• (1240)

So, on the one hand, self–induced intoxication can diminish moral responsibility for normally criminal behaviour. But, on the other hand, the person who has committed a criminal offence while in a state of self–induced intoxication should not absolved of his or her responsibility.

Since the drunk defence does not exist in the Criminal Code, it must be drawn from case law. Where intoxication was not the result of a deliberate act, the accused could always plead the drunk defence.

Involuntary intoxication may come about through fraud or the actions of another person or through the bona fide use of a drug prescribed by a doctor, the effects of which were not known to the user.

So Common Law recognizes involuntary intoxication as a defence. By maintaining this defence, Bill C–72 codifies the jurisprudence. The new section 33.1 will still allow the involuntary intoxication defence, as is now the case.

Before Daviault, the question was whether the intoxication was self–induced, whether it resulted from the fault of the accused; it could not always be used as a defence.

However, in the case of offences requiring specific intent, such as manslaughter or robbery, intoxication can be used as a defence. Courts went to great pains to distinguish between the two categories. Even today, many legal scholars are hard put to understand the distinction between the two. Yet, this distinction is very important when the defence is based on the intoxication of the accused.

In the grey area of criminal law, there is no clear dividing line between specific intent offences and general intent offences. I will give an example. According to the Criminal Code, a murder is first degree murder when, and I quote the code: "it is planned and deliberate". This is a specific intent offence. The homicide must be premeditated, the accused must have planned the ultimate consequence of his action, that is the death of the victim.

Under section 322 of the Criminal Code, for a theft to be considered a theft, it must be committed, and I quote: "with the intent" to deprive, temporarily or absolutely, the owner of the object which has been taken. Here again, one could plead intoxication as a defence because it is also a specific intent offence.

We must remember that Bill C–72 does not change in any way the distinction between a general intent offence and a specific intent offence. In other words, a person accused of severe offences such as murder, theft, robbery, extortion, breaking and entering, and torture, will still be able to plead self–induced intoxication as a defence.

Sexual assault becomes murder when it results in the death of the victim. In this case, murder being a specific intent offence, the offender will be able to use the intoxication defence. He could not have presented such a defence if his victim had not died, since the offence he would have charged with would been sexual assault causing bodily harm, which is a general intent offence.

Which leads to the following nonsense. If the aggressor hits his victim hard enough to cause her death, he can plead that he was too intoxicated to know what he was doing. If his victim recovers from her injuries, he will no longer be able to use this defence. We must eliminate the arbitrary distinction between crimes of general intent and crimes of specific intent.

This legal fiction was created solely for the purpose of allowing drunkenness or intoxication as a defence. Criminal intent should include specific moral elements for each offence. Offences should no longer be divided into two distinct categories, but classified on a gradual basis according to their seriousness.

Bill C–72 is a step in the right direction, and I am convinced that it is constitutionally valid. The preamble to the bill will make it possible for judges to interpret section 33.1 in a way consistent with the principles of a free and democratic society. It will stand the test of section 1 of the Canadian Charter of Rights and Freedoms.

• (1245)

However, the justice minister should amend the general part of the Criminal Code without delay. The rules of criminal law are archaic and many of its fundamental principles are not included in the general part, as they were elaborated by the courts.

Precedents shape the law, and lawmakers are always lagging behind the judiciary. The time has come to reverse the roles, and for lawmakers to act responsibly. Thus, the justice minister will be able to stop trying to play catch up, and Parliament will be able to decide in which direction criminal law will be heading in the coming years.

Stopping violence against women will have to be part of this new direction. I urge the justice minister not to wait for another Daviault case to happen before he finally acts.

Mrs. Christiane Gagnon (Québec, BQ): Mr. Speaker, I am pleased to rise on this debate regarding Bill C–72, introduced in the House by the Minister of Justice.

This bill is of particular interest to women and is part of the legislative process aimed at curbing violence against women and children. I will therefore analyze it in this context.

First of all I will try to resume the historical background of legislation regarding the defence of self–induced intoxication,