

**"Source: Department of Justice Canada, *Reforming the General Part of the Criminal Code: A Summary and Analysis of the Responses to the Consultation Paper*, August 1995, 123 pages.
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QUESTION 9 — INTOXICATION AS A DEFENCE

Should the new General Part codify the existing law? If so, should it continue to use the specific/general intent distinction? Or, should it say that intoxication may be a defence to offences which require intent or knowledge, but not to offences which require recklessness, criminal negligence or negligence?

Should extreme intoxication result in a new special verdict of "not criminally responsible by reason of automatism" (with a range of orders, from discharge to a hospital order) instead of an acquittal as in *Daviault*?

Should a new crime to deal with criminal intoxication be added to the *Criminal Code*?

If so, how should it be structured (e.g. criminal intoxication leading to harm, or criminal negligence causing harm, or recklessness causing harm)?

What should be the punishment for the new crime?

GENERAL PUBLIC

Lakefield, Ont

(group response); The existing law should be amended to eliminate specific intent and only general intent should remain. Seven members of this group agreed that intoxication should never be used as a defence, while one member tells that intoxication could be used as a partial defence. Extreme intoxication should not result in a new special verdict. A new crime should be added to the Code to deal with criminal intoxication; no opinion on how this should be structured. Some members felt that intoxication should not reduce the punishment, whereas some members held the view that punishment should be as much as doubled for an offence committed while intoxicated.

San Francisco

Why weren't Blair & Daviault held responsible for substance abuse which resulted in physical abuse? Have they no mental capacity to stop themselves from consuming an excess of alcohol? Please consult with the NAC.

Chicago

I was shocked by the decision. It is very disturbing to me that a person's level of intoxication can be used as a defence. This implies that intoxication is considered to be a reasonable explanation or a justifiable cause for violence against women. In my opinion, the reason someone acts violent towards another person is irrelevant. The justice system should strengthen laws and enforcement procedures to protect women.

000795

Elfros, SK

In my opinion, self-induced intoxication should never be allowed as a defence. Nobody knows what intent another person has formed, possibly before drinking alcohol, which can cause the person to carry out a criminal action when sufficiently intoxicated to relax the inhibitions against that behaviour. Possibly there should be a new crime, along the lines of criminal negligence causing harm. People must realize that taking responsibility for their own actions is a primary concern of the state and therefore intoxication is not a defence for violent crimes. The sentencing must therefore reflect the seriousness of the particular crime.

LA, CA

Please strengthen laws and enforcement procedures that protect women. Please consult with the NAC.

Austin, Texas

Canadian women need protection from the legal system.

Anonymous

Men don't commit these crimes because they are intoxicated; they commit them because they can get away with them. It's time to hold all people responsible for their actions, including their choice to become intoxicated and their criminal behaviour while under the influence.

Amherst, Mass.

Please strengthen laws and enforcement procedures that protect women. Please consult with the NAC during the review of the General Part.

Montreal

Please strengthen laws and enforcement procedures that protect women. Please consult with the NAC during the review of the General Part.

Burlington, Ontario

Please strengthen laws and enforcement procedures that protect women. Please consult with the NAC during the review of the General Part.

Elora, Ontario

Please strengthen laws and enforcement procedures that protect women.

Oberlin, Ohio

The law should not condone the use of intoxication as a defence in cases of rape and battery any more than it does in cases of driving accidents. The message otherwise is that crimes against women are not as serious. Justice should consult the viewpoint of women on this.

000796

Colchester, Connecticut

Please consult with women's groups during this review. I strongly protest the Supreme Court ruling. The Justice Minister's proposal to classify this as criminal intoxication is no solution to the problem of how to discourage men from sexually assaulting and beating women. The flaw in the ruling is that it ignores the fact that a state of intoxication is a personal choice and is completely within an individual's responsibility, as opposed to insanity, which is not. Women's groups must be included in the consultation.

Culebra, PR

Please consult with women's groups, as the NAC recommends.

Syracuse, NY

Please consult with women's groups as recommended by the NAC. I don't believe the Justice Minister's proposed criminal intoxication offence will minimize cases of violence against women. Men don't commit these crimes because they are intoxicated; they commit them because they can get away with them. The criminal intoxication offence would condone this. People must be held responsible for their actions including when they are intoxicated.

Havelock, Ontario

Extreme intoxication should not result in a new special verdict. There should be a new crime to deal with criminal intoxication, along the lines of criminal negligence causing harm. The punishment should be a flexibly applied blend of mandatory rehabilitation, restitution, and incarceration.

Scarborough, Ontario

I do not support the creation of a new offence of criminal intoxication; where would we draw the line. I believe that an individual who becomes so inebriated that they are no longer in control of their actions is in need of counselling and should not be exempt from the law that is supposed to protect our society.

North York, Ontario

Intoxication should never be used as a defence. If someone commits a crime while intoxicated they should be held responsible for their actions including getting extremely intoxicated. Why would someone be excused because they were intoxicated?

Guelph, Ontario

Extreme intoxication should result in a new special verdict of not criminally responsible by reason of intoxication. There should be a new crime to deal with intoxication. The penalty should be the maximum for the main offence.

000797

Windsor, Ontario

The General Part should correct the Court's error by quashing the intoxication defence, and making persons who drink or take drugs responsible for their subsequent criminal actions. Even providing for a lesser offence of intoxication is not acceptable, for it will only provide a continual source of defences to enable criminals to seek lesser sanctions, or no punishment, for serious offences.

Coquitlam, BC

Supports the NAC calling for the Department to consult with women's groups. I implore you to create firm laws which hold the individual accountable for his or her actions regardless of drug or alcohol abuse. We, as a society, need to make the eradication of violence against women a priority for the sake of future generations.

Ottawa

Supports the NAC calling for the Department to consult with women's groups.

Vancouver, BC

Yes, there should be a new crime to deal with criminal intoxication; negligence or recklessness if breathalyser testing is not sufficient to stand out in court. Penalty should be same as for the crime committed.

Delta, B.C.

A victim of harm from someone who is very intoxicated should be given the same consideration as a victim of a drunk driver.

Peace River, Alberta

Supports the NAC calling for the Department to consult with women's groups.

Two Rivers, WI

Supports the NAC calling for the Department to consult with women's groups.

New Glasgow, N.S.

Supports the NAC calling for the Department to consult with women's groups.

Minneapolis

Supports the NAC calling for the Department to consult with women's groups.

Bowling Green, Ohio

In Canada there is a great need to strengthen laws and enforcement procedures that protect women. This is evidenced in the use of alcohol intoxication as the excuse for a formal denial of responsibility in the cases of Henri Daviault and Carl Blair.

North Vancouver, B.C.

The *Daviault* case is another example of giving the accused rights which go beyond the bounds of reasonableness. That same defence is now being used in drugs cases, and undoubtedly there are defence lawyers actively seeking other substances which can be used to obtain an acquittal for their client. While intoxication may be a defence in cases of general versus specific intent, it is obvious that the accused in this case had the specific intent of sexual assault. Under serious intoxication most people simply pass out; if they are mobile they can hardly be at the extreme stage of intoxication. To give them a defence of automatism and not hold them criminally responsible would be criminal. Intoxication is a self-inflicted condition and should not be a permitted defence. For an extremely intoxicated driver to kill an innocent party, and then get a reduced sentence, or be set free because they claim to be too drunk to intend to kill someone, is the very reverse of Justice. Crimes committed while intoxicated should carry their normal sentence, with an additional penalty added because of drunkenness.

Havelock, Ont.

Intoxication is no excuse for committing a crime. It should be an offence to be intoxicated, which if you read the laws of the land close enough, it already is. If you can use intoxication for an excuse to get off a murder or assault charge, why can't you get off on a drunk driving charge?

Oakville, Ont.

I think your plan to create new crimes to allow for prosecution of criminal intoxication is a good idea and a necessary signal to potential abusers. I hope that your definition of intoxication includes both drunkenness and voluntary use of drugs that were not prescribed.

Oshawa, Ont.

Criminal intoxication should be added to the *Criminal Code*. Punishment should match the established standard for the loss of life or property damage as if the defendant had not been intoxicated. A person who drinks or takes drugs to excess either knew or ought to have known that he or she may act in a manner much differently than if sober [sic]. The excuse of intoxication must be removed as a viable defence for acts which society doesn't condone.

Guelph, Ont.

It is my opinion that an accused is accountable for his actions and should be subject to punishment for those actions.

Guelph, Ont.

I don't think that intoxication should be used as a defence to offences that require intent or knowledge, or other offences. I don't think that someone who has committed a crime should be acquitted because of extreme intoxication or automatism.

000799

I don't believe a new crime to deal with criminal intoxication should be added to the *Criminal Code* for the reasons stated on page 18 last paragraph. I think that people have to become more responsible for their actions as opposed to less responsible.

Gloucester, Ont.

Extreme intoxication should be a crime. Anyone that encourages or aids the state of extreme intoxication, should be charged with the crime as well. The courts should decide whether there is substantial departure from the standards of reasonable people.

Anonymous

The General Part should codify the existing law. The specific/general intent distinction should be discarded without exceptions. Extreme intoxication should not result in a new special verdict. A new crime to deal with criminal intoxication should be added to the Code. Intoxication causing minor injury: 5 years in prison. Intoxication causing major injury or death: 15 years in prison without parole.

Phoenix, AZ

The *Daviault* decision is preposterous. Regardless of whether they drink or not, men are responsible for their behaviour. That is the problem - men are not held responsible for their behaviour starting at a very young age (boys will be boys). Yet women suffer from their violence. It simply gives men a reason to drink - to escape punishment for the violence they intended to commit. After working in the field of battered women for 18 years, I can tell you that men do not beat or rape women because they are drunk. They do it because they can. You have just given them one more reason to continue it. I urge you to reconsider these rulings.

St. Catherine's

Intoxication should not be a defence as a person would not do anything while under the influence of alcohol or drugs that they would not do while sober. There is no evidence that shows that extreme intoxication leads to automatism; therefore, no person should be acquitted on those grounds. Ordering a person to a rehabilitation program is not feasible because it is a proven fact that a person cannot be rehabilitated unless that individual admits he/she has a problem and wants rehabilitation. An intoxicated person who commits a crime should be charged with the crime itself, not intoxication.

Windsor

Respondent views the decision in *Daviault* as an assault by the Supreme Court on female victims: why is it that women still have not been able to establish that all men who commit crimes of violence against women, be it spousal assault, rape or murder - should be held responsible for their crimes and changing their behaviour? A new offence of "criminal intoxication" would not solve the problem of extreme drunkenness and associated violent crimes. The new offence would only cloud the real issues. In many cases, plea bargaining would be a real issue because the accused

would receive a lesser charge and worst of all would be fully acquitted of the main offence and the new offence of criminal intoxication. The resulting punishment will not reflect the seriousness of the crime a person might commit while intoxicated.

Saskatoon

Respondent believes that a new crime dealing with criminal intoxication should be added to the *Criminal Code*. It should not result in a new special verdict of "not criminally responsible by reason of automatism."

