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THE DEFENCE OF EXTREME INTOXICATION AKIN TO AUTOMATISM: A STUDY OF THE LEGISLATIVE RESPONSE TO THE SUPREME COURT OF CANADA DECISION *R. V. BROWN*

**Report of the Standing Committee on Justice and
Human Rights**

Randeep Sarai, Chair

**DECEMBER 2022
44th PARLIAMENT, 1st SESSION**

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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has the honour to present its

TENTH REPORT

Pursuant to the motion adopted by the House on Tuesday, June 21, 2022 and the motion adopted by the committee on Thursday, September 22, 2022, the committee has studied the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication) and has agreed to report the following:

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LIST OF RECOMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Department of Justice launch a public awareness campaign to communicate in plain language the conclusions of the Supreme Court of Canada decision in *R. v. Brown*, the new version of section 33.1 of the *Criminal Code* and its practical effects..... 24

Recommendation 2

That the Government of Canada ensure that a public communication plan is in place and implemented to accompany the decisions of the Supreme Court of Canada when they have significant consequences for the public, including victims of crime..... 24

Recommendation 3

That the Department of Justice compile data on the use of the defence provided in section 33.1 of the *Criminal Code*. 24

Recommendation 4

That Parliament carry out a formal review of the legislation amending section 33.1 of the *Criminal Code* three years after it came into force to ensure that the application and interpretation of this new provision adequately fulfills Parliament’s objectives, and to evaluate its impact on victims of crime. During this review, Parliament should consider the option of amending the legal standard of criminal negligence in new section 33.1 of the *Criminal Code* to require only foreseeability of a loss of control of an individual’s actions, instead of “foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person”..... 25



THE DEFENCE OF EXTREME INTOXICATION AKIN TO AUTOMATISM: A STUDY OF THE LEGISLATIVE RESPONSE TO THE SUPREME COURT OF CANADA DECISION *R. V. BROWN*

CHAPTER 1: BACKGROUND

On 22 September 2022, the House of Commons Standing Committee on Justice and Human Rights (the Committee) decided to schedule a study of the subject matter of Bill C-28, An Act to amend the Criminal Code (self-induced extreme intoxication)¹ pursuant to a motion adopted by the House of Commons on 21 June 2022. This motion provided for the accelerated passage of Bill C-28, while instructing the Committee to undertake a study on the subject matter of the bill once the business of the House resumed in September 2022, for the Minister of Justice to “be invited to appear as a witness” and for “the committee [to] report its findings to the House no later than Friday, December 16, 2022.”²

Exceptionally, the subject matter of the bill was considered at parliamentary committee after it was adopted and came into force, departing from the usual legislative process.

There were particular circumstances surrounding the accelerated passage of the bill; Parliament had to quickly fill a void in the *Criminal Code* following the Supreme Court of Canada’s (SCC) decision *R. v. Brown* on 13 May 2022.³ Bill C-28 was introduced in the House of Commons on 17 June 2022 by the Honourable David Lametti, Minister of Justice, in response to the SCC’s decision that found unconstitutional the former section 33.1 of the *Criminal Code*,⁴ which eliminated the defence of self-induced extreme intoxication akin to automatism for certain violent offences.⁵ Since the former section 33.1 of the *Criminal Code* was declared of no force or effect by the SCC,

1 House of Commons, Standing Committee on Justice and Human Rights (JUST), *Minutes of Proceedings*, 22 September 2022; [Bill C-28, An Act to amend the Criminal Code \(self-induced extreme intoxication\)](#), 44th Parliament, 1st Session (S.C. 2022, c. 11).

2 House of Commons, *Debates*, 21 June 2022, 1345.

3 *Criminal Code*, R.S.C. 1985, c. C-46; *R. v. Brown*, 2022 SCC 18. On the same day, the Supreme Court of Canada issued its decisions in Sullivan and Chan. *R. v. Sullivan*, 2022 SCC 19.

4 *Criminal Code*, R.S.C. 1985, c. C-46, s. 33.1.

