

I would like to thank Winifred Holland for her permission to reproduce this document.

François Lareau
16 August 2011



The UNIVERSITY of WESTERN ONTARIO

Faculty of law

September 24, 1992

Professor Don Stuart
Faculty of Law
Queen's University

Dear Don,

Thank you for sending me a copy of the CBA Proposals for revision of the General Part of the Criminal Code and first draft of the Brief supporting the Proposals. I passed the copies of your letter and brief to

[the rest of this paragraph was removed for privacy reasons

François Lareau, August 16, 2011]

I spoke with Syd and both he and I are interested in the proposals. We had hoped to organize a meeting to discuss them but, as you mention, the time frame is very short and we've both been caught up with other things. I thought it would be helpful if we had another copy of the proposals and I called the C.B.A. in Ottawa as soon as I received your letter. Another copy was promised but it has not yet arrived! Consequently, I am the only person on our faculty to have seen the actual proposals.

My purpose in writing is to indicate overall support for the proposals. However, I do have some reservations. I do not have the time to give you a detailed response but I thought it would be helpful if I singled out a couple of things.

My main concern is one you identified on p6 of the Brief ie. the very strongly subjectivist tenor of the proposals. I would like to have seen much more discussion of this issue - I felt it was very cursorily dealt with, as though it were relatively uncontroversial. I, too, feel that there is room for the imposition of criminal liability on an objective basis. This is a matter which requires further debate.

I don't share your concerns about common law defences, though I'm not wedded to the current formulation. Duress is a particularly bad example of the use of this provision but what of necessity?

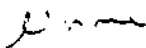
There are problems with clauses 6 and 7. s6(4) is very poorly drafted and very vague. S7 (automatism) is also problematic. S7(1) speaks of external factors and instances stroke and sleepwalking!

S5 - causation. A difficult section to draft but s5(3) is clumsily worded .

I am not sure what is to happen to these Proposals. Since the Code does not conform to the proposals are they to be grafted on? Maybe I'm missing something here.

My apologies for this very brief response but I did want to indicated my general support. However, I don't think we should rush into implementing these proposals without an opportunity for further discussion. Is there a chance that someone, perhaps Justice, would fund a meeting of law teachers, Crowns etc to discuss the proposals in more detail?

Best wishes,



WINNIE HOLLAND