



Letters from the LCC President

Letter # 10

10 May 2024

The month of May began with a trip to St. Catharines, Ontario, for a Listen & Learn roundtable conversation chaired by Commissioner Aidan Johnson. Aidan had brought together remarkable individuals, invited for their varied responsibilities and roles in criminal law practice, policing and decision-making. We gathered in the library of the Welch Court House for a lively, insightful, and thought-provoking discussion focused on today's challenges and tomorrow's possibilities with respect to Canadian criminal justice.

On the walk from the St. Catharines train station – a tiny red brick building badly in need of some restorative care – I noticed two thriving businesses. Both offered auto collision repair services. Passersby are invited to assume that car accidents in the region are plentiful enough not only to sustain business but to allow for competition. For the Law Commission of Canada, auto collision repair might serve as a useful metaphor for a particular approach to law reform: one that responds to structural breakage, promises to smooth out the dents, and offers to apply a fresh coat of paint.

As the roundtable discussion started, it wasn't surprising that the initial observations with respect to fairness in criminal law and justice focused on crisis, damage, and the need for urgent repair. This was the Law Commission's first Listen & Learn with a circle of professionals whose paths have included extensive practice-based experience. That experience provided a special and rich vantage point from which participants deplored inadequate resources, insufficient support for criminal defence work, sometimes floundering initiatives with respect to opioid addiction, and lack of consistency and effective coordination. It seemed easy to compare the situation to a car wreck.

As the discussion developed, however, it became obvious that the auto collision repair image for law reform, while evocative, doesn't quite work. It's simplistic to wish that the criminal justice system could be towed like a broken-down car to specialists who would send it back in fully functioning order. The metaphor isn't only unsatisfactory or unrealistic; instead, it risks being



Listen and Learn Roundtable, Welch Court House (St. Catharines, ON) 6 May 2024





dangerously misleading. Desire for complete overhaul directed by an imagined institution with omnipotent power can turn into greater despair, brokenness, and sense of disempowerment. Yes, as participants around the table agreed, governments at every level could and should be more aware and responsive. But the repair might come in the form of somewhat messy patchwork, partnerships, educational programs, and grassroots cooperation involving a wide range of individuals, communities, and institutions.

It is interesting to realize that another route to the same conclusion might take the form of research and scholarship, sometimes from domains beyond law. Four weeks earlier, the Law Commission hosted French sociologist Jacques Commaille in our Ottawa office. Professor Commaille also turned to the vocabulary of crisis as he shared with us his critical analysis of ongoing transformations in how we know and understand law. In Canada to present his most recent book, *L'esprit politique des savoirs: Le droit, la société, la nature*, he is particularly concerned with the place and potential contributions of citizens to their societies. For him, citizens must be empowered to participate in necessarily pluri-dimensional problem solving. He underscores what he refers to as "les connaissances situées": knowledge and understanding situated in context and experience. If law itself is fundamentally about structures for social flourishing, the processes in which citizens participate must both be grounded in, and nourish, the renewal of hope.

The juxtaposition of these encounters – one in our Ottawa office as host to a French scholar, and the other in a small city centre with Commissioner Aidan Johnson and a varied group of actors in criminal law and justice – reminds us that theory and practice in law are not as far apart as they might sometimes seem. It would be easy to label one as "high theory" in sharp contrast to the "on the ground practice" character of the other. It might even be easy to see them as competing auto collision repair businesses, each sure that their approach offers the best service! But together they offer sophisticated and intertwined responses to the question found in the title of one of Jacques Commaille's books: *À quoi nous sert le droit?* They refute the often-assumed dichotomy between theory and practice and instead embrace their co-existence and connections.

Yet another meeting, situated between these two in late April, showed how that insight and embrace can inform the work of law reform. On a stop to our office as part of a visit to Ottawa from Vancouver, Executive Director Peter German and Chair of the Board Neil Boyd shared the history and current initiatives of the International Centre for Criminal Law Reform and Criminal Justice Policy. Launched in the early 1990's as an informal successor to the disbanded Law Reform Commission of Canada, ICCLR identifies and leads criminal law reform projects that necessarily combine theory and practice. The Centre's impact relies on the coming together of actors including lawyers, criminologists, and judges: people are front and centre in the design and implementation of their work related to change in law. In both substance and format, they illustrate a complex and in-depth approach to law reform, dependent on the inextricable links between theory and practice and between people and processes.



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The Law Commission's ongoing reflections on potential paths for research related to criminal justice reform in Canada rely on outreach to, and engagement with, thinkers and actors, ideas and practices, scholars and policymakers. We may have a unique role and responsibility in encouraging and supporting conversations that focus on collaboration rather than crisis, participation rather than distance, trust rather than despair. On future travels, I will be on the lookout for metaphors more promising than that of auto collision repair!



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