Legislating Obscenity

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Introduction

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LEGISLATING OBSCenity

Legislation relating to sexual offences has come under increasingly close scrutiny in Canada in recent years with the result of a great deal of liberalization with respect to certain laws pertaining to morality. One area that has been left totally untouched by the legislators in the past decade is that of obscenity and pornography. Experience in Denmark seems to indicate that this aspect of legislating morality should be tackled as well, while the majority of the President's Commission on Obscenity and Pornography in the United States recommends the abolition of such legislation.

The following two articles presented here add further weight to the arguments against obscenity legislation. The two papers are a study in contrasts in many ways. The one examines the traditional criminal law approach by which obscenity is outlawed; while the other examines the use of what some have termed a more sophisticated technique to control obscenity — the censorship board. The analyses themselves differ considerably, for one bases its rejection of such legislation on philosophical and institutional grounds while the other empirically examines the use of the administrative board and points out its failure.

Yet the two articles are most complementary, and the reader cannot but perceive upon a reading of the papers that the problems of legislating morality through the courts of justice or the administrative board are closely entwined.