Hanover ON

The General Part should not include a defence for self-induced intoxication. People in our country have the freedom to use alcohol, but with freedom comes responsibility. If they break the law when they are drunk they must be held responsible for their actions. If they are not held responsible, what will stop them and many others from doing the same thing over again? We must uphold the laws and not lessen them, which would result in peoples lives and well-being being placed at greater risk.

North Bay ON

The General Part should codify the existing law, but it should not continue to rely on the false distinction between specific and general intent. Respondent believe that a new crime to deal with criminal intoxication should be added to the revised *Criminal Code*. It should be structured as follows:

- 1) The intoxication defence should only be allowed for crimes involving mens rea, because intoxication can incapacitate the formation of intent - when intent is not an issue, intoxication does not make a difference i.e. for someone charged with manslaughter, an acquittal could not depend on a defence of intoxication - acquittal must be achieved through other defences.
- 2) A person acquitted of murder (or any other serious offence) because of the intoxication defence would be automatically convicted of criminal intoxication leading to the death of a person -- and these two criminal charges would have the same sentence.
- 3) Intent would lie in the person's intent to consume alcohol -- any consent to consume alcohol is an assumption of the risks, including the risk of perpetrating dangerous crimes such as rape and murder.
- 4) A mentally sane person who was not coerced to consume alcohol, would be assumed to be aware of the consequences of consuming alcohol, including the potential to lose control of one's senses.

- 5) In consuming alcohol, the accused has intended; becoming intoxicated is not accidental; and even though the intent is of a second-order it is still relevant - and is in essence the cause of the criminal action.

Victoria BC

With regard to first question, respondent believes we should stay with existing law. If an accused lacks the necessary intent, they should not be convicted of that offence. Daviault: problem lies not with the Court but in the inadequacy of the law. Need to create a special verdict to deal with automatism. Also need to create a new crime, which the author would structure as follows:

RECKLESS IMPAIRMENT

- 1) Every one is recklessly impaired who allows his or her mental ability to become impaired through ingestion of substances under circumstances where her or she knows, or ought to know, that such impairment may endanger the life or safety of another person or the security of the state.
- 2) If accused is charged with an offence, and Court finds they would have been convicted, but for their impairment (as outlined in subsection one), the court shall find they were recklessly impaired and convict them with the offence of being recklessly impaired
- 3) The maximum punishment for committing an offence while recklessly impaired is the same as the maximum punishment for the offence itself.

Peterborough

Although intoxication can cloud judgement some penalty is important to discourage increasing use of intoxication as an alibi. A criminal intoxication category would allow this.

Oshawa

The new General Part should codify the existing law, but there should be no distinction between specific and general intent. There should be a new crime of criminal intoxication leading to harm. The punishment for this crime should be commensurate with the harm done.

Hamilton

Intoxication should not be allowed as a defence period. New laws should be written to show Canadians that if they drink to the point of rendering themselves unable to judge criminal actions then they must face the same punishment as someone who committed the same crime sober.

Gloucester

Extreme intoxication should be a crime. Anyone that encourages or aids the state of extreme intoxication should be charged with the crime as well. The courts should decide whether certain actions represent a substantial departure from the standards of reasonable people. "Victims should be more involved in the court process -- court should take the advice of victims and their families on sentencing."

Almonte ON

Appalled by the Daviault decision. Ingestion of alcohol or drugs should never be an excuse for a crime. If a man is capable of sexual assault obviously he was capable of the act of erection which is not possible in an overly intoxicated state. This decision really reflects an overall pattern of "trivializing crimes against women." Wants to see the severity of these crimes reflected in sentencing. We should not wait for crimes to happen before we begin to take action (crime prevention).

Borden ON

Support the NAC's actions against Supreme Court decision in Daviault. We need to change our laws and demand that our court system treat drunkenness equally, regardless of whether it was someone behind the wheel or someone battering his wife. Minister Rock's crime of "criminal intoxication" would not solve the problem because its message is that alcohol could be a defence rather than an offence. We firmly believe that any individual is responsible for consuming alcohol and the actions which ensue from their drunkenness. Generally speaking, the government needs to strengthen laws to protect women and consult more with groups like MADD.

Montreal

In order to strengthen laws and enforcement procedures which protect women, please formally consult with women's groups as part of the review of the *Criminal Code*.

Ruthven ON

Condoning "criminal intoxication" creates the ticket and the excuse, creates the perfect safe setting that would perpetuate violent acts against women, children and some men. As the *Criminal Code* is being reviewed, women's groups need not only to be consulted, but they need to be at the table while decisions are being made.

Fort Smith Arizona

Encourages Department to listen to NAC and strengthen laws so as to protect women. Consult with women's groups.

Puslinch ON

A new crime to deal with criminal intoxication should be added to the *Criminal Code*. Clearly the individual's behaviour caused the result. When behaviour causes harm to an identifiable victim, a criminal offense has occurred and the situation should be covered by the *Criminal Code*. Punishment should range from severe fines to long

prison terms depending on the nature of the crime and the probability that the crime would be repeated.

Peterborough

Under no circumstances should intoxication be used as a defence.

Beaver Creek BC

The law should state in the clearest terms possible that intoxication is no defence. Extreme intoxication should carry with it its own criminal charge. Acquittal would be a non-issue. Punishment would fit the crime.

BC

I do not want intoxication to be used as a defence in any criminal offence. Disagrees with the creation of a special verdict of "not criminally responsible by reason of automatism." Only the crime should be considered, and not the state of the accused. If anything, extreme drunkenness should be considered as "doubly indicting." Responsibility for one's actions before the law is the key to successful law enforcement and thus protection for us all from wilful crime.

Oshawa

Extreme intoxication is not a defence in any crime. A new crime to deal with criminal intoxication should be added to the *Criminal Code*. It should be structured as criminal intoxication leading to harm and the penalties should be the same as they would be applied for a person in a non intoxicated state.

MPs

Fred Mifflin, MP, Newfoundland

I do not believe intoxication is an excuse for any act committed as a result of this condition. Intoxicated persons, like all others in our society, are responsible for their own actions.

Jim Hart, MP, BC

My constituents are outraged that intoxication could be used as a defence. If it is necessary to have a separate law regarding criminal intoxication, the sentence should carry the same maximum sentence as the crime committed.

CHURCHES

Belarusian Canadian Coordinating Committee

We strongly oppose the rule that extreme intoxication may be a defence to any crime, especially to crimes that cause death or bodily harm, mental and emotional anguish. Who will protect the victims?

Belarusian Autocephalous Orthodox Church

Intoxication should not be a defence against any criminal activity. If a person cannot handle intoxicant substances, he or she should abstain from it. If a person commits an offence whilst under the influence of a substance, he/she should be held responsible for the crime, same as any other individual. The Code must be constructed in such a manner that no loopholes could be found by clever criminals, who will use any excuse to commit a crime and get away with it.

JUDICIARY

s. 21(1)(b)

POLICE

Scott Newark, Canadian Police Association

Responding to a particular judgment is always a dangerous way of making law. The decision is poorly reasoned and will not likely be followed by our generally sensible trial courts. The proposed offence of criminal intoxication is itself fraught with difficulties, as the paper notes. The notion of not criminally responsible on account of automatism with possible hospital orders stretches the purpose of Part XX.1 of the Code. The point, which should be maintained, is that it is appropriate for society to prohibit anti-social conduct which occurs when a person is grossly self-intoxicated and to use the criminal law to do so. Recommendation: take the first available case in which this bad judgment is used and re-argue it before the Supreme Court, and our Association will intervene; and statutorily exempt the appropriate offences from such a defence and justify this using section 1 of the Charter.

RCMP

There is a need for remedial legislation. The best response would be the creation of an offence of criminally negligent intoxication causing harm. This rests on the notion of fault and causing of harm as opposed to intoxication alone, which is quite appropriate. This offence would naturally be an included offence to the main offence. The sentence should be the same as the maximum for the main offence. An amendment to say that an intoxication defence is not available for crimes of violence against people is fraught with Charter difficulties.

Metropolitan Toronto Police

The General Part should codify the existing law and should continue to use the specific/general intent distinction. Extreme intoxication should result in a new special verdict. A new crime to deal with criminal intoxication should be added to the Code. Unable to give informed opinion on structure or punishment of new crime. (Contains detailed explanations for views, including case citations)

Brian J. Ford, Canadian Association of Chiefs of Police

(Interim response) The decision in Daviault is most disturbing, both in its result and its implications. For a person to consume an enormous amount of alcohol, commit a horrendous act of violence and degradation and then successfully claim that he does not remember, is simply unacceptable. In my mind, this is distinct from cases of automatism due to the voluntary nature of the consumption of alcohol. The result, regardless of the logic of the court in arriving at the conclusion, will lead to unjust and bizarre results and will contribute to a complete lack of confidence and credibility of our communities in the justice system. It strikes me that in these times when public authorities are striving to enhance the community's confidence in the criminal justice system, this decision is a setback. Therefore, I am confident our Association will enthusiastically recommend a legislative response, such as the creation of a new

offence or an expansion of the negligence provisions. I endorse the Minister's speedy reaction which displays his understanding of the devastating effects of this judgment.

FEDERAL/PROVINCIAL GOVERNMENTS

Department of Canadian Heritage

The Department supports including a new crime of criminal negligence causing harm in the *Criminal Code* to deal with criminal intoxication. The punishment for this new crime should be less than that for the original or main offence for which the accused is acquitted.

Legal Services, Human Resources Development

[s. 21(1)(a) - (b)]

Department of Justice regional office

With regard to self-induced intoxication [s. 23]

[in regard to the suggestions put forward in the consultation paper, I would strongly support option six (p.47) if only because of its simplicity: "voluntary intoxication could negate the mental element of the specific intent offences or offences of intention and knowledge. However, in relation to general intent offences or offences of recklessness criminal negligence and simple negligence voluntary intoxication could succeed only if the accused provided on the balance of probabilities that the intoxication rendered the accused in a state akin to automatism or insanity. In the latter case, the accused could be liable for criminal intoxication. Maximum penalty for the offence of criminal intoxication involving death of another individual: the maximum punishment should be equivalent to criminal negligence causing death, which is life imprisonment. That would give the sentencing judge enough discretionary headroom to structure a just and fitting sentence for the specific facts before him/her. For bodily harm (including sexual assault), the maximum sentence should not be any less than the tariff for the substantive criminal behaviour.]

MEDICAL COMMUNITY

Manitoba Association of Registered Nurses

We endorse the response of the Canadian Nurses Association.

Judith A. Oulton, Canadian Nurses Association

We believe strongly that the status quo is not an acceptable option and an amendment to the Code is necessary. Intoxication is not an excuse for violence and must therefore not be used as a legal defence. The myth that violence is usually caused by substance abuse encourages a view of perpetrators as not being responsible for their

actions due to impairment. We recommend legislation that disallows intoxication as a defence; individuals must take responsibility for their own actions and should not be able to claim immunity from punishment because of self-induced intoxication. It is important that the creation of a criminal intoxication offence not worsen the situation by allowing for the use of intoxication (as opposed to the current case law of extreme intoxication) as a defence. We do not support the proposal for criminal intoxication sentences being set at one-half of the maximum for the primary offence.

