

**"Source: *Crimes Against the Foetus,*  
*Working Paper 58, 1989.***

**Department of Justice Canada. Reproduced  
with the permission of the Minister of Public  
Works and Government Services Canada, 2006."**

## Table of Contents

INTRODUCTION .....	1
CHAPTER ONE: The Foetus in Law and History .....	5
I. Early Attitudes to Foetuses and Newborns .....	5
II. Common Law, English Law and the Foetus .....	6
III. Canadian Law and the Foetus .....	7
IV. The Problem of the Foetus .....	8
CHAPTER TWO: The Present Code and Its Shortcomings .....	15
I. The Present <i>Criminal Code</i> .....	15
II. Shortcomings .....	18
A. Undue Complexity in Arrangement .....	19
B. Lack of Clarity .....	20
C. Inconsistency .....	22
D. Incompleteness .....	23
E. Inadequate Response to Recent Developments .....	25
F. Conclusion .....	27
CHAPTER THREE: Reshaping Present Law .....	29
I. A Redraft .....	29
II. A New Approach .....	31
A. Search for Principles — The Four Tests in Our Criminal Law .....	31
B. Applying the Principles — The Tests in Our Criminal Law .....	32
Test One — Harm to Other People .....	33
(a) The Pregnant Woman .....	33
(b) The Foetus .....	33
Test Two — Serious Contravention of Fundamental Values .....	35
Test Three — Will Enforcement Contravene Fundamental Values .....	36
(a) Interests of Other People .....	36
(b) The Mother's Interests .....	37
(i) Foetus' Life v. Mother's Life .....	37
(ii) Foetus' Life v. Mother's Security .....	39
(iii) Foetus' Life v. Mother's Liberty .....	40
(c) Three Stage Approach .....	41
(d) Two Stage Approach .....	43
Test Four — Can Criminal Law Make a Significant Contribution .....	45
C. Conclusion .....	47
CHAPTER FOUR: Reform .....	49

Proposed New Legislation .....	49
Definitions .....	49
Person .....	49
Foetus .....	50
A New Foetus Title .....	50
1. Foetal Destruction or Harm .....	51
2. Medical Treatment .....	53
3. Lawful Abortion .....	53
4. Independent Survival .....	57
Effect on Present Law .....	57
Issues Respecting Foetus and Embryo Research .....	59
Suggestions for Further Study .....	61
 CHAPTER FIVE: Summary of Recommendations .....	 63
 APPENDIX A: Abortion in Selected Countries .....	 67
 APPENDIX B: Selected Bibliography .....	 79
 DISSENT: Joseph Maingot, Q.C., Commissioner .....	 87