alta L Rev 991.

17 See Richard Jochelson & James Gacek, "Indecency and Obscenity Law: From *Hicklin* to the Post-*Labaye* Era – A (Tall) Tale of Risk?" in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 41.

18 *Ibid*.

19 2008 QCCQ 7959 [*Desmarais*].

20 *Ibid* at para 73 ("Toute tolérante qu'elle soit, la société canadienne réprouve les gestes qui comme celui posé par le défendeur, portent atteinte à l'intégrité physique et psychologique des enfants"). Although such risk of harm seems obvious to the author, it is also a harm that has been proven in the literature. See Stuart P Green, "To See and Be Seen: Reconstructing the Law of Voyeurism and Exhibitionism" (2018) 55:2 Am Crim L Rev 203 at 241–44, citing amongst other work Stephanie K Clark et al, "More Than a Nuisance: The Prevalence and Consequences of Frotteurism and Exhibitionism" (2016) 28:1 Sexual Abuse: J Research & Treatment 3.

21 2008 CanLII 17311 (ONSC) [*Sheikh*].

22 2003 SCC 74 [*Malmo-Levine*].

23 *Ibid* at para 129.

24 Joel Feinberg, *Offense to Others: The Moral Limits of the Criminal Law* (Oxford: Oxford University Press, 1985) at 1.

25 For commentary on this point, see Green, *supra* note 20 at 256–58.

The editors also co-author Chapter 2, which reviews the history of Canadian sex work and engages with the merits of Parliament's recent response to *Bedford*. The chapter provides a useful introduction to the history of sex work for those teaching on the subject, but also provides commentary on sex work policy moving forward. Parliament's adoption of a modified Nordic model — which seeks to deter sex work by criminalizing the purchaser — is seen by a variety of commentators as ensuring sex work is at least as, if not more, dangerous than it was under the old law.[26] The authors echo these sentiments, observing that the new law "effectively criminalized communication in public for the purpose of prostitution, the purchase of sexual services, [receiving a] material benefit, procuring, and the advertisement of sexual services."[27] As with the impugned laws in *Bedford*, these restrictions push sex work to more remote, dangerous areas and prevent sex workers from hiring protective services or from screening potential clientele.

The authors therefore call for further legislative reform of sex work laws to avoid further litigation. This is prudent as the *Bedford* case cost significant resources and was unlikely to happen but for the volunteer work of Alan Young.[28] It is also questionable whether the new law violates the *Canadian Charter of Rights and Freedoms* at all.[29] Although sex workers are arguably no safer under the new laws, the major innovation of the new law was to modify the objective of sex work policy from nuisance abatement to deterrence of sex work. By deterring sex work, the law purports to *protect* sex workers.[30] Although the authors are sympathetic (as am I) towards Hamish Stewart's argument that these goals are incompatible and thereby violate the principles of instrumental rationality, litigation has been in short supply and, where it does exist, the results have been mixed.[31] Litigation should focus not only on the incompatibility of the objectives of the law, but also on the (in)ability of the law to protect sex workers. Although this requires challenging the current presumption that a law under scrutiny for violating the instrumental rationality principles achieves its objectives, commentators have argued that such a presumption is misplaced.[32]

The editors, joined by Alicia Dueck-Read and Brayden McDonald, engage with the plethora of issues arising from non-consensual distribution of intimate images (NCDII) in Chapter 3. Parliament recently passed section 162.1 of the *Criminal Code*[33] to provide police with an alternative option to charging those in relationships with young persons with

---

26 See for instance Chris Bruckert, "*Protection of Communities and Exploited Persons Act*: Misogynistic Law Making in Action" (2015) 30:1 CJLS 1 at 1; Hamish Stewart, "The Constitutionality of the New Sex Work Law" (2016) 54:1 Alta L Rev 69 [Stewart, "Constitutionality"].

27 See James Gacek & Richard Jochelson, "Sex Work in Canada: Beginnings, *Bedford*, and Beyond" in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 76.

28 See *Bedford v Canada*, 2010 ONSC 4264 at para 84 (25,000 pages of evidence were submitted in the proceedings).

29 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

30 See Bill C-36, *An Act to amend the Criminal Code in response to the Supreme Court of Canada decision in Attorney General v. Bedford and to make consequential amendments to other Acts*, 2nd Sess 41st Parl, 2014, Preamble (assented to 6 November 2014), SC 2014, c 25. See also Stewart, "Constitutionality," *supra* note 26 at 72.