Canadian Public Health Association

(Reference to a November 10, 1994 paper entitled "Violence in Society: A Public Health Perspective", sent to DM; we would like to commend the Minister on this consultation process; we were pleased with both the paper and the time given for responding). The fact that intoxication can successfully be used as a defence against acts of violence, as in Daviault, is a concern for CPHA. As was stated in the paper, "legislation and justice reform are required to protect all members of society and hold perpetrators of violence accountable for their action". While intoxication may increase a person's capacity for violence, it cannot be seen as the root cause of a violent act. CPHA believes that "fiscal and social reform are required to reduce economic inequities and address the conditions that lead to violence; and that health policies are needed to improve prevention, early intervention and treatment of violence".

Whitehorse Medical Services Ltd., Roger Mitchell, President, Yukon Medical Association
The Association is outraged that an individual's behaviour would be excused because of alcohol overdose. We would like to see drunkenness which leads to this type of behaviour become a criminal offence, with punishment appropriate to the crime perpetrated while under the influence of alcohol. People are responsible for their actions.

Addiction Research Foundation, Toronto (Also sent a paper on alcohol consumption and legal responsibility in German law).

(detailed response). The availability of the defence of automatism arising from intoxication should be severely restricted, if not eliminated completely, as automatism is not a consequence of intoxication that is supported by scientific evidence. The codification of a defence of intoxication (in the absence of automatism) should be conducted in such a way that there is no opportunity for an expansion of its applicability to situations to which it does not currently apply. It is sound public policy that the revised Code maintain that one is personally responsible for offences committed while intoxicated. The revised Code must not propose, nor be interpreted as stating, that an offence committed while intoxicated is by that fact a lesser offence than the same action committed while sober. We recommend: that a defence of automatism due to intoxication not be added to the revised Code, or that it be severely restricted.

LEGAL ASSOCIATIONS

Barreau du Québec

We recommend that the intoxication issue be dealt with as part of the General Part review. If this is not possible, we prefer the option of creating a special verdict over the option of creating a new offence specific to intoxication. It is important that the special verdict be for voluntary intoxication and not for automatism because automatism requires that the individual not have created the conditions leading to the state. For example, our members cannot accept that a diabetic who commits an offence after neglecting to take insulin could not benefit from the automatism defence, whereas someone in a state of voluntary intoxication could.

Canadian Council of Criminal Defence Lawyers, Brian Greenspan

We are concerned that the decision has been misinterpreted as to its limited application. All of us responsible for criminal justice in this country have been ineffective in educating the public. We are concerned that the response to the judgment may be fast-tracked, which would be unfortunate. We respectfully urge you to deal with this as part of the General Part review. However, if there must be fast-track legislation, we take the position that the defence of excessive drunkenness should result in a finding equivalent to "not criminally responsible".

Criminal Lawyers' Association, Bruce Durno

In our view, there is no need to introduce new legislation to "remedy" the Supreme Court's decision. The impetus for the public concern is a misunderstanding of the judgment. There is no flood of cases using the judgment. However, if legislation must be introduced, it is our view that a verdict of not guilty based solely on the defence of excessive drunkenness for a general intent offence should result in a finding equivalent to "not criminally responsible" on account of automatism. This would necessitate removing a distinction between sane and insane automatism.

Michelle Fuerst, Chair, National Criminal Justice Section, Canadian Bar Association

The Section remains convinced that it is preferable to deal with fundamental issues concerning criminal liability by way of comprehensive reform, rather than on a piecemeal basis as is proposed on the issue of criminal intoxication. It is our belief that the extent of the application of Daviault may have been exaggerated by the media. It will also be instructive to await appellate court review of cases in which accused have been acquitted based on Daviault. A careful reading of the decision makes it clear that a complete acquittal based on the defence of intoxication is to be the exception, not the rule. The Section is fundamentally opposed to any changes which would diminish the availability of a defence as a result of drunkenness for specific intent offences. The distinction between general and specific intent offences should be retained. The Code might be amended to specify that the defence of intoxication not apply to any general intent offence which is a crime of violence. We believe this proposal could be justified under section 1 of the Charter. Alternatively,

extreme intoxication could remain a defence to all general intent offences, but a defence that leads only to a special verdict of "not criminally responsible". Such verdict would then invoke treatment and other alternatives, which might address both the rehabilitation of the offender and the public's safety concerns.

WOMEN'S GROUPS

Halton Women's Place

Intoxication should never be a defence under any circumstances.

L'Action Ontarienne contre la Violence Faite aux Femmes, Andrée Côté (long and detailed response)

Bill C-72 is encouraging and it represents a willingness on the government's part to consider the views of women. The preamble indicates Parliament's willingness to recognize the true extent of the harm that violence causes to women's lives. However, it would have been preferable to specify that the intoxication defence does not apply to crimes involving any violation of a person's physical or sexual integrity. It would also have been better if the bill had specified that the intoxication defence does not apply to crimes of specific intent such as sexual interference with children.

The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador

We don't agree with this kind of defence because it is used primarily to absolve the accused from responsibility for his crimes. This defence is one in which gender biases are manifested quite clearly. We believe men should be liable for the charge of assault and for extreme intoxication. While we recognize that it is not a crime to consume alcohol, we also recognize that human behaviour changes with the consumption of alcohol. We suspect that the consumption of alcohol is often used to remove inhibitions intentionally.

Catholic Women's League of Canada

The General Part should attempt to codify the existing laws using specific/general intent distinctions. No - extreme intoxication should not result in an order which releases the accused from being responsible for his/her actions and the harm caused to others. Yes - there should be a new crime dealing with criminal intoxication leading to harmful conduct. The person who claims the defence of intoxication should have to suffer the same consequences or penalties as if the person had been sober when committing the crime. The person had a choice to become intoxicated and remains responsible for all actions committed - drunk or sober. Punishment for this new crime should be very stringent. We suggest that as part of the penalty these people should be forced to do community service in an environment which exposes them to the pain and suffering which can be caused by violence and accidents involving drugs or alcohol.

Canadian Advisory Council on the Status of Women

(long, detailed paper). The paper explores the advantages and disadvantages of several options without clearly recommending one.

National Association of Women and the Law, Louise Shaughnessy

We support the positions expressed by women's groups at the December 9 meeting. The judgment focused on mens rea rather than on the equality guarantees in the Charter. For this reason we believe that it would be constitutional for the government to legislate on this. We propose that a new section of the *Criminal Code* bar the intoxication defence for any crimes involving male violence against women and children including murder.

Alberta Council of Women's Shelters, Arlene Chapman, Provincial Coordinator

The Council believes that drinking is a voluntary act. People who commit a crime while under the influence of alcohol must be held accountable for the crime they have committed. Sexual assault requires motor skills; where is the medical evidence that extreme intoxication completely impairs all motor skills? Legislation must be put in place to disallow this defence. If the suggestion of creating a new crime of criminal intoxication is adopted, the penalty for this must carry the same weight as the crimes committed while not under the influence.

Eileen Morrow, Lobby Coordinator, Ontario Association of Interval and Transition Houses

We believe that the disproportionate use of this defence to excuse violence against women calls for responses employing the Charter to balance the equality rights of women victims with those of the men committing these crimes. Using drunkenness to excuse violence against women and children has long been used to minimize and deny the actual intent of male violence to establish and maintain power and control over women and children. We believe that even while intoxicated, individuals continue to act within socially constructed value systems. We are opposed to the use of the defence of "automatism" in crimes against women and children. We are concerned that the defence of drunkenness is successfully being linked to mistaken belief in sexual assault cases. We believe the drunkenness defence will negatively impact on women's willingness to seek their rights to protection from police and courts. An offence of criminal intoxication would do nothing to break the ongoing linking of violence and substance abuse. In short, we agree with the position of the national women's groups as expressed in the December 9 meeting.

Faye Davis/Janice Gingell, Co-Coordiators, Provisional Association of Transition Houses Saskatchewan

Criminal Code drafters need to recognize that the current application of Daviault is caused by gender bias within the criminal justice system. Federal and Provincial Justice Departments need to adopt an immediate action plan to educate professionals working within the system. We note the continuing problem caused by the appointment of judges who fail to have the life experience or educational background

which would allow them to understand gender issues. Amendments relating to automatism and intoxication should be made in the context of other changes to liability and defences under the Code. It is however important that the changes take place expediently. Voluntary intoxication should never excuse personal violence. We do not feel that the intoxicated man who attacks his female partner should be treated much differently than the sober violent man. This is because we do not see alcohol as the cause of the violence.

Anne Nicholson, Chairperson, Prince Edward Island Advisory Council on the Status of Women

(November 14 letter to the Minister attached). We recommend that the Minister of Justice act immediately to ensure that drunkenness can no longer be used as a defence for any crime. By clarifying this in the Code, a clear message will be sent to the legal community, including the judiciary, and to the general public that the drunkenness defence will not be permitted for any abuse or crime.

COMMUNITY SERVICE GROUPS

St. John's (Newfoundland) Victim Services Advisory Committee

The *Criminal Code* needs to be amended to ensure that victims are protected, and the responsibility lies with the offender. In the present situation, the Code is allowing the offender to commit these offences with impunity. Therefore, is the Code meeting the goal of protecting society? This philosophically raises the question of whether the rights of the individual should override the rights of society to feel protected. We feel there should not be a special verdict of "not criminally responsible for reason of automatism". If the Code is amended to include a defence of criminal intoxication, then the punishment should be equal to the existing sentencing patterns for offences where intoxication is not an issue.

Regroupement Québécois des CALACS (in French)

We recommend not creating a new offence of criminal intoxication, and we recommend specifically prohibiting the use of the intoxication defence in cases involving incest, sexual abuse, and assault. (The reasons given in the letter are not summarized because the letter was received in mid-April).

Parkdale Focus Community

There should not be a defence of voluntary intoxication. The *Criminal Code* is a guide on which to judge a person's behaviour in an orderly society. By legislating intoxication as a defence to criminal behaviour, the Code is carving out a standard of behaviour that is different for those who are voluntarily intoxicated than for ordinary persons. The defence of voluntary intoxication should be removed from the Code and be considered at sentencing. Creating a new crime is an attempt to close a loophole in the Code.

The General Part should recognize a general defence of self-induced intoxication while maintaining the distinction between general and specific intent. Voluntary intoxication could negate the mental element of specific intent offences or offences of intention and knowledge. In relation to general intent offences or offences of recklessness, criminal negligence and simple negligence, voluntary intoxication could succeed only if the accused proved on the balance of probabilities that the intoxication rendered the accused in a state akin to automatism or insanity. In the case of automatism or insanity, the accused could be made liable for criminal intoxication.