5 *R. v. Brown*, 2022 SCC 18.



individuals charged with a violent offence under that section could raise the defence of extreme intoxication akin to automatism, regardless of whether they were negligent in their use of intoxicants. The SCC did not suspend the declaration striking down former section 33.1 of the *Criminal Code* to give Parliament time to pass a legislative solution in response. Therefore, the House of Commons was required to act quickly to protect victims of violent offences committed while intoxicated, so it fast tracked the bill with the guarantee that the Committee would study the bill after its adoption. This understanding allowed for Bill C-28 to come into force on 23 June 2022, about six weeks after *R. v. Brown*.

As planned, the Committee held five meetings on the subject matter of Bill C-28 between 20 October and 14 November 2022, during which it heard from a variety of witnesses. The Committee is grateful to the witnesses who took the time to share their expertise and knowledge as part of this study. The Committee has used the evidence to formulate the key observations and recommendations included in this report.

CHAPTER 2: NEW SECTION 33.1 OF THE *CRIMINAL CODE*

2.1 Brief History of the Former Section 33.1 of the *Criminal Code*

In 1994, the SCC ruled in *R. v. Daviault* that self-induced intoxication resulting in a state akin to automatism or insanity could be used as a defence in cases of general intent offences to raise a reasonable doubt.⁶ It therefore provided an exception to the common law rule set out in *Leary*⁷ that intoxication cannot be raised as a defence for general intent offences. At that time, the SCC ruled that the onus was on the accused to establish, on the balance of probabilities, that they were in a state of extreme intoxication akin to automatism or insanity, using expert testimony.

In response to the *Daviault* ruling, Parliament quickly passed legislation adding former section 33.1 to the *Criminal Code* in 1995. This section eliminated the defence of extreme intoxication akin to automatism in cases of general intent offences when the conditions set out in section 33.1 were met:

33.1 (1) It is not a defence to an offence referred to in subsection (3) that the accused, by reason of self-induced intoxication, lacked the general intent or the voluntariness required to commit the offence, where the

6 [*R. c. Daviault*](#), [1994] 3 RCS 63.

7 [*Leary v. The Queen*](#), [1978] 1 S.C.R. 29.

accused departed markedly from the standard of care as described in subsection (2).

(2) For the purposes of this section, a person departs markedly from the standard of reasonable care generally recognized in Canadian society and is thereby criminally at fault where the person, while in a state of self-induced intoxication that renders the person unaware of, or incapable of consciously controlling, their behaviour, voluntarily or involuntarily interferes or threatens to interfere with the bodily integrity of another person.

(3) This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.⁸

In *Brown*, the SCC struck down former section 33.1 of the *Criminal Code*, ruling that it violated the principles of fundamental justice and presumption of innocence of the accused under sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*⁹ (the Charter) in part because it allowed an accused to be convicted of an offence without proof of *mens rea* or without criminal intent. The SCC held that these violations were not justified under section 1 of the Charter. However, the SCC did note that its decision did not affect the rule that “intoxication is not a defence to general intent crimes” except in cases of “intoxication akin to automatism.”¹⁰

The SCC noted that there were fairer options for the accused than the former section 33.1 of the *Criminal Code* that could achieve Parliament’s objectives.¹¹ The SCC identified two key legislative solutions:

8 [Bill C-72, An Act to amend the Criminal Code \(self-induced intoxication\)](#), 35th Parliament, 1st Session (S.C. 1995, c. 32).

9 [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11, ss. 7 and 11(d).

10 [R. v. Brown](#), 2022 SCC 18, para. 43.

11 Parliament’s objectives were to “protect the victims of extremely intoxicated violence” and to “call offenders to answer for their choice to voluntarily ingest intoxicants, where that choice creates a risk of violent crime.” The SCC acknowledged in *R. v. Brown* that these objectives were pressing and substantial. [R. v. Brown](#), 2022 SCC 18, paras. 10, 11, 119 and 120.



- 1) establish a stand-alone offence of criminal intoxication, the gravamen of this new offence being “the voluntary intoxication, not the involuntary conduct that follows”¹²; or
- 2) adapt the legal standard of criminal negligence to require “proof that both of the risks of a loss of control and of the harm that follows were reasonably foreseeable.”¹³

The Government of Canada opted for the second solution by introducing Bill C-28. This option was preferred by the Government of Canada because it allows for a conviction for the commission of violent offences and thus holds offenders accountable for their actions¹⁴, as will be explained further in section 3.3 of this report.

