

A second aspect is the fact that this is an issue which impacts disproportionately on women. It raises the question of the Criminal Code as a whole, and whether or not any attempt is being made to apply gender analysis as a component of the review under way.

A few years ago, Madam Justice Beverly McLachlin gave a speech to the Elizabeth Fry Society on the subject of how the criminal law has discriminated against women. She outlined how, historically, society has made women into victims by its attitudes toward certain crimes, while at the same time doing nothing to change the social practices which impose the commission of such crimes on women.

One example of this double standard is the section on infanticide which still exists in our Criminal Code. The social and economic situations of women have almost always been the reasons for such feminine crimes as infanticide and prostitution. The law cannot always address the victimization of women by conditions not addressed by the law, but that is no excuse for making women's reality irrelevant in considering legal reforms.

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When Canadian women cannot feel safe going out to a bar at night with a friend, and when women must carry their car keys laced between their fingers, or a can of mace in their purses when they walk alone, the system is not working and we must ask ourselves for whom we are making these laws.

The recent Supreme Court decision makes the crime itself seem irrelevant. It denies victims any recourse to justice. The intoxication defence sends a message that rape will be tolerated. It devalues women who have been the victims of the crime, and perpetuates the situation whereby the legal system has systematically devalued women throughout history.

It seems to me that we will be taking a step backward if the Supreme Court ruling is allowed to stand. This is particularly true on university campuses. After all the work which has been done to raise the student and public consciousness of date rape, this ruling comes as a real setback for women.

In the past, victims of sexual assault have often felt that they were on trial, rather than the accused, because of the wide-ranging freedom allowed by the law to question the victim's sexual history. This made women feel as victimized by the justice system as they had been by the accused.

According to Statistics Canada, 39 per cent of Canadian women have experienced at least one incident of sexual assault since the age of 16. Last year, there were 13,462 sexual assaults but only 6 per cent of them were reported to the police. This ruling is likely to keep even more women from reporting rape or family violence. A system which keeps women silent and fearful is an unjust system.

While in the past prostitution laws have put the burden of the problem on women's shoulders by focusing on the person offering the services, the law pertaining to rape has also put the onus on women, even though in rape cases women are the so-called "recipients" of the sexual act rather than the ones performing the act. From the point of view of the law, it would

seem that if the offence has to do with sexuality, it must be the woman's fault. Only very recently has prostitution started to change from being a feminine crime to one which involves both men and women.

Throughout much of history, the practical effect of the law on these so-called feminine crimes has been to place on women the burden of all the punishments and social stigma attached to these crimes. It has been an easy but inequitable solution to what are admittedly complex social and moral problems. In that way, our Criminal Code has failed to recognize the equality of women.

We have seen the law on abortion evolve from being a female crime to the point where doctors performing abortions take some of the responsibility, and then to the Supreme Court's ruling in 1988 which decided that the abortion law violated women's equality rights and the right to security of the person.

In the same way, prostitution laws have been changed to make those buying sexual services as accountable as those selling the services.

The intoxication defence denies not only any form of equal rights to women victims, but any rights at all. Women's groups are calling for action now, particularly because alcohol is so often a factor in spousal abuse. It is distressing that when men lose control, it is usually women who pay the price in terms of physical beatings and emotional abuse. After years of public education, we as a society have learned that no one has the right to get drunk and then drive a motor vehicle. It is difficult now to see us in a situation where someone has the right to get drunk and then rape a woman.

The intoxication defence essentially says, "The devil made me do it." It erases any form of personal responsibility as if drunkenness were something akin to an epileptic seizure. Without trying to deny in any way the seriousness of the disease of alcoholism, the defence, as interpreted by the Supreme Court, would not be applicable in the case of a person with a history of drinking-related problems. However, voluntary consumption of vast amounts of intoxicants should not, in all fairness, render a guilty person innocent.

Lawyers are arguing that any new law must balance the rights of an intoxicated accused with the rights of a victim. The minister has said that, overall, there should be accountability, but we are now seeing a backlog of cases and appeals dealing with this defence and the prospect of no new law in place for several months.

It has been said in the media that the reason for delay in introducing government legislation is that the bureaucrats from the Department of Justice will need time to deal with their counterparts in each of the provinces. In the meantime, the defence is being used liberally by lawyers across the country.

The minister is quoted in *The Globe and Mail* of November 2, 1994, as saying that it would be several months before any law would come out of the discussion paper which he has released. "That's the machinery of government," he said. "We're doing the best we can." Canadian people and Canadian women are looking for more than a mechanical excuse. They are looking for real understanding, compassion and leadership from this government.