



May 8, 2017

Via email: donald.piragoff@justice.gc.ca

Donald K Piragoff  
Senior Assistant Deputy Minister  
Justice Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Mr. Piragoff:

**Re: Purpose and Principles of Criminal Law – 1982**

I am writing on behalf of the Canadian Bar Association's Criminal Justice Section (CBA Section) in response to your invitation to comment on Justice Canada's reference document, 'The Purpose and Principles of Criminal Law – 1982' (the document). We appreciate the opportunity to consider this important document.

The CBA is a national association of over 36,000 lawyers, law student, notaries and academics, and our mandate includes seeking improvements to the law and the administration of justice. The CBA Section consists of a balance of prosecutors and defence lawyers who specialize in criminal law, and who appear in Canada's criminal courts on a daily basis.

Our consideration of the document leads us to generally conclude that it has held up remarkably well over 35 years. It reflects a policy orientation in keeping with principles that have continually guided the CBA Section's law reform efforts. That said, we offer some specific comments and trust they will be helpful during your review of the document.

The beginning paragraph outlining the Purpose of Criminal Law strikes an appropriate balance between ensuring public safety and security and dealing 'fairly and appropriately with culpable conduct'. We do not think it requires amendment.

In paragraph (b), it appears that 'dearly' should be replaced with 'clearly', as this seems to be an error.

We suggest that the word 'offenders' in paragraph (e) should be omitted, and replaced with 'individuals', or something similar. As written, the paragraph suggests that those arrested, detained or under investigation of a crime are always guilty, and properly referred to as 'offenders'. Many people are detained and arrested each year, but never actually convicted of an offence.

Paragraph (g) should be amended to use gender neutral language, and expanded to include sentencing concepts specifically recognized since 1982. In particular, we suggest that the special status of Indigenous people, the mitigating effect of mental illness and cognitive impairment, and deterrence and denunciation of criminal conduct be referenced.

Paragraph (k) should be removed from the document, in our view. It seems inconsistent with the rest of the document as it does not address the purposes and principles of the criminal law itself. While we agree that accountability of public officials for illegal or improper conduct is essential to a properly functioning free and democratic state, we note that the provision goes beyond the subject matter of the document.

In summary, we reiterate our support for the document in its current form, subject only to the small changes suggested above. We thank Justice Canada for offering us this opportunity to comment.

Yours truly,

*(original letter signed by Gaylene Schellenberg for Loreley Berra)*

Loreley Berra  
Chair, CBA Criminal Justice Section