2.2 New Wording of Section 33.1 of the *Criminal Code*

New section 33.1 of the *Criminal Code* introduces a new path of liability to ensure that people who commit a violent offence while in a state of extreme intoxication akin to automatism can be held liable for their actions if they were criminally negligent in their consumption of intoxicants.¹⁵

Under this new section, a person in a state of self-induced extreme intoxication akin to automatism who commits a violent offence referred to in section 33.1(3) may be held criminally liable for this offence if:

- all the other elements of the offence are present; and
- they negligently consumed intoxicating substances, meaning that before they were in a state of extreme intoxication, they “departed markedly from the standard of care expected of a reasonable person in the circumstances with respect to the consumption of intoxicating substances.”

The new section 33.1 of the *Criminal Code* also requires the court to consider the objective foreseeability of the risk that consuming intoxicating substances could cause

12 *R. v. Brown*, 2022 SCC 18, para. 98.

13 *Ibid.*, para. 11.

14 JUST, *Evidence*, 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

15 Bill C-28 did not amend sections 33(3) or 33(4) of the *Criminal Code*.

extreme intoxication and lead a person to harm another person to determine whether the person departed from the standard of care:

33.1 (1) A person who, by reason of self-induced extreme intoxication, lacks the general intent or voluntariness ordinarily required to commit an offence referred to in subsection (3), nonetheless commits the offence if

- a) all the other elements of the offence are present; and
- b) before they were in a state of extreme intoxication, they departed markedly from the standard of care expected of a reasonable person in the circumstances with respect to the consumption of intoxicating substances.

(2) For the purposes of determining whether the person departed markedly from the standard of care, the court must consider the objective foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person. The court must, in making the determination, also consider all relevant circumstances, including anything that the person did to avoid the risk.

(3) This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.

(4) In this section, *extreme intoxication* means intoxication that renders a person unaware of, or incapable of consciously controlling, their behaviour.¹⁶

During his appearance before the Committee, the Minister of Justice said that new section 33.1 of the *Criminal Code* had the same objectives as the previous version, “to protect victims of intoxicated violence by holding accountable those who negligently self-intoxicate and cause harm to others.”¹⁷

He added that extreme intoxication “is a rare mental state akin to automatism when the accused loses control of their actions, but is still capable of acting,” that “intoxication,

16 [Criminal Code](#), R.S.C., 1985, c. C-46, s. 33.1.

17 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).



even to an advanced degree, does not meet the definition of extreme intoxication” and that “intoxication alone is never a defence in crimes such as sexual assault.”¹⁸

CHAPTER 3: WITNESSES’ OBSERVATIONS AND RECOMMENDATIONS REGARDING THE NEW SECTION 33.1 OF THE *CRIMINAL CODE*

Over the course of the study, the Committee heard from witnesses who presented varying perspectives regarding the new section 33.1 of the *Criminal Code*. Some witnesses expressed that the new wording was balanced and addressed the concerns of *R. v. Brown*.¹⁹ Others argued that it needed to be amended as it did not adequately fill the legislative void created by *R. v. Brown*.²⁰

This chapter outlines the observations and recommendations made by the witnesses who appeared before the Committee.

3.1 Consultations Leading Up to Bill C-28

During his appearance, the Minister of Justice shared that consultations had been conducted prior to the introduction of Bill C-28.²¹

Several witnesses testified at the Committee that they had been consulted by the Government of Canada on how to respond to *R. v. Brown*.²² Nevertheless, some witnesses noted that they would have liked more consultations, among other things,

18 Ibid. See also JUST, [Evidence](#), 24 October 2022 (Chelsea Moore, Counsel, Criminal Law Policy Section, Department of Justice).

19 For example, see JUST, [Evidence](#), 20 October 2022 (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 31 October 2022 (Michele Jules, Executive Director, Manitoba Prosecution Service) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund) (Farrah Khan, Executive Director, Possibility Seeds).

20 For example, see JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law) (Isabel Grant, Professor, As an Individual) (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual) (Kerri Froc, Associate Professor, University of New Brunswick).