Church Council on Justice and Corrections

It surely should not be a defence although it may well influence the nature of the charge (i.e. murder/manslaughter) and may influence sentencing. The Supreme Court was legally correct in Daviault even if this decision is considered socially and politically as being stupid. But do we really want a court to be political, preferring exigency over law? If a new law is constructed, it should not be based on the traditional proposition that the aim of criminal law is punishment. Of course, a person should be responsible for the consequences of becoming intoxicated and subject to redressing the harm done as well as preventing further occurrences. Painful consequences have to be accepted. Concepts of "guilt" and "punishment" just confuse the issues.

National Crime Prevention Council Secretariat

The members of the Council support a review of legislation regarding criminal intoxication. Alcohol abuse harms relationships and leads to increased crime and victimization. We are outraged that voluntary intoxication has been used with success as a defence in several recent cases. Alcohol alters one's ability to attend to the environment and thus it may limit the ability to form criminal intent. However, we believe that Canadian society could not survive the chaos that would ensue if voluntary intoxication were to become a widely-used, successful defence. Alcohol by its nature has disinhibitory properties hence recklessness and unsafe behaviour is an expected consequence of ingestion. Pathological intoxication with alcohol must be understood to be a rare and narrowly-defined medical condition. It is imperative that legislation clearly define the criminal responsibility of those persons who choose to become intoxicated and while under the influence of a drug known to disinhibit behaviour and impair judgment, commit a criminal act. The Council believes that non self-induced consumption of alcohol should still remain a credible defence.

Noreen Provost, Coordinator, Citizens United for Safety and Justice, North Vancouver, B.C.

It has been our long standing belief that self-induced intoxication should never be permitted as a defence for any criminal offence. People must be held responsible for their actions. Responsibility remains with the individual when they willingly decide to partake of any form of intoxicating substance. If the intoxication of the offender has been forcibly caused then charges should be laid against the person responsible. Our members feel that there should be a new crime for criminal intoxication but that

it should be an additional penalty to that for any crime committed. There is an offence for causing a disturbance while drunk and for drunk driving; it is therefore illogical to excuse a person for a criminal offence committed while intoxicated.

Victims of Violence, Canadian Centre for Missing Children, Ottawa

(Interesting and thoughtful response). Individuals must be held responsible for their actions, especially when those actions cause harm and suffering to another individual. This must hold true even when their actions are committed while in a state of self-induced intoxication. Anyone who chooses to get drunk or high and commits a crime while in that state is a person that must be held accountable. Victims of Violence and Canadians call upon the government to ensure that such offenders are held accountable for crimes they commit. Individuals who commit a criminal offence while in a state of self-induced criminal intoxication are not morally blameless, and must therefore be held responsible for such actions. We recommend that anyone who is charged with a criminal offence and successfully uses the drunkenness defence be convicted of the original offence charged while intoxicated. The distinction between general intent and specific intent should be codified. The range of sentencing should be wide to reflect the range of possible situations and offences. We would support the maximum sentence of 14 years suggested by Senator Gigantes. The fact that the Court limited their decision only to extreme drunkenness is irrelevant if men misinterpret it.

VISIBLE MINORITY/MULTICULTURAL GROUPS

National Congress of Italian Canadians

It is well known that alcohol acts as a disinhibitor and therefore makes an otherwise rational person act in a criminal manner. It is respectfully submitted that the approach to be used in dealing with the Daviault situation is the introduction of a new offence of intoxicated criminal negligence causing harm or death. Sentencing should be like that for impaired driving causing bodily harm or causing death. I am in favour of abolishing the distinction between specific and general intent offences.

R. F. Kirkland, President, National Council of Jamaicans

An accused should not have a defence because he or she was drunk. Most people ought to know the dangers of getting intoxicated. The availability of an intoxication defence could lead to blatant abuses of human rights. There should be no new offence of criminal intoxication. If a new offence is created it should be phased in over 1 to 2 years to allow for education. The members feel distaste over the need to make a quick decision to change the existing law.

ABORIGINAL

Corinne McKay, paper entitled "Reform of the Law of Intoxication: A First Nations Women's Analysis"

(detailed response). Parliament should maintain the general/specific intent classification, and bar against the use of the intoxication defence for general intent offences. Parliament should conduct a comprehensive study on the ways in which Daviault could be limited. Women's interests should be addressed. The options for addressing Daviault should be carefully considered. When alcohol use is considered at the sentencing stage it should be an aggravating factor rather than a mitigating factor.

STUDENTS

Timmins High and Vocational School, law teacher sent letters from 8 students in his law class.

Of the 8 students, all believe that people should be held responsible for their actions even when they are intoxicated. Six students think that a new crime should be created to deal with people who commit crimes while intoxicated. Four students suggested that the new crime be a type of criminal negligence. Six of the students commented on what sentence would be appropriate and three stated that it should be shorter for crimes committed while intoxicated, two believe that the sentence should be the same, and one said it should depend on whether the accused intended to commit the crime before he or she got drunk.

LEGAL ACADEMICS

Two professors of law, University of Ottawa

(Detailed response) The judgment illustrates the need to reform general principles in criminal law. A quick legislative response could have adverse consequences by over simplifying issues that are much more complicated than the question of extreme drunkenness. We don't see how the drunkenness issue can be separated from the general question of criminal responsibility. If legislation must be advanced now, it should be in the form of limiting the offences to which the defence could apply. The government could use section 33 of the Charter. Also, a good option is to class extreme intoxication as a form of automatism which would require treatment. In our opinion, Bill S-6 illustrates the dangers of legislating quickly without regard for general principles.

000815

NON-LEGAL ACADEMICS

Department of Sociology, New York University

I am writing to applaud all efforts to close the loophole of chemical-induced temporary insanity. I have worked with battered women for many years and I have gained simple wisdom: men (and a few women) abuse because they can. I have known of hundreds of batterers and every one who successfully dealt with chemical convictions became a sober batterer. The chemicals are the excuse, not the cause. I implore you to consult with women's groups and experts. I ask you to keep in mind and balance the fact that it is mostly men who batter women, **and** that men batter other men and that women batter other women (and in a very few rare cases, their male partner).

000816

QUESTION 10 — MISTAKE OF LAW

Should the new General Part recognize any exceptions to the rule that mistake or ignorance of the law is no excuse?

If so, should it codify the exception for "officially induced error"? Should such an exception apply only to regulatory offences, or should it apply to all laws?

Should reliance on a Court of Appeal decision (which turns out to be wrong) be a defence? If so, should this exception apply to lower court decisions as well?

GENERAL PUBLIC

Havelock

Opposes ignorance as any type of defence.

North Vancouver

Given the large number of laws and their complexity, it may be asking too much for citizens to know the law on all occasions. Ignorance of the law should be a valid defence. If the different levels of the judiciary are so inconsistent and varied in their interpretation of similar laws, how can citizens (especially an accused) be expected to understand the law?

St. Catherine's

NO. Our laws represent our fundamental common values and as such ignorance is no defence.

Havelock

There should be exceptions to the rules surrounding mistakes or ignorance - we must take into account the heterogenous mix of cultures in Canada. This should be codified and applied only to regulatory laws. Alliance on a Court of Appeal decision would be acceptable, but not lower court decisions.

Guelph

There should be exceptions. The General Part should codify the exception for "officially induced error" but it should apply only to regulatory offences and not to all laws. Reliance on either a Court of Appeal decision or lower court decision should serve as a defence.

Lakefield

There should be no exceptions to the rule that mistakes or ignorance of the law are no excuse.

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Windsor

Ignorance of the law should be no excuse. No the exception should not be codified for officially induced error. This should apply to all laws.

Saskatoon

Ignorance of the law is not an excuse. New Canadians must be made sufficiently aware of our criminal laws in order to prevent them from engaging in criminal activity. While most Canadians do not know the details of the criminal law any more than in a general and human way, they know enough to avoid criminal activity. Reliance on a court of appeal or lower court decision should not serve as a defence.

Victoria BC

Officially induced error should be recognized as an excuse, and it should apply to all laws. The burden of proving reliance on the error should lie with the accused. I suggest that the exception be limited to decisions of the Court of Appeal of the province where the crime was committed.

Peterborough

Mistake or ignorance of the law should be an allowable excuse if there is a valid reason for the "ignorance" -e.g. if the person is a recent immigrant from a country which allows the act and if no personal injury to others is involved.

Oshawa

The Code should allow for exceptions to the rule that mistake or ignorance is no excuse. It should codify the exception for "officially induced error" and it should apply to all laws. Exceptions should apply to both Court of Appeal decisions and lower court decisions.

Hamilton

The General Part should recognize exceptions to the rule that mistake or ignorance of the law is no excuse. Officially induced error should be an exception to all laws and only Court of Appeal decisions which turn out wrong can be a defence.

Guelph

Ignorance of the law should never be allowed as a defence for any offence.

Oshawa

"Officially induced error" should be an exception to all laws. We still must abide by the general principle that ignorance is no excuse and this applies equally to all Canadians despite multiculturalism. If a Court of Appeal were to make a mistake of law, the accused should not be responsible for their error and a defence should be allowed.

(south ON)

Mistake or ignorance of the law should not be an excuse. "Officially induced error" might be an acceptable defence, but not for all crimes. Court of Appeal or lower Court decisions should not provide defences. Respondent feels we must avoid any course of action which could end up causing a double standard in the justice system.

Puslinch ON

Yes - there should be exceptions. The *Criminal Code* no longer reflects the fundamental values of Canadians. This is partially due to the diversity in the Canadian cultural background and mainly due to the passing of laws which reflect the interests of particular groups, rather than Canadians generally. A mistake or ignorance of the law is quite understandable under such circumstances. *Criminal Code* is very complex - easy to see how many Canadians, especially people new to Canada, would have difficulty understanding the exact letter of the law.

Peterborough

The new General Part should codify the exception for "officially induced error" to apply to regulatory offences.

Beaver Creek BC

"Officially induced error" would be the sole exception to a rule declaring ignorance or mistake no excuse.

BC

Mistake or ignorance should never constitute an excuse. A new General Part should codify an exception for "officially induced error" with reliance on a Court of Appeal decision.

Oshawa

Mistake of law should be a defence when accused can reasonably establish that they were ignorant of the law. Reliance on a Court of Appeal decision should be a defence if it involves best knowledge at that time. The exception could be applied to a lower court decision as well.

JUDICIARY

s. 21(1)(b)

POLICE

RCMP

The law should remain the same. Again, the seriousness of the error and the reasonableness with regard to the circumstances can be considered during sentencing.

FEDERAL/PROVINCIAL GOVERNMENTS

Department of Canadian Heritage

On the general question of exceptions to the rule that mistake or ignorance of the law is no excuse, the Department feels that consideration must be given to the diversity of the Canadian populace, while culture should not be a defence so as to avoid criminal liability, provisions should be made whereby sensitivity to one's culture or religion could be taken into account as a mitigating factor in sentencing. There is consensus within the Department on including "officially induced error" as an exception to the rule that ignorance or mistake of law is not a defence. This "officially induced error" should apply to all laws. For the purposes of clarity, it might be useful to have a definition/explanation of "officially." The Department also supports reliance on a Court of Appeal decision as a defence.

