

I would like to thank Kent Roach for his permission to reproduce this document.

**François Lareau
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September 23, 1992

Professor Don Stuart
Faculty of Law
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Dear Don:

Thank you for sending me the brief and the task force report. It is nice to be thought of as an "experienced criminal law teacher"!

I can agree with the brief, but as you might expect, subject to quite a few reservations.

I agree completely with the opening paragraph under Criminal Liability Can Only be Based on Subjective Fault. However, I find that I could not agree to what I find is an implicit criticism of the new sexual assault provisions and Wholesale Travel in the last two paragraphs under this point. As I have written, I think that these cases require careful contextual considerations. At the most they present difficult s.1 cases. I do not think that much would be lost if the references to these provisions were deleted as it seems to me the general thrust of the point is that we cannot agree with the Canadian Bar Association statement that criminal liability should only be based on subjective fault.

I cannot agree with Point 4. I think it would be best to follow the CBA approach and maintain room for development of common law defences. I think that constitutional litigation is too blunt an instrument to develop new defences. I think courts should be encouraged to experiment with new defences as they learn more about the medical and psychological causes of crime and that mandatory constitutionalization of new defences would inhibit their development.

I also find the CBA's decision under Point 5 to be preferable to the one that you have expressed. Although there is much to be said for the general reasonableness test, I do think that the criminal law has an important symbolic and moral function. On this basis, I would support a clear statement that we as a society do not value property over life.

Again, I cannot agree to Point 7 on Criminal Intoxication. I do not share the prevalent belief about the futility of the distinction between general and specific intent crimes. My views on this are adequately captured by Justice Wilson's decision in Bernard. I could, however, accept legislative abolition of this distinction, provided that there be some residual intoxication offence. I would probably prefer the CBA's recommendation to the Law Reform Commission's recommendation on this. Again, there is a moral or symbolic dimension to this matter so that even if, following the practical experience in Australia and New Zealand, your proposal does not threaten social protection, I believe there is a role for a residual offence.

Thus, in conclusion I would be prepared to sign on to the general brief, subject to what I consider to be minor revisions to Point 2. I, however, cannot agree to Points 4, 5 and 7. I will quite understand if you find it impossible to accommodate my views. I suspect that they are in the minority among criminal law teachers.

Thank you again for sending me the brief and for taking the time to make what I am sure will be an important contribution to the debate.

Yours sincerely,



Kent Roach
Assistant Professor