21 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

22 For example, see JUST, [Evidence](#), 20 October 2022 (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

before the bill was introduced.²³ For example, Jennifer Dunn, Executive Director of the London Abused Women’s Centre, said the following: “We agree that Parliament had to act in response to the Supreme Court decision, but we do feel it was rushed. There was a lack of consultation before the bill was introduced.”²⁴ Since Bill C-28 was passed unconventionally without full consideration by a parliamentary committee, some witnesses stressed the importance of meaningful consultation and the need for the flexibility to amend the legislation after its coming into force in light of the recommendations made to the Committee.²⁵ Benjamin Roebuck, Federal Ombudsman for Victims of Crime, specifically recommended that the legislation be amended if significant concerns are identified.²⁶

3.2 Public Confusion Surrounding *R. v. Brown*

Following the SCC decision in *R. v. Brown*, there existed confusion and misunderstanding among the general public about its actual impact and consequences.²⁷ There was a wave of misinformation, especially on social media and among young people.²⁸ For example, many appeared to believe that simple intoxication was now a defence for sexual assault, when it is not.²⁹ As explained by Jennifer Dunn of the London Abused Women’s Centre,

23 For example, see JUST, [Evidence](#), 20 October 2022 (Jennifer Dunn, Executive Director, London Abused Women’s Centre) (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 27 October 2022 (Kerri Froc, Associate Professor, University of New Brunswick, As an Individual) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

24 JUST, [Evidence](#), 20 October 2022 (Jennifer Dunn, Executive Director, London Abused Women’s Centre).

25 For example, see JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

26 JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

27 For example, see JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 20 October 2022 (Eric Dumschat, Legal Director, Mothers Against Drunk Driving (MADD Canada)) (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Holly Foxall, Program Director, Action Now Atlantic) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

28 For example, see JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada); JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

29 For example, see JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds).



some women who contacted them after *R. v. Brown* were concerned “that perpetrators, mostly men, might automatically think that they will not be held responsible if they are intoxicated.”³⁰ In addition, some wondered whether this defence applied in impaired driving cases, when it cannot.³¹

These beliefs have caused public concern and distress, notably among victims who had traumatic memories resurface.³² As the Minister of Justice pointed out, one of the reasons for fast tracking Bill C-28 was to counter this misinformation.³³

However, public misconceptions surrounding *R. v. Brown* and the new *Criminal Code* provision can have serious consequences. For example, some victims could end up deciding not to report a sexual assault if the offender was under the influence of intoxicants, if they think that they would not be believed or that the offender would be able to easily raise the defence of extreme intoxication successfully.³⁴ This is a particularly worrying consequence since it was pointed out to the Committee that approximately only 6% of sexual assaults are reported to the police in Canada.³⁵

In this regard, some witnesses stressed the importance of the public understanding the new section 33.1 of the *Criminal Code* and to communicate a clear message to the public about the essence of the legislation and the actual consequences of *Brown*.³⁶ As Holly Foxall, Program Director of Action Now Atlantic, put it, “[h]ow people understand

30 JUST, [Evidence](#), 20 October 2022 (Jennifer Dunn, Executive Director, London Abused Women’s Centre).

31 JUST, [Evidence](#), 20 October 2022 (Eric Dumschat, Legal Director, Mothers Against Drunk Driving (MADD Canada)).

32 JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

33 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

34 For example, see JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds); JUST, [Evidence](#), 27 October 2022 (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual).

35 For example, see JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds); JUST, [Evidence](#), 20 October 2022 (Jennifer Dunn, Executive Director, London Abused Women’s Centre). See also Adam Cotter, [Criminal victimization in Canada, 2019](#), Canadian Centre for Justice and Community Safety Statistics, Statistics Canada, 25 August 2021.

36 For example, JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Michele Jules, Executive Director, Manitoba Prosecution Service) (Holly Foxall, Program Director, Action Now Atlantic); JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

laws can greatly impact behaviours and cultures within our communities, so it's essential to have clear and easy-to-interpret information around these laws."³⁷

Benjamin Roebuck, Federal Ombudsman for Victims of Crime, indicated that "[t]here is still work to do in terms of communicating clearly with the public so that we can root out some of the misconceptions that were present in that period of time."³⁸ He stressed the importance of clear, easily understood language in the legislation, and suggested that having a plain language summary at the beginning of the bill or in the *Criminal Code* that articulates the essence of the legal language that follows could help clarify matters.³⁹