31 See *R v Boodhoo, and others*, 2018 ONSC 7205; *R v Anwar*, 2020 ONCJ 103.

32 See Hamish Stewart, "*Bedford* and the Structure of Section 7" (2015) 60:3 McGill LJ 575; Colton Fehr, "The 'Individualistic' Approach to Arbitrariness, Overbreadth, and Gross Disproportionality" (2018) 51:1 UBC L Rev 55; Colton Fehr, "Re-Thinking the Instrumental Rationality Principles of Fundamental Justice" 2020 58:1 Alta L Rev [forthcoming].

33 RSC 1985, c C-46.

possession and distribution of child pornography.[34] The authors, however, criticize the current emphasis on "privacy" as the lodestar for determining when distributing such images is criminal. In their view, "NCDII should be viewed through a gendered lens, with attention to its inherent violence."[35] Citing the work of Moira Aikenhead, the authors argue that relying on whether the victim maintained a "reasonable expectation of privacy" in an image shifts the focus to the actions of the victim which, in turn, facilitates victim blaming.[36]

The authors' laborious efforts admirably detail how the various criminal and civil NCDII cases target women, lesbian, gay, bisexual, transgender, queer or questioning and two-spirit (LGBTQ2S+), racialized, and disabled people. With the aid of the courts, however, interpretation of the "reasonable expectation of privacy" requirement has arguably been made more sensitive to these issues. In *R. v. Jarvis*,[37] the Supreme Court of Canada recently interpreted the reasonable expectation of privacy requirement in the voyeurism offence in section 162(1) of the *Criminal Code*. In addition to the traditional considerations relevant to determining whether an expectation of privacy was reasonable,[38] the Supreme Court concluded several other factors were relevant, including "the relationship between the parties; the purpose for which the observation or recording was done; and the personal attributes of the person who was observed or recorded."[39] These factors were influential in determining that a school teacher who had surreptitiously recorded many school girls and teachers' chests was guilty of voyeurism, overturning both lower court rulings.[40] It is notable that the *Jarvis* decision was applauded by the Women's Legal Education and Action Fund, Canada's leading women's rights advocates.[41]

In Chapter 4, Lauren Menzie and Taryn Hepburn chronicle developments in the Canadian law regulating sexual offences against youth, most notably the offences of child luring and possession/distribution of child pornography. Digital technologies have complicated this field of law, giving rise to a plethora of legal questions. As the authors query, should police posing as children online be permitted to be "lured" to meet potential offenders, or should the

---

34 Obviously, there are other charging options in the *Criminal Code*, including voyeurism (s 162), obscene publication (s 163), criminal harassment (s 264), uttering threats (s 264.1), defamatory libel (ss 300–301), extortion (s 346), intimidation (s 423), and mischief with respect to data (s 430(1.1)). However, these provisions may either not apply in every instance of NCDII or do not adequately capture the moral blameworthiness of the offender's actions.

35 Richard Jochelson et al, "Intimate Images and the Law," in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 102.

36 *Ibid* at 113, citing Moira Aikenhead, "Non-Consensual Disclosure of Intimate Images as a Crime of Gender-Based Violence" (2018) 30:1 CJWL 117 at 133.

37 2019 SCC 10 [*Jarvis*]. It is notable that the authors discuss this case, but that it was released around the time the book under review was published.

38 *Ibid* at para 5.

39 *Ibid*.

40 *Ibid* at paras 71–92.

41 See Women's Legal Education and Action Fund (LEAF), "LEAF Celebrates Supreme Court of Canada Ruling in R. v. Jarvis," online: <www.leaf.ca/leaf-celebrates-supreme-court-of-canada-ruling-in-r-v-jarvis/>:

> The Supreme Court's ruling is an important contribution to the advancement of women's and girls' equality in the digital age. By rejecting a narrow, location-based definition of privacy, the Court refused to allow historically gendered ideas about the public and private sphere to taint or narrow the real life protections that Parliament intended to extend to Canadian women. Instead, the Court adopted a nuanced, contextual test centered on circumstances where women expect to be "free from the type of intrusion" at issue, in line with a modern society in which women strive to enjoy true equality.… The decision will have positive impact on the day to day lives of Canadian women and girls, and the confidence with which they engage in social, cultural, economic, and political life.

doctrine of entrapment apply in such circumstances?[42] Is it adequate to rely on predictions of future harm when prosecuting child luring offences in this manner? Finally, is the current level of harm in the child pornography provisions — which includes within its ambit possession of child sex dolls and stories involving sex with children — sensible from a criminalization perspective?

