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Professor Don Stuart
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Dear Don:

I have had a chance to glance at the CBA Task Force report but no more than that. To be honest, I am not too happy about either supporting or criticizing something that I have not really had a chance to read carefully.

My major reservation about this whole thing is that I am not sure that now is the right time to be legislating a new Code. I don't deny that Canadian jurisprudence "has now reached a level of complexity" that makes a new Code apparently desirable but it seems to me that the Charter was bound to bring uncertainty and complexity for a few years. I do not wholeheartedly support everything the S.C.C. has done over the past few years, but I do see - albeit slowly and hesitantly - that principles are emerging - principles that are sensitive to social values, policy issues and community interests. There is much more to be done and, in my view, if left to do it, the courts (i.e. the S.C.C.) will, in time, develop clearer principles both of basic liability and of defences and procedures. At least (and this is where my hesitation comes in) I would hope they will.

On the other hand, if we are to have a new Code, then from my brief reading of it, that proposed by the C.B.A. would have my support subject to your qualifications (with which I agree).

I'm not sure where this leaves me.

All the best,

Yours

Alan Felsen