Some witnesses also pointed out that community-based organizations can play an important role in reaching out to the public to raise awareness and counter misinformation, but they need funding to do so.⁴⁰

Some witnesses also stressed how important it is for the Department of Justice to communicate more with the public, in general, including young people, about SCC decisions and their impact.⁴¹ In particular, Farrah Khan, Executive Director of Possibility Seeds, said that "[w]hen this comes out or when anything comes out that will affect survivors, we have to think about the accompanying communications plan so that people are not spreading more misinformation that will hurt survivors."⁴²

Some witnesses also said that it is important to educate, train and guide those in the justice system, including prosecutors and police, to ensure that the new law is properly enforced.⁴³

37 JUST, [Evidence](#), 31 October 2022 (Holly Foxall, Program Director, Action Now Atlantic).

38 JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

39 Ibid.

40 For example, see JUST, [Evidence](#), 27 October 2022 (Kerri Froc, Associate Professor, University of New Brunswick, As an Individual); JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women's Legal Education and Action Fund).

41 For example, see JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women's Legal Education and Action Fund) (Holly Foxall, Program Director, Action Now Atlantic).

42 JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds).

43 For example, see JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women's Legal Education and Action Fund); JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).



3.3 Possible Options in Response to *R. v. Brown*

With respect to the two legislative options identified by the SCC in *R. v. Brown*, the Minister of Justice indicated that the second option, amending section 33.1 of the *Criminal Code* to create a new standard of criminal negligence, was preferred over creating a stand-alone offence of criminal intoxication. First, the chosen solution allows a conviction for the commission of violent offences and will “hold offenders accountable.”⁴⁴ Second, it “contained known standards” and “for judges or Crown prosecutors or defence attorneys it had less potential for unforeseen consequences.”⁴⁵ Chelsea Moore of the Department of Justice presented some of the disadvantages of creating a separate offence of dangerous intoxication, noting that “the person would not actually be convicted of the underlying offence of violence, such as sexual assault or assault. They would instead be convicted of dangerous intoxication” and they might not have “the same stigma or might not get the same range of sentencing that they would if they were charged with the underlying offence of sexual assault.”⁴⁶ She also indicated that it would be very difficult for the Crown to prove such an offence, considering that normally only the accused has possession of the evidence of their intoxication.⁴⁷

Michele Jules, Executive Director of the Manitoba Prosecution Service, agreed with the government’s choice to pursue the option of a new standard of criminal negligence, noting the risk that creating a separate intoxication offence could criminalize substance abuse or poverty.⁴⁸

For some witnesses, Parliament was not necessarily bound to the SCC’s words and did not have to choose between the two options suggested in *R. v. Brown*, but could fulfill its legislative role by adopting what it considered as the most appropriate option to achieve its objective in a constitutional manner.⁴⁹

44 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

45 Ibid.

46 JUST, [Evidence](#), 24 October 2022 (Chelsea Moore, Counsel, Criminal Law Policy Section, Department of Justice).

47 Ibid.

48 JUST, [Evidence](#), 31 October 2022 (Michele Jules, Executive Director, Manitoba Prosecution Service).

49 JUST, [Evidence](#), 27 October (Kerri Froc, Associate Professor, University of New Brunswick) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

3.4 New Standard of Criminal Negligence

Several witnesses who appeared as part of this study commented on the centrepiece of Bill C-28: the new standard of criminal negligence set out in section 33.1 of the *Criminal Code*.

During his appearance, the Minister of Justice said that criminal negligence is a well-understood and accepted minimum standard that is used in other *Criminal Code* offences to establish the guilt of the accused.⁵⁰ He explained how new sections 33.1(1) and (2) of the *Criminal Code* work in practice: in order to prove extreme intoxication, under a common law rule, the accused must satisfy the court that, on the standard of proof of the balance of probabilities and through expert evidence, they were in a state of extreme intoxication when they committed the violent offence. If the accused is successful, the Crown will then have to prove that the accused was not in a state of extreme intoxication or that before they were in a state of extreme intoxication, they departed markedly from the standard of care expected of a reasonable person in the circumstances with respect to the consumption of intoxicating substances. Then, the court will have to make a contextual analysis of the circumstances based on an objective standard, with possible factors to consider including “the environment, the nature and the quantity of substances consumed, the individual’s state of mind, as well as measures taken to avoid the risk, if any.”⁵¹