The chapter provides an excellent overview of the legislative and judicial development of the child luring and child pornography provisions of the *Criminal Code*. Yet, it would have been useful to engage more deeply with the existing philosophical frameworks addressing the latter two questions posed by the authors. As observed above, objectively offensive behaviour is likely adequate to criminalize some sexual offences despite there being no identifiable harm. Harm has also become a fluid concept since it was popularized by the Hart-Devlin Debate.[43] To the extent that harm includes "social harm," is there a meaningful line that can be drawn for criminal liability?[44] If not, how would different conceptions of what qualifies as an offence impact the scope of criminal liability with respect to the child luring and child pornography offences?

In Chapter 5, the editors, joined again by Alicia Dueck-Read, outline and critique the historical development of the bestiality prohibition. Although it is unclear the extent to which bestiality occurs, one study suggests that 8 percent of males and 3.6 percent of postpubescent women had some sort of sexual experience with animals, a number which increased to nearly 50 percent of men who grew up on a farm.[45] Yet, as the authors observe, the scope of the prohibition has received scant academic attention. With the Supreme Court's recent decision in *DLW*, which held that penetration is an element of the offence of bestiality, the bestiality prohibition has been thrust back into the spotlight. In response, Parliament recently broadened the definition of bestiality to include "any contact by a person, for a sexual purpose, with an animal."[46]

The authors interestingly query whether the Supreme Court in *DLW* could have made use of the *Labaye* harms-based test in governing bestiality. As they observe, "[i]f obscenity and indecency originated in Victorian morality and its prevention of corruption of morals — and it is now interpreted as a prohibition of harms that interfere with the proper functioning of society — would it not be appropriate to make similar claims about bestiality?"[47] It is possible that the new bestiality provisions have such an aim, but as the authors suggest, it is unclear if prevention of animal suffering and promotion of animal agency could properly be conceptualized as fundamental Canadian values. Given the commodification of animals, the authors maintain such a value statement would be difficult for any court to assert, absent

---

42 To date, this defence has been unsuccessful.

43 See Bernard Harcourt, "The Collapse of the Harm Principle" (1999) 90:1 J Crim L & Criminology 109.

44 See *Malmo-Levine*, *supra* note 22 at para 127, citing Harcourt, *ibid* at 113.

45 Richard Jochelson, Alicia Dueck-Read & James Gacek, "Rethinking Bestial Regulation," in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 211, citing AW Stern & M Smith-Blackmore, "Veterinary Forensic Pathology of Animal Sexual Abuse" (2016) 53:5 Veterinary Pathology 1057 at 1059; Piers Beirne, *Confronting Animal Abuse: Law, Criminology, and Human-Animal Relationships* (Lanham: Rowman & Littlefield, 2009) at 122–23.

46 Bill C-84, *An Act to amend the Criminal Code (bestiality and animal fighting)*, 1st Sess, 42nd Parl, 2018, cl 1 (assented to 21 June 2019), SC 2019, c 17.

47 Jochelson, Dueck-Read & Gacek, *supra* note 44 at 244.

clear legislative intent.[48] Instead, the authors put forward a "reasonable person standard for the assessment of sexual touching of animals": a standard which is more likely to inform the new prohibition against bestiality.[49]

