

**I would like to thank Bruce P. Archibald for his permission to reproduce this document.**

**François Lareau  
12 August 2011**



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October 16, 1992

Professor Don Stuart  
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Dear Don:

Re: C.B.A. Task Force Report:  
Principles of Criminal Liability  
Proposals for a New General Part of the Criminal Code

I was pleased to receive your letter of September 8, 1992 concerning the above noted document. Subject to the reservations outlined below, I would urge the Federal Government to introduce legislation creating a comprehensive General Part for the Criminal Code along the lines advocated by the Canadian Bar Association Task Force.

As you are no doubt aware, academic input was critical to successful recodification in Germany as well as to the elaboration of the widely adopted Model Penal Code in the United States. I hope that the Government is aware of the depth of commitment of many Canadian university criminal law specialists to this project. Failure to take advantage of this expertise during the legislative process could severely weaken the ultimate product, and might dampen the reception which could await it after passage.

Without going into detailed analysis, let me express some of my reservations about the C.B.A. draft.

- (1) The declaration of purpose and principles would be a source of endless, and perhaps fruitless, controversy. It should be omitted.
- (2) While the Law Reform Commission of Canada's proposals on the fault elements of offences were too complex, the Task Force's are over simplified. The best re-statement of the subjective elements of fault is to be found in the English Law Commission's Draft Code. This also affects the manner in which external elements of offences must be defined.

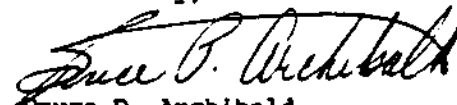
- (3) The new General Part must, for limited purposes, provide for fault based upon a "significant and marked departure from the standard of a reasonable person in the circumstances". While the Task Force is right that generally criminal liability should be based on intent, knowledge and/or recklessness, objective liability for exceptional offences or in relation to some external elements (e.g. consequences of some assaults) is necessary.
- (4) The Task Force's approach to conscious involuntary conduct and automatism, while generally sound, can be streamlined.

While I might quibble over details of other aspects of the C.B.A. Task Force Report, I am generally supportive of the approach which it takes. It builds on the strengths of many of the Law Reform Commission of Canada's proposals and should be central to Parliament's deliberations.

The tax-payers of Canada have paid hundreds of thousands of dollars in efforts to date to attain a renewed Criminal Code. The absence of clear general principles in the Code is increasing the amount and cost of criminal litigation in our courts. The efforts of the C.B.A. Task Force indicate a constructive approach to criminal law reform from the practicing criminal bar across the country which merits support.

Should there be an opportunity for like-minded academics to present submission to the Parliamentary Committee, I would be pleased to participate.

Yours truly,



Bruce P. Archibald  
Professor of Law