Legal Services, Human Resources Development

[s. 21(1)(a) + (b)]

Health Canada

Mistake or ignorance of the law should not serve as an excuse. Proper steps and orientation materials are provided by governments to inform new immigrants about what is acceptable and unacceptable behaviour in Canada and what cultural practices contravene Canadian criminal legislation. Presumably, citizens entering the country have a responsibility to be well-informed as to what is unlawful behaviour in Canada.

WOMEN'S GROUPS

Halton Women's Place

The new general part could recognize exceptions to the rule of mistake or ignorance of law in so far as the exceptions are reasonable.

L'Action Ontarienne contre la Violence Faite aux Femmes, Andrée Côté (long and detailed response)

The continuing emphasis on the subjectivity intention puts at risk the advances of the rape-shield legislation in the area of mistake of fact. As a result, it is important that the General Part contain a section stating that section 273 is expressly exempted from the general statements on intention and is protected from Charter challenge. The reform of the criminal law must reinforce the rule limiting the use of the defence of mistake of fact in cases of sexual assault.

Another approach would be to state that an error in relation to consent in circumstances in which the Code presumes that there is no consent, amounts to an error of law rather than of fact and thus is inadmissible as a defence.

Catholic Women's League of Canada

The General Part should not recognize any exceptions. The *Criminal Code* contains values which we should all be expected to know. Anyone coming to Canada knows that we obviously have laws governing us, otherwise it would not be considered the best country in the world to live in. Individuals entering the country should find out what the laws are. We are not doing enough to assist newly arrived immigrants to learn about Canadian laws and customs. The exception of "officially induced error" should only be available upon written evidence of the inducement. Reliance on a Court of Appeal decision may be a partial defence, but the defence should not apply to lower Court decisions.

COMMUNITY SERVICE GROUPS

Citizens United for Safety and Justice Society

There should be no excuse for ignorance of the law. This again could lead to tremendous abuse. Rather than include ignorance of the law as a defence, laws should be re-written in simple terms so that citizens can understand them.

Church Council on Justice and Corrections

Historically speaking, evils that could be recognized by anybody did not result in a defence of "ignorance of the law." The situation is different when actions may not be recognized as culpable without specific knowledge. Surely a court would have to consider, in cases involving regulatory offenses, strict liability, whether a sufficient effort had been made to bring a legal restriction to the attention of the kind of person the offender represents. The simple question: the offender can reasonably be assumed to have known that she or he engaged in unlawful behaviour.

LEGAL ACADEMICS

Law professor, University of Western Ontario

What about mistake of law affecting formation of mens rea (ie. *Docherty* (1989) 72 C.R. (3d) 1 (S.C.C.)? This consultation paper raises some issues not raised in the Technical Paper: the issue of reliance on court decisions. There is certainly a problem with expecting the average citizen to have a better knowledge of the law than the judges. However, I am a little concerned that some "maverick" decisions might be used to circumvent the law before the loophole is plugged.

Extension of officially induced error to all laws? - Seems to depend on the type of offence in question. For instance if it involved something like driving while disqualified and the accused had relied on representations an argument can be made that it should be available as a defence. However, I am not sure how far this could be extended into other areas.

QUESTION 11 — PROVOCATION

Should the partial defence of provocation for murder be removed from the *Criminal Code*?

Should the partial defence of provocation be available for all offences?

Should the partial defence of provocation be changed to include both "sudden" acts of rage and the slow-building effect of prolonged and severe abuse?

GENERAL PUBLIC

North Vancouver

Degree of provocation should be taken into account in murder cases. In other cases, a partial defence of provocation should be available and include both the "sudden" and "slow build" effects, and be available to both men and women (even though it occurs most often with men abusing women.)

St. Catherine's

The defence of provocation should not be removed. While there is no excuse for murder, in extreme circumstances it is understandable why the murder was committed (ie. abuse). Having this as part of the *Criminal Code* allows the person to be punished for the crime while also reflecting society's understanding of how the circumstances contributed to the crime being committed. However, it should not be allowed for all offences - allowing too much leeway would give perpetrators of crime a "loophole" which they could abuse. The provocation defence should be changed to include "sudden" acts of rage and "slow-building effects" in extreme circumstances.

Havelock

The provocation defence should be maintained; it should be available for all offences and should be changed to include both "sudden" acts of rage and the slow-building effect of prolonged and severe abuse.

Guelph

The defence of provocation should not be removed. However, it should not be available for all offences. The partial defence of provocation should be changed to include both "sudden" acts of rage and the slow-building effects of prolonged and severe abuse.

Lakefield

The defence of provocation should not be removed. This group unanimously agreed that provocation should be a defence for all offences and that the limitation of "partial" should be deleted. The partial defence of provocation should be changed to include both "sudden" and slow-building effects of prolonged and severe abuse.

000823

Several of the members of this group argued that provocation should be allowed as a defence to a charge that does not contain a lesser and included offence.

Windsor

Provocation should not be used as a defence for all murder offences. This type of defence has been used erroneously many times to discriminate against women especially in homicides after the fall-out of domestic violence. The results of this defence is that the murder charge will be greatly reduced to manslaughter which does not reflect the horrific and violent nature of the crime. It gives men permission to murder without full consequences.

Saskatoon

Defence of provocation should not be removed. The partial defence of provocation should be available for all offences. It should be expanded to include both "sudden" acts of rage and the slow-building effect of prolonged and severe abuse.

Victoria BC

Provocation is really a matter which should be considered at the sentencing stage. I would only see a justification for removing the defence of provocation for murder if the minimum penalty for murder was removed as well. I do not think there is any need to extend provocation as a defence in non-murder cases. I would agree that the law should recognize the slow-building effect of prolonged and severe abuse. Lavallée case is a prime example of an instance where the provocation defence should have been available.

Peterborough

The defence of provocation should be available for all offences and should apply to both sudden and slow-building acts of rage.

Peterborough

The partial defence of provocation for murder should not be removed from the Code. The provocation defence should not be available for all offences. It should be changed to include both sudden and "slow-building" acts of rage.

Hamilton

The partial defence of provocation for murder should not be removed from the *Criminal Code* and it should be available for all offences. It should also include sudden acts of rage as well as the slow-building effects of prolonged and severe abuse.

Guelph

Provocation should not be allowed as a defence for any offence. People must be held accountable for their actions.

Oshawa

All offences should have the partial defence of provocation available under both "sudden" acts of rage and the slow-building effect of prolonged and severe abuse.

Almonte ON

The defence of provocation is a male oriented excuse for battering women. The sentences are already very lenient in these matters - it would be ludicrous to half the maximum punishment with this defence. Sudden acts of rage should be taken out. Long-term abuse should fall under self-defence and self-preservation for women and their children.

(south ON)

Partial defence of provocation should not be removed, but it should not be extended to cover all offences either.

Puslinch ON

A defence of provocation should be a partial defence for all crimes. Yes - it should include sudden acts of warranted rage and the slow-building effect of prolonged and severe abuse.

Peterborough

The partial defence of provocation should be changed to include both "sudden" acts of rage and the slow-building effect of prolonged and severe abuse.

Beaver Creek BC

Provocation should be kept as a defence for murder and should be allowed in other crimes as well. It should however stay a defence of "crime of passion." I am not sure what to suggest regarding murder after prolonged abuse.

BC

The defense of provocation for murder should not be removed from the Code. The provocation defence should be available for all offences. The defence should be changed to include "sudden acts of rage" and "slow-building" effects - but this should only be admissible upon the discretion of the judge.

Oshawa

The partial defence of provocation for murder should be removed from the *Criminal Code*. The partial defence of provocation should be changed to include both sudden acts of rage and the slow-building effect of prolonged and severe abuse.

JUDICIARY

[s. 21(1)(b)]

[s. 21(1)(b)]

POLICE

RCMP

Provocation should not be extended to other offences. There is a place for provocation though, in cases of prolonged and severe domestic abuse. This is recognized in the case law.

FEDERAL/PROVINCIAL GOVERNMENTS

Legal Services, Human Resources Development

[s. 21(1)(a) + (b)]

Health Canada

The partial defence of provocation should not be available for any offence other than murder and only in cases of slow-building effect of prolonged and severe abuse (emotional, psychological, physical, etc.). The partial defence of provocation should be changed but only to include cases where the sudden act of rage was instigated as a result of "slow-building effect of prolonged and severe abuse", which is corroborated by expert-witness evidence.

MEDICAL COMMUNITY

CPHA

Our paper mentioned under question 9 states that "one quarter of all women have experienced violence at the hands of a current or past marital partner. More than one in ten women who reported violence in a current marriage have, at some point, felt their lives were in danger". We believe that the *Criminal Code* should reflect this real threat of violence that women in Canada face.

WOMEN'S GROUPS

Halton Women's Place

The partial defence of provocation should be changed to include both sudden acts of rage and the slow building effect of prolonged and severe abuse. Again, it is a matter of the criminal justice system being sensitive to, educated about and ready to respond to the unique situations faced by abused women. However, in no way should the criminal justice system allow a man's behaviour toward his spouse be said to be the result of provocation.

L'Action Ontarienne contre la Violence Faite aux Femmes, Andrée Côté (long and detailed response)

One option is to prevent the use of the provocation defence in cases of family violence and violence against women. The second option, which we prefer, is to abolish the defence of provocation. The defence amounts to a normalization of violence and the state should not promulgate rules that legitimate violence.

The General Part should state that defences of rage including provocation, and psychological shock are not recognized. In particular, the defence of provocation serves only to excuse male rage against women. It is striking that the defence of provocation will not help women or people of colour who fight back against the abuse and insults of whites.

The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador

We think there is a need to distinguish between provocation as a defence (used in situations where your buttons are pushed to the limited) and provocation as self-defence (used in situations where you need to take action to keep safe). The arguments in the paper on a provocation defence for battered women don't address how this defence could be protected from misinterpretation (reference to an article by Elizabeth Comack on the battered wife syndrome).

We believe the defence of provocation should be removed from the Code, and that it should not be applied as a defence in all criminal offences. We don't accept provocation as a valid defence because it allows the offender to absolve himself of responsibility for abuse by saying to the victim "you made me do it".

Catholic Women's League of Canada

The partial defence of provocation for murder should not be removed from the *Criminal Code*. Provocation as a defence should be available for other offences as well. We recommend that a strong burden of proof be required of the person using this defence. We believe that both "sudden acts of rage" and "the slow-building effect of prolonged and severe abuse" are definitions of "provocation". "Provocation" is a mitigating circumstance which can have a bearing on the length or type of

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sentence, but which in no way can be used to remove guilt or responsibility for the crime in question.

COMMUNITY SERVICE GROUPS

Regroupement Québécois des CALACS (in French)

The defence of provocation largely developed in cases in which a man committed acts of family violence against a woman. In the case of murder, this defence sends the message that it can be legitimate, and therefore reasonable, to kill someone due to sudden anger. For the reasons already stated (the perspective of women must be included). It would be greatly prejudicial and discriminatory to include acts of sudden rage in the defence of provocation. For a man to kill his wife in a sudden rage is not reasonable.