In Chapter 6, Leon Laidlaw engages with the fallout of Parliament's enactment of Bill C-16,[50] which resulted in "gender identity" and "gender expression" receiving protection from discrimination in both the *Canadian Human Rights Act*[51] and *Criminal Code*. Jordan Peterson's infamous rebuttal of the legislation charged that freedom of expression was being infringed as the legislation forced people to use select pronouns when addressing transgender persons. As the author contends, these erroneous legal claims marked a shift in opposition to transgender rights. Whereas "concerns" previously existed with respect to protecting women in bathrooms from transgender persons, the discourse against transgender rights now relies on freedom of expression.[52] This understanding of transgender rights as relating only to "political correctness … [undermines] the material reality of cisgenderism and the need for greater gender-based protections."[53] As the author persuasively argues, "the prominence given to the pronoun debate [especially during the Bill C-16 hearings] purposefully detracts from the material reality of oppression that trans communities [experience]."[54]

Despite Bill C-16 constituting a meaningful step forward, the author details how the new law fails to protect transgender people in general, and especially transgender sex workers and prisoners. As the author observes, there is no evidence to prove that hate crime prosecutions reduce violence against transgender people.[55] This is due in no small part to the troubled history transgender people have had with police, which makes them less likely to report being a victim of crime.[56] These issues are exacerbated when it comes to transgender sex workers, who are more common than other demographics to sell sex and thus face the many dangers inherent in the Canadian sex trade.[57] Transgender prisoners have also struggled to have their right to be recognized by their chosen gender in the prison system, which has caused significant hardship for transgender prisoners.[58] Despite Corrections Service Canada's recent modification to allow both pre- and post-operation transgender people to choose the gender of their prison, the author rightly criticizes this policy for its vague exception allowing staff to place pre-operative transgender people in their birth gender prison if "there

---

48 *Ibid*. For an interesting review of this argument, see Kathy Rudy, "LGBTQ…Z?" (2012) 27:3 Hypatia 601 at 601; Gabriel Rosenberg, "How Meat Changed Sex: The Law of Interspecies Intimacy after Industrial Reproduction" (2017) 23:4 GLQ: A Journal of Lesbian and Gay Studies 473 at 475.

49 *Ibid* at 245, citing *R v Chase*, [1987] 2 SCR 293.

50 Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, 1st Sess, 42nd Parl, 2017 (assented to 19 June 2017), SC 2017, c 13.

51 RSC 1985, c H-6.

52 Leonid Laidlaw, "Our Pronouns are Protected But Not Our Bodies: How Gender-Based Protections Fail Criminalized Trans People," in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 262, citing Brenda Cossman, "Gender Identity, Gender Pronouns, and Freedom of Expression: Bill C-16 and the Traction of Specious Legal Claims" (2018) 68:1 UTLJ 37.

53 *Ibid*.

54 *Ibid* at 262–63.

55 *Ibid* at 277, citing Dean Spade, "Keynote Address: Trans Law & Politics on a Neoliberal Landscape" (2009) 18 Temp Pol & Civ Rts L Rev 353.

56 Laidlaw, *ibid* at 278, citing available American data suggesting that 57 percent of transgender people would be uncomfortable seeking help from the police. See Sandy James et al, *The Report of the 2015 U.S. Transgender Survey* (National Centre for Transgender Equality, 2016).

57 Laidlaw, *ibid* at 281, citing James et al, *ibid* ("A U.S. national survey has indicated that nearly one in five trans people have sold sexual services in their lifetime").

58 Laidlaw, *ibid* at 282–87.

are 'health or safety concerns' that cannot be resolved."[59] Such an exception, the author persuasively argues, is violative of the *Canadian Human Rights Act*.[60]

Given the limited successes of Bill C-16, the author proposes two ways forward for improving the rights of transgender people. As the author observes, "the fight for trans rights is incomplete without the decriminalization of sex work and the work towards prison abolitionism."[61] Although interesting propositions, these arguments are inadequately developed to provide significant comment. The idea that prison abolition in particular is necessary for full realization of transgender rights rests on assumptions that past failures in institutional reform cannot be addressed as transgender rights gain more momentum.[62] Equally important, prison abolition is likely unattainable politically, let alone desirable from a normative perspective given the myriad interests implicated by theories of crime and punishment.

