



Letters from the LCC President

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The recently published book, *The Notebook: A History of Thinking on Paper*, opens with an introductory chapter in which author Roland Allen tells the story of the launch of the Moleskine notebook in the late 1990's. The successful design of the classic, minimalist black product was driven by a value, insistently repeated and rhetorically powerful: "creativity within constraints". In the hands of their owners, what looked like identical notebooks would become unique records and sources. The constraints of material, dimensions and colour would inspire the unbounded creativity of writers, inventors, and artists. What Moleskine is unlikely to have realized is that "creativity within constraints" also serves as a description of law and law reform.



At a moment in history when people across Canada are thinking about neighbourly relations, they are also hearing and talking about the "rule of law" and its importance in our free and democratic society. A short springtime letter from the Law Commission is not the place for a comprehensive essay on the depth and breadth of a concept that incorporates fairness, transparency, accountability, and the robustness of an impartial judiciary. Instead, I will simply suggest that the notion that effective rules or constraints can and should support individual creativity and collective flourishing does not originate with the creators of a popular brand of notebooks. It is what the "rule of law" is all about.

It is easy to fall into the trap of thinking that law primarily comes in the form of orders – some prescribing certain desirable behaviours and others banning activities deemed problematic or dangerous - and then to react to their substance. But much of law is instead tied to process: the "how" rather than the "what". Law offers principles and guidelines that govern how rules are adopted or modified, how the exercise of power is limited in appropriate ways, and how to organize and oversee the everyday back-and-forth among individuals, organizations, and states. Legal traditions rooted in Canada – common law, civil law, Indigenous legal orders – all have their own stories and sources, formats for decision-making and mechanisms for change. Those elements are the equivalent to a notebook's material and dimensions: they provide constraints, strength and sustainability while serving as framework for constant creativity and adaptability.

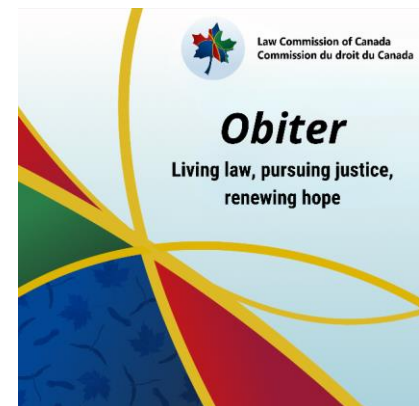


Listen and Learn visits to Edmonton and Moncton in March have included elements that nicely illustrate the importance of legal structures intertwined with potential for innovative thought and action. On a visit to a law school classroom at the University of Moncton, I met with students immersed in the study of Anglo-Canadian common law of contracts in French. They are learning to be both comfortable and creative within the constraints of legal tradition, while at the same time encouraged to enrich their knowledge through comparison with contracts-related principles found in the Civil Code of Quebec or selected Indigenous laws. Invited to reflect on how their learning and approach to the evolution of law could be analogized to poetry, members of the class noted the importance of structure, words and format for conveying passion, fresh ideas, and possibilities for change.



Warmly welcomed to the Wahkotowin Lodge, housed within the Faculty of Law building at the University of Alberta, I noticed how the Lodge consists of and cares for inspiring spaces intentionally formatted for collaboration, sharing, and celebration. The constraints of architecture convey norms for coming together while at the same time inviting individual reflection and creative engagement. In another Edmonton meeting, this one with the Office of Children and Youth of Alberta, we learned how child welfare proceedings and youth criminal justice – both highly structured and constrained legal spheres – can make room for the voices of young people keen to take on responsibility as members of a mentored youth advisory council. As always, our university Listen and Learn roundtables featured a wide range of inspiring projects: legal scholars at the Universities of Alberta and Moncton shared projects focused on housing law and health law, tax policy and new technologies, language rights and reproductive freedom. Our travels show that jurists are necessarily creators within constraints and, in a nod to the notebook reference with which this letter began, I am busy filling up notebook after notebook with observations and ideas for the LCC.

As this letter draws to a close, I invite readers to check out an in-house project, launched in the last week of March, that evokes the mix of constraints and creativity of law in our lives. *Obiter* is the name of our brand-new Law Commission of Canada podcast. The word *obiter*, or phrase *obiter dicta*, refers to words not understood to be crucial to what a case in law stands for; it turns out, however, that passages labelled *obiter* sometimes become the most important or enduring. In that vein, our podcast shines light on what might otherwise be missed or invisible in the evolution (and rule) of law, through conversations with individuals who bring a wide range of experiences and interests connected to the pursuit of justice and the renewal of hope. All



demonstrate dimensions of law and justice in surprising, creative and optimistic ways. Our first three episodes have now been recorded and produced, and we are so proud to invite friends of the Law Commission to listen to these remarkable conversations with Val Napoleon, Frank Iacobucci and Kim Thuy. Enjoy!