Citizens United for Safety and Justice Society

We would not expand the defence of provocation. In the case of murder, we feel that courts have recognized the situation of a woman who kills due to the slow-building effects of prolonged and severe abuse.

LEGAL ACADEMICS

Law professor, University of Western Ontario

Provocation - expand or abolish? Even if we abolish provocation it would still be relevant to the issue of formation of intent. Thus if X is provoked and flies into a rage and kills the provoker - it could be argued that X did not have the requisite intent for murder and there is no real need to use provocation. Provocation becomes significant in cases where the provocation results in the accused intending to kill in retaliation. I think that should be borne in mind when deciding whether to abolish this partial defence.

I do not support extending provocation to cover offences other than murder - it is always relevant in sentencing anyway and I think the expansion would send out the wrong message. The situation of battered women does not fit well within provocation - it is more compatible with self-defence.

QUESTION 12 — CULTURE AS A DEFENCE

Should the General Part include a general cultural defence?

Should a general cultural defence apply to religious beliefs?

Instead of a general cultural defence, should some crimes have specific defences which would allow for different behaviour because of a person's culture?

GENERAL PUBLIC

North Vancouver

There should be absolutely no cultural defense. Too many different groups would have to be catered to - hard to determine what groups constitute a legitimate culture and religion. Which religions and cultural groups would the government recognize. It would be hard to accommodate religious tenets and cultural practices which directly conflict with our important laws.

Edmonton, Alberta

Letter refers to a Globe and Mail article of November 14/94 - argues that most Canadians are fed up with this kind of nonsense.

St. Catherine's

Absolutely not. The laws of our country should reflect our traditional Canadian culture. One cannot accommodate all cultures without sacrificing one's own culture and values. It would be impossible to allow for all cultural backgrounds and still maintain law and order in our country as deserved by the public as a whole.

Vancouver

No cultural defence - too difficult to list the number of different cultures and beliefs. Would result in inconsistencies in the application of criminal law.

Havelock

A general cultural defence should be included only for minor offences. Religious beliefs should only apply to specified, minor offences. I believe that it is Canada's obligation to orient every new Canadian to our mores, customs and values. I do not think we are doing enough in this respect. Only minor crimes should have specific cultural defences. Certainly, customs that hurt no one should not be penalized (ie. the wearing of turbans or daggers).

Oakville

The idea of allowing a cultural defence is fundamentally flawed. In practical terms, this law would likely apply to recent immigrants of non-European descent. It would

be a serious departure from the concept of equality before the law. In effect, it makes second/late generation Canadians and European immigrants more equal than non-European immigrants. Respondent suggests that we review laws concerning polygamy, wife battery and the carrying of concealed weapons such as knives and swords. For each of these laws we should ask if a) we want to continue with the law in Canada and b) we should remove the law because it provides little benefit to Canadian society and therefore offends certain cultural groups unnecessarily. Any law we choose to continue with must apply to everyone in Canada. Suggests that we catalogue "sensitive but necessary" laws and make them available to potential immigrants in order to make them aware of our laws and to aid them in their decision over whether they should immigrate to Canada.

North York, ON

Opposes cultural defence. Criminal law must apply to all citizens equally. It would be too difficult to try and accommodate every other culture, despite the fact we are a multicultural nation. Respondent does not feel we should in any way sacrifice the Canadian values embedded in our system of law in order to incorporate other cultures and lifestyles. In her view, part of coming Canada includes a willingness to accept and abide by our system of laws.

Guelph

There should be no cultural defence in the General Part, and there should be no specific defences for some crimes either.

Windsor

This idea is the least acceptable of all the proposals in the consultation paper. Adding a defence that would recognize the cultural practices of minorities as somehow exempt from the general criminal law is contrary to our notion of a national criminal law binding on all citizens. The Code should reflect national standards, and not be bent to accommodate the wishes of every cultural minority.

Lakefield

No cultural defence at all.

Windsor

Raises a host of cultural and religious practices in her letter which are common in foreign jurisdictions, and clearly in defiance of the Canadian sense of justice. Concludes that the General Part should not include a general cultural defence. A general cultural defence should not apply to various religious beliefs. Crimes should not have specific defences which allow for different behaviour because of a person's culture.

Saskatoon

Recourse to an appeal to cultural or religious cause and effect should be allowed, but if the defences were too specific this could lead to endless arguments.

Hanover ON

No cultural defence should be included. There are simply too many different cultures/religions to accommodate, and so many foreign practices are anathema to the tenets of our criminal law. People must try and maintain their cultures within the confines of our law. Nor should there be specific defences which would allow peoples of certain cultures and religions to escape the provisions of our laws. Our laws have important purposes; there are reasons why people should not carry knives, have more than one wife, or use prohibited drugs.

Victoria BC

Important that the criminal law does not criminalize behaviour unnecessarily. Consultations should be undertaken to ensure there is no unnecessary interference with cultural/religious practices. But, law should apply to everyone equally. Cultural and religious practices should be dealt with as special factors at sentencing.

Peterborough

Cultural and religious defences should be allowable in some cases but not in the cases which involve child abuse, injury to others etc. Perhaps an expert panel could decide if this is allowable.

Oshawa

There should be no general cultural defence, nor should there be any partial defences to certain crimes.

Hamilton

The only cultural defence in the General Part should apply to Native Peoples. Also a lesson could be taken from our Native brothers and sisters that when a crime is committed rather than criminal sentences, retribution to the victim could be a better sentence. The general cultural defence should not apply to religious beliefs or be based on a person's cultural background.

Guelph

A cultural defence by an accused should not be allowed under any circumstances. Individuals should be held accountable for their offences against Canadian society and not a culture they have left behind in a foreign land.

Oshawa

Neither cultural nor religious beliefs should be included in the General Part. The laws of Canada must stand for our national credos. If culture or religious factors bear

any consideration in the commission of a crime, they should be dealt with in sentencing as a mitigating circumstance.

Almonte ON

I do not believe aboriginal people fall into this category as they should be rulers of their own people. Otherwise, our laws should be for all Canadians (consider how absurd acts like female castration are in light of our Canadian values). Human rights should be of paramount importance. If, however, the impugned action does not impact on others (such as carrying a ceremonial dagger), this should be taken into if culture is claimed as a defence.

(south ON)

No general cultural defence. The law in any country is designed to protect and serve everyone equally. In Canada we have many different cultures and religions which are recognized. Too difficult to try and accommodate them all without causing discrimination. General Part should spell out a code of behaviour for all Canadians that will be clear and specific in its endeavour to protect the life and freedom of everyone.

Puslinch ON

There should not be a general cultural defence. All laws in Canada should recognize the diversity of culture and should not offend anybody. There should be no need to excuse any culture from any section of the law. Equality in the law - if one group is allowed to carry concealed weapons, all Canadians should be extended this privilege.

Peterborough

No general cultural defence should be included.

Beaver Creek BC

No - forget even attempting a general cultural defence. Common standards for all Canadians.

BC

No general cultural defence. To enter into "cultural differences" in a court of law is discriminatory to society as a whole and would separate the *Criminal Code* into multitudinous layers of unmanageable concepts. To have a *Criminal Code* at all, it must be one law for all citizens.

Oshawa

We should recognize the importance of the beliefs and practices of other cultures only as long as they do not contravene the laws of the land. Immigrants should be made aware of the expectations of them as new citizens of Canada. There should be a cultural defence in all non-violent crimes.

CHURCHES

Lutheran Church of Canada

Against culture as a general defence. There is the risk that people could be held variously "innocent" or "guilty" for the same act, depending on their cultural background, thus giving the appearance of discrimination and prejudice in administering justice. Criminal law must be consistent. Specific defences based on culture might be allowed. This is more manageable because it would be administered on an individual case-by-case basis.

Greek Orthodox Diocese of Toronto (a 10 page paper on multiculturalism is attached). The General Part ought not to embrace the divisive notion of "a general cultural defence"; in the absence of a "general cultural defence", no application to religious beliefs is possible nor ought there to be consideration of "a general religious defence"; the General Part ought not to recognize "specific cultural defences", which similarly lack legal and logical justification.

FEDERAL/PROVINCIAL GOVERNMENTS

Health Canada

No - would result in such horrible practices as female genital mutilation. The adoption of this approach would contravene article 24(3) of the Convention on the Rights of the Child, which states that "state parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." A general cultural defence would be inconsistent with the spirit of the *Charter of Rights and Freedoms*, which states that all Canadians have equal rights. The *Charter of Rights and Freedoms* provides for constitutional challenges when an individual feels that his cultural rights have been violated.

Department of Canadian Heritage

As has been indicated previously, the Department is generally opposed to incorporating "culture" as a defence so as to avoid criminal liability. Nevertheless, provisions should be made whereby sensitivity to one's culture or religion should be taken into account as a mitigating factor during sentencing given the culturally diverse nature of the Canadian population.

Legal Services, Human Resources Development

[s. 21(1)(a)+(b)]

s. 21(1)(b)

JUDICIARY

s. 21(1)(b)

s. 21(1)(b)

POLICE

RCMP

No cultural defence.

MEDICAL COMMUNITY

CPHA

We attach [not attached to the copy I received] a copy of our 1993 resolution on Qat. The intent of this resolution is to control the availability of Qat, not to criminalize those found to be using it. Given its widespread use and religious connections, public education efforts will be needed, particularly with recent immigrants, to raise awareness and understanding of the serious adverse effects of Qat. We would like the harmful nature of this drug to be recognized under the *Food and Drug Act*, so it can be a controlled substance.

WOMEN'S GROUPS

Halton Women's Place

The General Part should not include a general cultural defence. The use of drugs and the carrying of concealed weapons is prohibited in Canada. These are fundamental community standards.

Catholic Women's League of Canada

No general cultural defence. Newcomers to Canada must be prepared to abide by our laws. New Canadian citizens should keep their ethnic culture and background as a proud heritage, but should follow Canadian laws and traditions in their dealings with other citizens of the country. We cannot constantly be bending over backwards to accommodate all cultures, or we will end up losing our own Canadian identity. If a cultural defence were included, what parts of the country would it apply to? Would this undermine fairness in the application of laws toward all citizens? Provision MUST BE MADE, however, for some crimes to have a specific defence which would

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allow for different behaviour because a person is of native culture. Here again, care would have to be taken that the accused did not escape all accountability for his/her actions because of cultural differences.

COMMUNITY SERVICE GROUPS

Union of British Columbia Municipalities

We feel that the introduction of a general cultural defence under the *Criminal Code* could potentially undermine respect for the law and heighten cultural tensions. Local government is concerned that the establishment of a cultural defence under the Code could lead to the creation of different levels of justice based on race and culture. We would suggest that the concept of equality before the law should be maintained and that one set of laws should apply to all Canadians.

Citizens United for Safety and Justice Society

This is an outrageous suggestion. While the country is concerned about unity, this would be one of the most divisive moves one could consider. This does not even warrant discussion as we would not wish to be part of completely destroying respect for the justice system.