The final contribution comes from David Ireland, who examines the disturbing trend of "victim blaming" by judges in sexual assault trials and asks whether disciplining judges can help eviscerate rape culture. The infamous cases of Justices McClung,[63] Dewar,[64] and Camp[65] are reviewed in detail. Despite each judge displaying similar levels of disdain towards female complainants during sexual assault trials, only in the latter case did the Canadian Judicial Council vote to remove the judge.[66] As the author observes, part of the problem is that judges are often undereducated on the law of sexual assault before running such trials.[67] Yet, as the author observes, increased education is not a cure-all. The disparaging remarks from judges emanate, perhaps unconsciously, as they listen to the evidence presented at trial.[68] To rid the courts of such insidious bias, it is necessary to ensure "more rigorous appointments, processes and radical overhaul of criminal law training processes."[69] The Liberal government's recent proposals in Bill C-337[70] furthers these ends by requiring:

---

59 *Ibid* at 283.

60 *Ibid* at 284, relying on *XY v Ontario (Government and Consumer Services)*, 2012 HRTO 726 ("[t]he tribunal concluded that taking surgical status into consideration was, indeed, discriminatory because it disadvantaged pre- and/or nonoperative trans people and perpetuated the stereotype that postoperative trans bodies are more real or authentic than those who do not undergo surgery.")

61 *Ibid* at 264.

62 *Ibid* at 286–87.

63 See *R v Ewanchuk*, 1998 ABCA 52 at paras 4–21. After being overturned by the Supreme Court, the judge took the further step of penning multiple letters to newspapers accusing the Supreme Court of, among other things, "anti-male attitudes." See David Ireland, "Considering Judicial Behavior and Language in Sexual Assault Trials" in Jochelson & Gacek, *Sexual Regulation*, *supra* note 1 at 306–307 for a summary. The Canadian Judicial Council ultimately decided this conduct was not serious enough to warrant removal.

64 See Ireland, *ibid* for a summary (judge commenting that the offender was no more than a "clumsy Don Juan" and that "sex was in the air"). The judge did, however, apologize for his comments and seek professional help. The Canadian Judicial Council took no further action.

65 See *R v Wagar*, 2017 ABPC 17 (judge generally perpetuated rape myths and trivialized the harms of sexual violence. He also asked the complainant why she couldn't "keep her knees together"). A full hearing was ordered, and it was recommended that the judge be removed from office. He resigned as a result.

66 Ireland, *supra* note 62 at 308, 312, 314–16.

67 See *ibid* at 321–22, citing Melanie Randall, "Randall: Judges Need More Education about Sexual Assault," *Ottawa Citizen* (22 March 2017), online: <ottawacitizen.com/opinion/ columnists/randall-judges-need-more-education-about-sexual-assault>; Brenda Cossman, "For Judge 'Knees Together' Camp: Education is Power," *The Globe and Mail* (1 December 2016), online: <www.theglobe andmail.com/opinion/for-judge-knees-together-camp-education-is-power/article33121316/>.

68 Ireland, *ibid* at 322.

69 *Ibid*.

70 Bill C-337, *An Act to amend the Judges Act and the Criminal Code (sexual assault)*, 1st Sess, 42nd Parl, 2017 (Senate report presented 5 June 2019).

"comprehensive education in matters related to sexual assault law before appointment to the bench," the Canadian Judicial Council "to report on continuing education seminars offered on matters of sexual assault," and, perhaps most importantly, "to require that judges provide reasons in writing or on the record in sexual assault cases."[71]

As the editors observe at the outset of this collection, "[t]o study sexual governance requires a willingness to absorb the oppressive, the oppressed, the absurd, the disgusting, the difficult, and the challenging."[72] This book admirably opens up the socio-legal discussion on topics considered taboo by many Canadians. And as pointed out at the beginning of this review, we have the judicial system to thank for facilitating and spurring such discussion in the legal system. But Parliament has proven willing to engage as well, as evidenced by its recent response to the narrow prohibition on bestiality. However, it is unlikely that Parliament will show similar enthusiasm for sexual regulation when it comes to limiting the scope of the criminal law where there is absence of harm or objective offence in a sexual practice. Parliament's response to the law regulating sex work serves as a prime example. For this reason, further change is likely to arrive via the judiciary, a proposition that litigants should be more likely to advance with the contribution provided by this collection of essays.

Colton Fehr
Assistant Professor
Simon Fraser University
School of Criminology

[71] Ireland, *supra* note 62 at 322. The Bill is likely to be passed by the time of publication.
[72] Gacek & Jochelson, *supra* note 1 at 13.