ment believes that a person who becomes voluntarily intoxicated to the point of losing conscious control or awareness and in that state causes violence to another person is at fault for the assault and should be held criminally accountable for that offence and for nothing less.

To acquit the person of the assault and convict them instead of a new offence of criminal intoxication would send the message that they were not criminally responsible for the assault itself. This would feed into the syndrome of blaming the alcohol instead of the man for the act of violence.

Third, a detailed examination of the criminal intoxication option in its various forms established that many of the charter and legal theory problems identified by the Supreme Court in relation to the common law rule as it applies to basic intent would apply with almost as much force to any such new offence.

If the new offence were required to be charged, there would be no opportunity to do so until trial, when the accused person invariably raises the intoxication as a defence and the crown becomes aware of it for the first time.

If the new offence were to operate as an included offence with conviction to follow automatically from acquittal on the main offence, a successful defence to that main charge which needs to be proven by the accused only on a balance of probabilities would be taken as proof beyond a reasonable doubt of the new offence of criminal intoxication. That anomaly might itself raise serious charter concerns.

If conviction for an included offence of criminal intoxication were to be not automatic but at the discretion of the judge or jury, the question arises whether the simple fact of the acquittal would be sufficient to form the foundation for liability for criminal intoxication. Would the crown be required to adduce additional evidence? If so, how?

The question arose of whether the offence of criminal intoxication would include an element of causation to prove for example that intoxication caused or led to the harm complained of.

Last, the prospect of the charge of criminal intoxication raised the spectre of the prosecuting crown attorney being required to argue contradictory positions at trial. One position would be that the person was not so intoxicated as to escape responsibility but in the alternative the person was intoxicated and therefore should be convicted of criminal intoxication.

The government also examined the prospect of a charge of criminal negligence as a separate offence, criminal negligence causing the harm contemplated by the crime in the code based upon self–induced intoxication.

• (1215)

Once again we rejected that approach. It avoided accountability for the central misconduct and provided a lesser label for the underlying harm which we believe should be addressed directly.

Having rejected those alternatives, we settled on the approach disclosed in Bill C–72. Fundamental to that approach is the principle of accountability. We are saying in substance that it is no defence to violent crime that you have intoxicated yourself.

For Canadians this is not just an issue in common law. This is a matter of common sense. I believe it is common sense which is reflected in this legislation. The bill applies to the basic intent element in all crimes of violence, including sexual violence and domestic assault which are of particular concern in relation to women and children.

This is not a course of mere technicality. The bill addresses an important point of principle. People cannot be permitted to hide behind drunkenness or other forms of intoxication to escape responsibility for their criminal conduct. What the government has said in this bill quite plainly, and as a principle of law, is that those who make themselves intoxicated and while in that state do harm to others cannot rely on their intoxication to escape the consequences in law.

The government also believes the approach of Bill C–72 avoids the conceptual and procedural problems I have identified in relation to criminal intoxication. I can report that in January when I met with the provincial and territorial ministers of justice and attorneys general it was this approach in Bill C–72 that was favoured by all present.

The question of the validity of Bill C–72, the constitutional validity, has also been carefully considered by the government in formulating this legislation. I observe at the outset that in the course of the Daviault judgment the Supreme Court of Canada in the majority ruling observed it was dealing not with a statute of Parliament but with judge–made common law rules and therefore did not feel obligated to show the deference it usually pays to a statute in determining the validity of the rule to which it created an exception in that case.

In Daviault the court expressly invited Parliament to legislate, to fill the gap created by its analysis of the common law. In essence the majority of the Supreme Court of Canada in the Daviault judgment said that while there is some fault in becoming intoxicated, the legal logic of the common law did not allow the court to relate that fault to the criminal fault underlying the charge.

Bill C–72 provides for the link between the fault in self–induced intoxication and the harm or fault in the criminal conduct which forms the basis of the charge. Bill C–72 creates a