However, over the course of the study, some witnesses stated that section 33.1(2) of the *Criminal Code* will be difficult, if not impossible, to apply given that the Crown will need to prove the objective foreseeability of the risk of harm.⁵²

Professor Isabel Grant said that the reason objective foreseeability of the risk is impossible to prove

is that extreme intoxication is more likely to lead to unconsciousness or sleep or some other response on behalf of the accused. Violence is not a common response to extreme intoxication. What that means is that an accused can always say, “I’ve been intoxicated

50 JUST, *Evidence*, 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada) (Matthew Taylor, General Counsel and Director, Criminal Law Policy Section, Department of Justice).

51 JUST, *Evidence*, 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

52 For example, see JUST, *Evidence*, 27 October 2022 (Isabel Grant, Professor, As an Individual) (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual). Readers may recall that section 33.1(2) of the *Criminal Code* provides that “[f]or the purposes of determining whether the person departed markedly from the standard of care, the court must consider the objective foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person.”



before, and I wasn't violent then, so how could I have foreseen that I would be violent this time?" or "I've never been extremely intoxicated before, so how could I possibly have foreseen that this time it would lead to violence?"

When you're dealing with relatively rare events, having a standard of objective foreseeability of harm is completely unworkable. So, unless you have an accused who's consumed the same amount of drugs and alcohol in the same circumstances and committed violence in the past, it's almost never going to be reasonably foreseeable that harm to another person would result.⁵³

University of Ottawa professor Elizabeth Sheehy added the following:

I think the difficulty with this legislation is that it suggests the Crown has to prove the foreseeability of loss of control and risk of harm. In particular, I think the second standard is going to be impossible for the Crown to prove. They're going to have to prove it beyond a reasonable doubt, and that's a very high standard of proof. The Crown's going to need two experts, at least, to counter the accused person's two experts. I think proving that a particular drug was likely to lead to violence is impossible. There are no studies, for example, that demonstrate links between specific drugs and crimes of violence.⁵⁴

Some witnesses explained that section 33.1(2) of the *Criminal Code* requires the court to consider both the objective foreseeability of the risk of harm and the risk of extreme intoxication, which in their view is excessive.⁵⁵ University of New Brunswick professor Kerri Froc said that "the Supreme Court in *Brown* [is] using risk of harm and risk of extreme intoxication disjunctively."⁵⁶

Suzanne Zaccour, Head of Feminist Law Reform with the National Association of Women and the Law, made the following comments:

Certainly the argument can be made that if it's foreseeable that you're going to lose control.... If we believe the necessity of this defence, and the whole premise is that

53 JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual). See also JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

54 JUST, [Evidence](#), 27 October 2022 (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual).

55 JUST, [Evidence](#), 27 October 2022 (Kerri Froc, Associate Professor, University of New Brunswick, As an Individual) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

56 JUST, [Evidence](#), 27 October 2022 (Kerri Froc, Associate Professor, University of New Brunswick, As an Individual).

when you lose control, you lose control and there is no telling what you're going to do, then it seems sufficient to hold someone responsible if the intoxication was voluntary.⁵⁷

Some witnesses also expressed concern that police and prosecutors, in deciding to lay charges or plea bargain, may be influenced in cases where the accused was known to be intoxicated, given that they will have to consider the defence under section 33.1 of the *Criminal Code* and that it will be difficult for the Crown to prove that the accused departed from the standard of reasonable care.⁵⁸ In particular, some witnesses pointed out that a prosecutor or police officer may decide not to lay charges where the accused was highly intoxicated.⁵⁹ On this point, University of New Brunswick professor Kerri Froc said that it will be difficult to collect data “on how many charges weren’t laid or how many prosecutions weren’t done because a defence of extreme intoxication is in the offing,” hence the importance of fine-tuning the bill “and mak[ing] sure you don’t have these unintended consequences.”⁶⁰

To remedy these issues, Isabel Grant recommended, as a preferred option, removing section 33.1(2) from the *Criminal Code*, since it is not necessary as “[t]he standard that the Crown has to prove to remove the defence is already in subsection 33.1(1)” and that “[j]udges know that they have to consider the circumstances.”⁶¹ As an alternative, she recommended changing the “foreseeability” standard to require “foreseeability of a loss of control over one’s actions instead of foreseeability of harm”⁶² and insert “a reverse onus clause that requires the accused to show whether or not the harm was foreseeable.”⁶³

57 JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

58 For example, see JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual) (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

59 For example, see JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

60 JUST, [Evidence](#), 27 October 2022 (Kerri Froc, Associate Professor, University of New Brunswick, As an Individual).

