The question of intent was very difficult. The amendment came through and the burden of proof has been considerably lessened by the addition of "knowing or recklessly". There is no question that it is difficult to prove intent. However if we take intent out in every way there is also no question that judges will infer intent based on the conduct of the accused and the fact that there is a concept of a mental element in almost every offence, and certainly offences of this nature.

The fact that we have the concept of recklessness in this bill will go a long way toward dealing with this problem. In criminal law we generally do not know how things are going to work until they are tried and interpreted and until they are judicially noted.

Professor Nicholas Bala told the committee that eliminating intent altogether means that the courts will then say that because there is this view that one can never be convicted of an offence without any kind of intent then they will say that the intent is that of causing reasonable fear and then we will have to show that the person intended to cause reasonable fear. That will be more difficult to prove than the amendment that we brought in.

• (1235)

The clause in section 2 of the bill as it now stands, with the amendment we made, is a far better situation than we had in the beginning. It will be easier but it will not be perfect. There will still be problems but the bill now reads: "No person shall, without lawful authority and knowing that another person is harassed, or recklessly as to whether the other person is harassed, engage in the conduct referred to in subsection 2".

It is not perfect but it is better. It goes a long way toward addressing the questions that were raised by women's groups in this particular area.

Then we have the question of reasonableness. This is again a bit of a lawyer's argument because those of us who suffered through law school have a tendency to be wedded intellectually to the reasonable test.

I can remember, and I brought this up at the press conference when the bill was introduced, when on my first or second day in law school a professor spoke about the reasonable man test. When the heads of the 20 women in the class all snapped up he immediately amended it, being a lawyer and knowing which way the wind was blowing, to the reasonable person test. In too many of our courts the reasonable person is still the reasonable man. That is a bona fide fear on the part of women who will have to go before the courts in this country.

They know it. They have seen it and there is nothing that anyone can say that is going to make it better because we know it is true. It is just like the old law about a husband and wife being one person at law, and that one person was the husband. It was not the wife. It was the husband.

What can we do to change this? There are a number of things we can do. Unfortunately most of them cannot be done in this bill because enforcement and the judicial process are not things that we can legislate easily. One of the things is mandatory gender sensitivity training for judges. I merely raise it. I know it is not in the bill but I have such a knee-jerk reaction to this sort of thing that I have been raising this for four years in this Chamber so I am going to raise it one more time.

No less a personage than Madam Justice Wilson has called for this and so have a lot of other lesser lights in this country, one of the least being myself. I keep being told over and over again that it is impossible. No it is not. It is not impossible. This Chamber could do it with the political will. Right now, the judicial institute in this country offers good gender sensitivity training for judges. It is good stuff. Sixty per cent of federally appointed Canadian judges have availed themselves of this training. In those courts one can see the difference. Forty per cent have not. In those courts one can see the difference too.

What do we do? I actually had one person say that they will die some day. I do not think I can wait that long and I do not think that the women of Canada can wait that long. Unfortunately some of them are not at death's door.

The problem is that age is not an indication of a lack of sensitivity. The lack of sensitivity can be as rampant in younger judges as it is in older judges. There are many older judges who because of their life experience are a lot more sensitive to this issue. I can think of a couple of senior members of the bench, very senior members, who were among the first to sign up for this training. Before I go off on a complete tangent I would just like to say that if there is one thing that we should be doing to make