Repeal 43 Committee

(A copy of the Committee's April 1994 brief is attached). Section 43 is based to a large extent on the religious idea of disobedience as a sin and the belief that the Bible requires parents to ensure their children's obedience through physical chastisement. The section is therefore a clear example of how a religious belief has been used to justify acts that would otherwise be illegal and that are now increasingly seen as harmful to children in particular and society in general. Religious beliefs and practices must be distinguished. Canadians are free to hold whatever cultural or religious beliefs they wish. However, if these beliefs result in practices that are harmful or infringe basic human rights such as the right to security of the person, they should not be sanctioned by our *Criminal Code* as legitimate defences. Section 43 must be repealed.

Church Council on Justice and Corrections

It follows from what has been said before that behaviour and actions which flow from a recognized cultural form should be considered in terms of coming to an understanding of the offence. Whether it mitigates liability or increases it can only flow from a social policy which is sensitive to social change and should be clearly pronounced by legislations and/or the courts.

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VISIBLE MINORITY/MULTICULTURAL GROUPS

Federation of Sikh Societies of Canada

Long (33 pages, including appendices on the 5K and on consolidated Indian legislation on the kirpan) paper in support of amendments to the *Criminal Code* to alter sections that could prohibit Sikhs from carrying their kirpans at all times.

Canadian Arab Federation

We welcome the amendment of the General Part of the Code. Introducing positive changes to the General Part to make the Code accurately reflect the values and concerns of the increasingly diverse Canadian society is commendable.

We believe that with the exception of the First Nations, culture should not be used in defining fault or as a defence. We strongly believe that the proposed amendments would create more serious problems and would not lower the potential for conflicts between the beliefs and practices of different groups forming Canadian society. Adding culture as a characteristic or as a defence will negatively affect the position and the future of the so-called ethnic minorities, and further accentuate the existing state of disharmony between these cultures and the culture of the mainstream. The Code need not be amended to accommodate the cultural and religious practices of some groups that differ from those of the majority because these cultures and religions are capable of accommodating and assimilating new values that would improve the life of those who hold them.

The proposed amendment also raises a practical concern. Cultural and religious values are by no means monolithic. People who believe in certain religions do not unanimously subscribe to a single interpretation of the teachings of that religion.

Culture as a defence will, we believe, justify the abuse of women and children. It is known that many different cultures and beliefs support the supremacy of men over women in society. By adding culture as a defence, it is possible that the achievements of women in Canadian society will be reversed drastically as some men will find it easy to get away with assaulting women and children by using their cultures as shields.

Considering culture as a defence for certain groups would be a serious loophole that will encourage some people to deliberately commit certain offences. Exemption of certain harmful behaviour from being considered as *Criminal Code* offences jeopardizes the confidence of Canadians in the law and its universality.

LEGAL ACADEMICS

Law professor, University of Western Ontario

This proposal troubles me a great deal. I can see no justification for this. I believe that we need to send out a strong message that everyone is expected to reach a certain level of behaviour and permitting variation according to culture, religion etc. is the very antithesis of that message. I believe this new defence would open up a real Pandora's box of problems!

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QUESTION 13 — TRIVIAL VIOLATIONS

Should the new General Part include a defence of de minimis, by which a person who has committed an offence would not be convicted if the offence is too trivial to be worth a conviction, in view of the circumstances, including the person's background and the context of the offence?

GENERAL PUBLIC

North Vancouver

I question the need for a de minimis in law. If the prosecutor feels that case warrants court time, because of factors over and above the seemingly simple facts of the case, they should have that option. Would also depend on the type of offence and the circumstances under which it occurred (ie. the context and circumstances surrounding an assault).

St. Catherine's

No. To break the law is to break the law ... no compromises can be made in that area or the wrong message is being sent out. Statistics show that approx. 85% of perpetrators of crime are repeat offenders and in most cases the crimes become more serious. They must know from their first offense that breaking the law is wrong and will not be tolerated.

Havelock

Agrees with de minimis as a defence. There is too much litigation in this country as there is. Young Offenders especially should not be incarcerated, but given a chance for restitution, treatment and of course, in extreme cases, incarceration, but never without appropriate modification programs. Unfortunately, the cult of individualism has eroded our sense of community values and responsibilities.

Guelph

General Part should include a defence of de minimus.

Lakefield

No de minimis defence.

Windsor

Not necessary for de minimus defence to be part of the criminal law. Police and prosecutors screen all criminal charges. Trivial violations are sent to out of court diversion programs. Unless a person is a repeat offender, this can be used to remedy the problem.

Saskatoon

There should be room for a defence of "de minimis" as there is now against frivolous claims.

Victoria BC

I would agree with a de minimis defence, although it is not always easy to determine what is trivial.

Peterborough

Offences should be dismissed and resolved on a personal level if too trivial for court.

Oshawa

The defence of de minimis should exist.

Hamilton

General Part should include a defence of de minimis.

Guelph

The consideration of the defence of de minimis is not necessary in the *Criminal Code*. The issue is well addressed prior to criminal proceedings.

Oshawa

Yes - there should be a defence of de minimis.

Almonte ON

We would have to be careful to ensure important crimes never result in a defence of de minimis ie. assault. A definition of which crimes would fall under this category would have to be included and listed in the Code.

(south ON)

It should include a defence of de minimis.

Peterborough

NO - a defence of de minimis should not be added to the General Part.

Beaver Creek BC

The "de minimis" defence should be left as it is now.

BC

There should be no de minimis defence.

Oshawa

As parents and citizens of a wider reality, there is no such thing as a de minimis defence. Each triviality that goes unpunished by the law places the seeds of future

acts of contempt for the laws and values held by our society. An individual's background and the circumstances of the event could be taken into consideration, as well as intent.

CHURCHES

Greek Orthodox Diocese of Toronto

It is possible that recognition of such a defence has worth. If it does, it should stand on its own merits and not be supported because of its specific relevance to issues of cultural difference, although in the absence of specific prohibitions it goes without saying that it should not be denied to a defendant attempting to invoke it in relation to personal background or any other circumstance.

JUDICIARY

s. 21(1)(b)

POLICE

RCMP

De Minimis should not be codified. Police and crowns already use their discretion in trivial matters. There is also the option of conditional or absolute discharges and suspended sentences or probation.

FEDERAL/PROVINCIAL GOVERNMENTS

Health Canada

A defence of de minimis would further congest the justice system and impede on the administration of justice to deal effectively with more serious cases. Police are the first in the decision-making process to charge or not charge. If the police feel that the young person is involved in a trivial violation, the police typically deal with case in a

pragmatic way rather than deal with it through the Courts. The police also make decisions in conjunction with crown attorneys who are responsible for balancing the justice system's organizational needs while ensuring proper administration of justice. As a result of this "funnel effect" within the judicial process in Canada, it is unlikely that trivial violations will end up in Court. If the Crown attorney elects to charge and prosecute, this is done to protect the public in such cases. The trivial aspect associated with the charge can be alleviated in changing the sentencing objective and choosing alternatives such as diversion programs or suspended sentences. This practice will avoid bringing the administration of justice into disrepute.

Legal Services, Human Resources Development

s. 21(1)(a) & (b)

Department of Canadian Heritage

The Department is opposed to incorporating a "de minimis" defence into the Code; it is not necessary and would increase the length and complexity of trials. It is better to seek ways of ensuring that trivial actions are not placed before the court.

WOMEN'S GROUPS

Halton Women's Place

With respect to trivial violations, it would appear that there is no merit in changing the current practice.

The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador

We don't believe the General Part should include a defence of de minimis. These questions need to be answered: who will define trivial? Who will select the criteria which will be used to assess a person's background or to establish the context of the crime? From our work and observations, we conclude that women's experiences have been trivialized by the justice system. We also believe that including such a distinction in the law will reinforce negative attitudes towards women's complaints. Because there is very little understanding of the dynamic of fear in abusive relationships, many judges dismiss certain incidents as trivial.

Catholic Women's League of Canada

We do not believe that this is a necessary defence. The police and Crown Council do not proceed unless, in their opinion, the offence is serious enough to take up the time of the courts. Both are very aware of the backlog of court cases and the length of time it takes to get a case through the courts.

COMMUNITY SERVICE GROUPS

Citizens United for Safety and Justice Society

We do not see the need to include the defence of de minimis. It is true that trivial violations rarely reach court.

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QUESTION 14 — COMMON LAW DEFENCES

Should the new General Part allow the courts to continue to recognize common law defences?

GENERAL PUBLIC

North Vancouver

Very concerned about judge-made laws undermining the wishes and intentions of Parliament. Any defence which is allowed in a particular case should only apply to that case, and not automatically become the law of the land (referring here to Daviault). Too much power has already been deflected from Parliament to the Supreme Court. (Concerned about future judicial appointments becoming more "political" under the lobbying power and influence of special interest groups.)

Vancouver

It is up to Parliament to state the rules of criminal liability, and not the courts.

Havelock

We should maintain common law defences. The inherent flexibility should result in a higher degree of appropriate justice, one that should reflect evolving mores.

Guelph

The General Part should continue to allow courts to recognize common law defences.

Lakefield

The General Part should continue to allow courts to recognize common law defences.

Windsor

The recodified General Part should no longer allow the courts the power to recognize new defences. Parliament needs to clearly define the rules of criminal liability, including the defences. Unfortunately, giving judges and courts too much lee-way waters down our excellent *Criminal Code*. This leaves our *Criminal Code* open to each judge's interpretation of the law and the personal experience that he or she comes from.

Saskatchewan

Respondent felt very strongly that the new General Part should allow the courts to continue to recognize common law defences.

Victoria BC

The General Part should allow the Courts to continue to recognize common law defences, for the reasons outlined in the consultation paper.

Peterborough

Common law defences should still be allowed.

Oshawa

Common law defences should still be allowed.

Hamilton

General Part should continue to allow the courts to recognize common law defence.

Guelph

The courts should be allowed to recognize common law defences.

Oshawa

Yes - common law defences should be allowed - the Charter has become a safe-haven for criminals.

(south ON)

Yes - common law defences should be allowed - provided this does not interfere with the administration of fundamental justice.

Puslinch ON

Courts must continue to recognize common law defences. New laws require new defences. Many new laws go far beyond the fundamental values of a great number of Canadians. The courts must continue to recognize a defence when failure to do so would be fundamentally unjust.

Peterborough

Yes - courts should continue to recognize common law defences.

Beaver Creek BC

In the past decade, some of the worst decisions in Canadian judicial history have been tendered by our judges. Some degree of control must be exercised over the judiciary.

BC

I do not like the concept of vague, uncodified defences in general, but neither do I think that the *Charter of Rights and Freedom* is sufficiently clear to make a consistent interpretation as to what could be a defence and what could not.

Oshawa

The new General Part should allow the courts to continue to recognize common law defences.

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LEGAL ACADEMICS

Law professor, University of Western Ontario

It is not a bad idea to continue to recognize common law defences which can be developed as the need arises. However, one problem is that courts don't always seem to know what is a defence and what is part of the Crown case - see for example the decision in *Jobidon* (S.C.C.) where Gonthier J. seems to think that consent is a defence.