61 JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual). See also the testimony of Suzanne Zaccour, who said that this option was interesting: [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

62 JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual). See also JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

63 JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual).



In response to suggestions involving a reverse onus, Chelsea Moore of the Department of Justice pointed out that the presumption of innocence is protected by the Charter and that “any time a person may be convicted without a reasonable doubt, courts would likely find there to be a violation of the presumption of innocence that would then need to be justified under section 1 of the Charter.”⁶⁴ In this respect, she stressed how important it is to consider whether a reverse onus would be justifiable under section 1 of the Charter.⁶⁵ Similarly, Pam Hrick raised the following point:

My concern with any sort of reverse onus at this point is the large risk that the Supreme Court would find that to be unconstitutional. What I do appreciate about how this particular bill was tailored and implemented is the nuance that it allows to be brought to consideration of the defence. All the relevant factors that are able to be properly taken into account I think ensure the constitutionality of the legislation.⁶⁶

In addition, the Minister of Justice indicated that the new section 33.1 of the *Criminal Code* is fully applicable and disagreed with the argument that it will be difficult to enforce this new provision given that it will be difficult for the Crown to prove that the risk of violence was foreseeable. He said that while section 33.1 of the *Criminal Code* requires only “a ‘risk’ of violent loss of control,”⁶⁷ prosecutors are currently successful in obtaining convictions using other *Criminal Code* provisions which have higher evidentiary thresholds that require evidence that a particular outcome be likely, such as section 215 of the *Criminal Code*. Chelsea Moore said the following:

[T]he level of risk doesn’t need to be probable or even more likely than not. It’s not whether an accused should have known that the drug “would” lead to a violent loss of control but whether the accused should have known that the drug “could” lead to a violent loss of control, and the court’s going to look at this from the perspective of a reasonable person. A reasonable person is not someone who’s going to testify as to what they knew or what they did. It’s going to be assessed on a case-by-case basis.⁶⁸

Representatives of the Manitoba Prosecution Service were also optimistic that the new section 33.1 of the *Criminal Code* would be effective, noting that it would allow for

64 JUST, [Evidence](#), 24 October 2022 (Chelsea Moore, Counsel, Criminal Law Policy Section, Department of Justice).

65 Ibid.

66 JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

67 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

68 JUST, [Evidence](#), 24 October 2022 (Chelsea Moore, Counsel, Criminal Law Policy Section, Department of Justice).

convictions based on the evidence on file.⁶⁹ Michele Jules, Executive Director of the Manitoba Prosecution Service, said that the Service was confident that they “can make the case for those who negligently consume those drugs to excess and find themselves in the situation where they endanger the safety of other members of our community, and be able to hold them accountable with this legislation.”⁷⁰ She indicated that they believe that

the inherent dangerousness of certain drugs themselves will be evidence that will assist us in terms of the effects that we would expect everyone to have some concept about...and can be reasonably expected to potentially lose control and have a violent loss of control.⁷¹

She also said that in some cases, it would be possible to use an accused’s court history to prove that it was foreseeable that they would act in a violent way if they became extremely intoxicated.⁷²

Nevertheless, with a view to improving the legislation, Ami Kotler, General Counsel with the Manitoba Prosecution Service, suggested that

the current wording of the legislation I think arguably does place unnecessary emphasis on the foreseeability of violence as a stand-alone requirement. The use of the word “and” generally is a strong signal to judges interpreting legislation that these are independent elements, as opposed to simply a way of describing what kind of losses of self-control the legislation is looking to address.

That might cause a concern if a judge were to interpret the legislation as saying they need proof that this particular substance in this particular dosage will cause people to become violent, because the Crown is rarely going to have precise information about the toxicology of what an accused was taking. Also, street drugs are unpredictable. They are constantly evolving. It makes it hard to get expert evidence even if you did have that kind of information available to you.

