entering with intention to commit an indictable offence, again the crown had to prove that there was a special purpose in the mind of the accused.

• (1205)

Over the decades, the common law courts developed the rule that intoxication could be a defence to crimes of specific intent but were never a defence to crimes of general intent. As a result, if someone was acquitted of a crime of specific intent by reason of intoxication, they were almost invariably convicted of an included general intent offence. Therefore someone who might not be convicted of murder because of intoxication would be convicted of manslaughter which required a general intent. A person who was acquitted of robbery because of the lack of specific intent might be convicted of assault.

This approach to intent and the effect of intoxication upon criminal liability was one of the topics identified in the review of the general part of the Criminal Code launched by the Department of Justice last fall. It has been felt for many years that it is about time Parliament became involved in clarifying the rules with respect to defences and intention rather than leaving it to the courts to fashion their own approaches. It was in the course of that review of the general part that the Daviault judgment was released and its effect became known.

As to the judgment in Daviault itself, the effect of that judgment was to uphold the traditional distinction between crimes of general and specific intent. Another effect was to hold that extreme intoxication in some circumstances could be a defence even to a crime of general intent.

The underlying analysis was that extreme intoxication can cause a form of automatism. In the case of Daviault the evidence related to the ingestion of alcohol. The court held that in that automatic state, the state of automatism, a person would be unable to appreciate the nature of the consequence of their actions and would be unable to form the intention to commit the offence in issue. The court also held that it would be a question of fact in each case to determine whether that was so. The onus would be upon the accused person to establish that it was so and that scientific evidence would almost always be required to establish those facts.

The majority of the court also held in Daviault that under the current common law where self–induced intoxication was not held to be a sufficient basis for criminal fault, it would be contrary to the principles of the charter of rights and freedoms to hold someone criminally responsible for their conduct when they are intoxicated to the point of automatism.

I observe in passing that although the charter principles were touched upon in the facta filed by counsel in Daviault and although there was some reference to them in argument, the charter principles were not argued extensively or developed in detail. Furthermore, I observe that there was no section 1 evidence tendered by either party in the Daviault case. I also observe that the Attorney General of Canada was not invited to intervene in that case.

The Daviault judgment raised obvious concerns for members of Parliament and indeed for all Canadians. The whole question of accountability under the criminal law was brought into sharp focus.

Specific concerns related to crimes of violence against women and children. Indeed the Daviault case itself involved an allegation of sexual assault against a woman. In the weeks that followed the release of the Daviault case, there were other cases in various parts of Canada applying its principle, each case involving allegations of violence against women.

Concern grew that a person might be charged with murder and defend on the basis of intoxication. If the extent of intoxication was established to be sufficiently extreme, that person might walk out of the courtroom entirely free because they were incapable of performing a specific intent involving murder and because the intoxication was such that they were exculpated from the general intent crime of manslaughter. The result would be that they would face no sanction at all.

Concerns were also expressed that people might manipulate the legal principles so as to intoxicate themselves to some extent for the purpose of committing a crime. They would then intoxicate themselves further afterward before apprehension and rely upon the degree of intoxication overall to escape liability for the crime.

• (1210)

Following the release of Daviault and recognizing that change was needed, the government examined a variety of options. It looked at the prospect of legislating criminal intoxication as an offence under the law. Indeed, this suggestion was made almost 10 years ago by the Law Reform Commission. It suggested that we might approach the matter in that fashion. We rejected that option for a variety of reasons.

The first reason was the penalty. Clearly, it was the view of the government that if there was to be accountability in the criminal law, then the maximum penalty for any new offence of criminal intoxication would have to be the same as the maximum penalty for the original offence. Otherwise, we have the spectre of having created a drunkenness discount which would give people who intoxicate themselves an option to have a lesser penalty for the same crime. That obviously is unacceptable. If the maximum penalty for the new offence of criminal intoxication was to be the same as for the original offence, this would essentially be a long and complicated way of saying that intoxication is no defence.

The second reason for not pursuing the option of creating the criminal intoxication offence related to the labelling of the offence. The criminal intoxication option rests on the person being found not guilty of the original offence and instead found guilty of the new offence of criminal intoxication. The govern-