JUDICIARY

s. 21(1)(b)

POLICE

RCMP

Yes - General Part should continue to acknowledge common law defences.

FEDERAL/PROVINCIAL GOVERNMENTS

Legal Services, Human Resources Development

s. 21(1)(a) + (b)

Department of Canadian Heritage

The Department supports the continued recognition by the courts of common law defences. While the law must be rewritten occasionally to codify existing changes, the latitude to recognize new situations needs to remain in the General Part.

Department of Justice Regional Office

It is evident that the legal community is becoming increasingly frustrated by the rather wide scope of interpretations that judges put on primordial common law concepts.

Too, given that this country has become so culturally diversified if not balkanized, the prevailing wisdom suggests that concepts involving serious criminal jeopardy, or providing a defence to such jeopardy be defined with maximum precision.

WOMEN'S GROUPS

Halton Women's Place

The General Part should allow the courts to continue to recognize common law defences.

Catholic Women's League of Canada

The *Criminal Code* is based on the fundamental principles of the Common Law which itself is grounded in important Judeo-Christian values. These norms must be maintained, despite the many varied cultures and religions which have migrated to this country. There can be no absolute codification of each and every offence, problem and issue which confronts us daily. We have to keep our Code based on the community norms, not on some cultural divergence for a small minority. We must take strong measures to ensure that we do not dilute our sense of freedom and justice because of the requests for change from a small portion of the population.

QUESTION 15 — PREAMBLE OR STATEMENT OF PURPOSES

Should the new General Part include a preamble or statement of purposes and principles (relating to the General Part as opposed to the entire *Criminal Code* or the criminal law as a whole)?

If so, what should it contain?

GENERAL PUBLIC

North Vancouver

Should not include a preamble or statement of purposes. This would only further muddy the waters and lead to esoteric and lengthy arguments in court.

Vancouver

Unnecessary. The less verbiage the better.

Havelock

Yes, the revised General Part should include a preamble. It should contain:

- 1) rationale for the revision
- 2) goals and objectives for the revised document
- 3) synthesis of the law
- 4) procedure for future revisions/criteria
- 5) the inherent role of law in Canadian society; eg. to protect, root out causes of criminality, educate the public, modify criminal behaviour, etc.

Windsor

The *Criminal Code* is much more than an ordinary statute. As a way of guiding judges as to how they should enforce the law, a preamble would be quite useful.

- 1) it could set out the prime purpose of the law to be the protection of the public
- 2) it could also suggest that the prime purpose of the criminal law is a search for the truth - exclusion of evidence should be discouraged whenever possible
- 3) preamble could state that it is the function of the courts to ensure that all relevant facts are before them
- 4) reaffirm the fact that the *Criminal Code* exists to punish and that punishment and retribution should be used to reflect society's abhorrence of anti-social acts.

Lakefield

Group voted unanimously that there is no need to include a preamble.

Windsor

In order for our *Criminal Code* to be applied as originally intended, Parliament needs to set some strict guidelines for Judges to follow. This has become a necessity so

there are some assurances that the *Criminal Code* is enforced and that sentencing is applied to an offence with consistency. This would ensure that both the law and criminal sanctions are more certain and consistently applied. Preamble could insist on coherence and consistency in the criminal law.

Saskatoon

Favours the inclusion of a preamble in a new General Part.

Peterborough

A preamble might be restrictive unless it was quite general and flexible.

Oshawa

If properly written, a preamble would provide much needed coherence to the criminal law and the criminal justice system, while explaining Parliament's rationale for bringing in a new General Part to the *Criminal Code*. Could highlight our current fundamental values as a guide to both interpretation and application of the criminal law.

Hamilton

Should not include a preamble because this would only lead to endless legal wrangling.

Guelph

No - the reason for our criminal law in society should be quite obvious. A statement of purpose would be very hard to word, and to reach a consensus on its content. Rather than act as an aid to the law it would further cloud arguments and result in endless wrangling in cases.

Oshawa

There should be no preamble. These extra words would be used by lawyers trying to unravel the fabric of the law as it is written.

(south ON)

There should be no preamble or statement of purposes. Rather, the new General Part must contain a complete understanding of all purposes as well as a fully explained and operational set of principles.

Puslinch ON

General Part must have a preamble - it should include a statement of values. It should also define guidelines for the definition of a criminal offence. The preamble should also put a limit on the extent to which personal liberties can be taken away by the *Criminal Code* for the general good of society.

Peterborough

No preamble is required.

Beaver Creek BC

General Part can do without a preamble.

Oshawa

Dump the preamble. It would be redundant and time consuming. Let the specific laws speak for themselves and let them be applied evenly and justly.

CHURCHES

Lutheran Church of Canada

In general, changes to the *Criminal Code* should not be made unless they will lead to a clearer understanding of the intent and purpose of the law and to a fair and balanced exercise of justice in accordance with the normal and traditional values of Canadian society.

Mennonite Central Committee of Canada

We believe the articulation of such principles is crucial to the entire *Criminal Code*. We argue for a "restorative approach" which calls for the righting of the wrong between victim and offender, and all other related entities, including the wider family and community. The *Criminal Code* would then serve a symbolic function of underscoring our national standards vis-a-vis criminal acts, but then would channel the offender into a track where reintegration is available to all willing to take responsibility for their actions. These "restorative principles" should be enshrined in a preamble. Among the principles should be a commitment to establish a "first track" response to crime which encourages the perpetrator to move towards taking responsibility, righting the wrong, and being reintegrated into the community. Would like a communal response to crime, in which everyone in the community is called upon to work towards righting the wrongs which lead to offences, bringing healing to the victim, and reintegrating the offender into the community. This would include dealing with systemic issues such as social welfare, classism, and racism.

FEDERAL/PROVINCIAL GOVERNMENTS

Department of Justice regional office

In general, we are moving in the direction of more codification - let us make such codification simple to understand and apply. The very advantage of codification is that it makes law very definite by proscribing a zone of fault around a proscribed activity (ie. self-induced intoxication). To over explain the defences and jeopardy

involved regarding this activity would be to defeat the whole purpose of this enterprise.

Department of Canadian Heritage

While the Department does not support the idea of a preamble it might be useful to include, as part of a public education campaign, a statement of fundamental principles pertaining to the General Part of the *Criminal Code* emphasizing the relationship between these principles and the criminal law. It will also be important to ensure that the language used in the General Part is straightforward and clear so that it can be understood by members of the general public.

Legal Services, Human Resources Development

[S. 21(1)(a) + (b)]

JUDICIARY

[S. 21(1)(b)]

POLICE

RCMP

No - it would result in increased complexities and uncertainties and unnecessary litigation.

WOMEN'S GROUPS

Halton Women's Place

There should be a statement of purposes and principles that could include statements of parliamentary reasons and fundamental values.

L'Action Ontarienne contre la Violence Faite aux Femmes, Andrée Côté (long and detailed response)

The preamble to the Code should be a declaration of intentions on the objectives of the criminal law, which would "codify" the egalitarian orientation of the Charter. The preamble should explicitly recognize that violence against women is a fundamental breach of their human rights which has an important historical context. The preamble should recognize that in the past the laws and the rules controlling the police and the judiciary in relation to violence against women were, directly or

indirectly, discriminatory to women. The preamble should specify that the object of the criminal law is to protect women from discrimination based on their sex, ethnic origin, colour, religion, age, aboriginal status, sexual orientation, immigration status, and mental or physical deficiency.

Catholic Women's Association of Canada

NO - if there were to be a preamble, the wording would probably take two or three years of debate to be agreeable to everyone. If the wording is too broad, it will be ineffective. If it is too narrow, it will be contentious.

The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador

We think a preamble is important in providing a framework for the Code. The law cannot be applied in isolation; it needs to have context and background. However, the justice system has relied too much on a particular experience and a particular background, with the result that the justice system has not met women's needs because it has been designed to meet men's needs. Women do not respect the Code because it does not work for them.

COMMUNITY SERVICE GROUPS

Regroupement Québécois des CALACS (in French)

Bill C-49 contained a preamble which we believe was beneficial and educative. In order to confirm the role of the *Criminal Code* in the fight against violence against women we recommend the inclusion of a preamble in the General Part.

Church Council on Justice and Corrections

Yes - but there has to be a great deal of discussion before a decision can be made about what such a statement should contain.

Citizens United for Safety and Justice Society

It is our contention that the preamble of the Charter should be changed to emphasize the importance of respecting other's rights and the rule of law. Under our justice system a criminal act is a crime against society and the direct victim is considered to be a witness. It is therefore a fact that under the present wording the Charter benefits the individual criminal at the expense of safety and society.

OTHER COMMENTS

COMMUNITY SERVICE GROUPS

Ethics Scan Canada

A general reflection on law, ethics, and the role of criminal law in our society. Changes to the *Criminal Code* should recognize, reflect and nurture ethical behaviour. Revisions to the Code should reflect contemporary cultural realities, but not at the risk of situational realities replacing ethical verities or undermining universally accepted ethics. Ethical defences have more substance and social legitimacy than do most cultural values, which may be more transitory and special-interest-based, or both.

Regroupement Québécois des CALACS (in French)

Criminal law can conform to social values or, at other times, it can lead public opinion and create new norms. Criminal law is part of the solution for social problems that become dangerous or unacceptable. In this regard, criminal law will play an important role in combating violence against women. Women have traditionally been excluded from the places where the values that go into the Code are defined. For this reason, it is important to bring a feminist analysis to bear on the Code. This will identify overt discrimination but we must proceed to investigate the systemic discrimination against women including erroneous assumptions about women.

Canadian Medical Association

The proposed recodification aims to make the Code simpler, clearer and more readily understandable by all Canadians and to bring the Code up to date so that it applies to Canadian society today. Although CMA is pleased to play a part in this process, we are concerned that the interests of Canadian physicians and patients have not been given adequate consideration. (Reference to enclosed copy of CMA's Brief to the House of Commons Sub-Committee of the Standing Committee on Justice and the Solicitor General on the Recodification of the General Part of the Canadian Criminal Code, submitted October 19, 1992).

As stated in the brief, for the General Part to achieve its goals with respect to physicians and the practice of medicine, it must explicitly recognize medical practice as a legitimate sphere of activity, distinct from the wrongs that the criminal law seeks to address; clarify the ambiguities in the current law, particularly with respect to the obligations of physicians in the initiation and cessation of treatment; and address the differences in the clinical and criminal law definition of death.

We are disappointed that none of these are dealt with in the consultation paper. CMA and its members continue to be concerned that advances in the science of medicine and changes in Canadian society have created a tension between the apparent

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requirements of the Code and medical practices that are considered appropriate and desirable. This tension continues to cause uncertainty as to what constitutes appropriate conduct in a particular medical context. We believe that the Code will not be adequately brought up to date unless the concerns raised in the CMA brief are met.

Brian Jarvis
Darren Littlejohn
Communications and Consultation Branch
August, 1995