> The mental aspect of an offence has long been recognized as an integral part of a crime, and to eliminate it would be to deprive an accused of fundamental justice. The mental element in general intent offences may be minimal; in this case it is simply an intention to commit the sexual assault or recklessness as to whether the actions will constitute an assault. The necessary mental element can ordinarily be inferred from the proof that the assault was committed by the accused, but the substituted *mens rea* of an intention to become drunk cannot establish the *mens rea* to commit the assault.

Dissenting judges, however, expressed the following opinion:

> Evidence of intoxication can only provide a defence for offences of specific intent but not for offences of general intent. Since sexual assault is a crime of general intent, intoxication is no defence to a charge of sexual assault. This rule is supported by sound policy considerations. One of the main purposes of the criminal law is to protect the public. Society is entitled to punish those who of their own free will render themselves so intoxicated as to pose a threat to other members of the community.

The court added that the person must be so intoxicated as to be incapable of forming the minimal intent to commit the act. The judges described this defence as self-induced intoxication akin to a state of insanity or automatism.

It is not surprising that this decision by the Supreme Court shocked the general public. People want assurances that those who commit offences while intoxicated are held accountable for their actions. Women's groups and advocates of shelters for victims of violence are convinced that women have the most to lose as a result of this decision, since most victims of violence are women and children. According to some, this ruling is a setback for women because it condones offences committed against them.

While women are not challenging the decision rendered by the Supreme Court in the *Daviault* case, they do worry about its repercussions. They feel that the ruling was distorted by the media, and that it is a result of sloppy work by lower-court judges who misinterpreted precedents. It must be said in this regard that defence lawyers manipulate the system to get their clients off the hook. This is part of the game, I suppose. Obviously, if the *Daviault* case is interpreted properly, this defence would be used only in cases of extreme intoxication akin to a state of insanity or automatism.

Following the *Daviault* ruling, Criminal Lawyers Association president Bruce Durno explained to journalists that this case would not lead to many acquittals. Yet, two weeks later, an Alberta man was acquitted of brutally assaulting his wife after consuming large quantities of drugs and alcohol. The judge in this case said that he had to take the precedent set by the Supreme Court into consideration. Since then, and it is not so long ago, intoxication has successfully been invoked as a defence in two other cases. That is why the public is indignant.

The problem raised by the Supreme Court's decision is complex. There is more than one possible solution and it is therefore necessary to examine each of them carefully in order to choose the best one. Other solutions were considered besides the one proposed. The kind of offence for which the accused could invoke the defence of extreme intoxication could be restricted. For example, it could be limited to offences involving negligence or carelessness such as manslaughter or even sexual assault. Its application could be further limited if sexual assault cases were excluded.

The bill could have taken various forms. Under Bill S-6, if someone is found not guilty of an offence by virtue of being intoxicated, he could be found guilty of the offence of dangerous intoxication. Another way to look at this would be to create a new offence of reckless conduct causing harm. Someone who willingly becomes intoxicated should be held responsible for his acts.

Nonetheless, the approach taken in Bill S-6 raises a number of concerns. For instance, if the prosecution is unable to prove the level of intoxication of the accused beyond a reasonable doubt, there is some concern that individuals may, in the end, be acquitted of both the principal offence and the new offence of dangerous intoxication. Furthermore, the Crown would have to cite dangerous intoxication as a serious offence in all cases where alcohol or drugs are involved, to cover all eventualities with respect to sentencing.

Women's groups like the Canadian Action Committee on the Status of Woman, which also represents other groups under the umbrella of this committee, do not believe this bill is the answer. They are afraid that sexual assault will be dropped as an offence when alcohol is involved, which would have the effect of diluting the gravity of offences of a sexual nature. According to them, the government has no systematic approach to dealing with violence against women. I think we must realize that the search is continuing for a solution to this problem which is so widespread in our society, and it is impossible to make the requisite changes in the present system. They feel that the government will first have to review the provisions on rape and assault and consider the changes that must be made in this respect. That, in their view, should be the starting point.

Considering the foregoing, I think Senator Gigantès has done useful work in bringing this debate before a public forum, because although the Minister of Justice has said he intends to amend the Criminal Code to deal with these problems, it always takes time for good intentions to materialize, and sometimes it takes far too long since, as we saw recently, the Supreme Court's judgment has already been used in two cases in Alberta. From that perspective, I think Senator Gigantès' initiative is an excellent one. However, the bill as such poses a number of problems, as I have tried to explain. This is an extremely delicate and complex issue, and it is clear that the bill will have to be examined very closely.

[*English*]

• (1510)

It is evident that this bill should undergo close scrutiny. I therefore recommend that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.