So if you are looking for ways to amend the legislation, you may want to consider something along the lines of “foreseeability of risk of a violent loss of self-control”. In the *Brown* decision, at paragraph 119, Justice Kasirer refers to the “choice to voluntarily [consume] intoxicants where that choice creates a risk of violent crime”, as opposed to

69 JUST, [Evidence](#), 31 October 2022 (Michele Jules, Executive Director, Manitoba Prosecution Service) (Ami Kotler, General Counsel, Manitoba Prosecution Service).

70 Ibid.

71 JUST, [Evidence](#), 31 October 2022 (Michele Jules, Executive Director, Manitoba Prosecution Service).

72 Ibid.



setting out self-control and harm as independent requirements that both need to be proved beyond a reasonable doubt.⁷³

3.5 Other Witness Observations and Recommendations Regarding the Wording of Section 33.1 of the *Criminal Code*

Over the course of the study, several witnesses made other specific recommendations regarding the wording of section 33.1 of the *Criminal Code*:

- **Alcohol as the only intoxicating substance as stated by the SCC:** In the *Brown* decision, the SCC stated the following:

While s. 33.1 refers to intoxication generally, without formally distinguishing between licit or illicit substances, the preamble to Bill C-72 states that “the Parliament of Canada . . . is aware of scientific evidence that most intoxicants, including alcohol, by themselves, will not cause a person to act involuntarily”. [...] Although both *Daviault* and Parliament were focussed on “drunkenness”, the parliamentary record and facts of this appeal and the *Sullivan* and *Chan* appeals suggest that the defence of extreme intoxication akin to automatism will generally not be relevant in cases involving alcohol alone.⁷⁴

Likewise, some witnesses also testified that when a person ingests alcohol, it is likely not possible for them to reach a state of extreme intoxication akin to automatism and this should have been addressed in the bill.⁷⁵ In particular, Suzanne Zaccour of the National Association of Women and the Law, recommended “that the law explicitly state that alcohol is presumed not to cause extreme intoxication.”⁷⁶

- **Codification of the rules of evidence in *Daviault*:** Some witnesses noted that it would have been desirable to codify in section 33.1 of the *Criminal Code* the findings of *Daviault* that “the burden of proof is on the accused

73 JUST, *Evidence*, 31 October 2022 (Ami Kotler, General Counsel, Manitoba Prosecution Service).

74 *R. v. Brown*, 2022 SCC 18, paras. 61 and 62.

75 JUST, *Evidence*, 27 October (Kerri Froc, Associate Professor, University of New Brunswick) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

76 JUST, *Evidence*, 27 October (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

when he is raising a defence of extreme intoxication”⁷⁷ or else “there is a risk that some judges will drop that.”⁷⁸

- **Introduction of a threshold hearing to determine whether the defence provided in section 33.1 of the *Criminal Code* can be raised by the accused at trial:** Over the course of the study, a question was raised as to whether it would be advisable to develop a statutory provision similar to sections 276 and 278.93 et seq. of the *Criminal Code*,⁷⁹ which would provide that before the defence of extreme intoxication could be raised, a threshold hearing before the judge must be held, and that at this threshold hearing the victim could obtain their own lawyer so that they could be heard. Rhiannon Thomas of the Women and Harm Reduction International Network said that this was a good consideration, but that there would need to be financial support for the victim to be able to access a lawyer.⁸⁰ Benjamin Roebuck said that this is an intriguing proposal and indicated the following: “It causes distress to go through the court process. I think if there's a way to consider it early, without needing to go through a full trial, that is valuable and it merits more study.”⁸¹ He added that a better job needs to be done in exploring the standing of victims in the court process.⁸²
- **Extreme intoxication bordering on insanity:** Université de Montréal professor Hugues Parent recommended that section 33.1(4) of the *Criminal Code* be amended to define extreme intoxication as “intoxication akin to automatism or insanity.”⁸³ During his appearance, he explained that by limiting extreme intoxication in section 33.1(4) of

77 JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual).

78 JUST, [Evidence](#), 27 October 2022 (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual).

79 These sections provide the rules surrounding the admissibility of evidence with respect to a sexual assault complainant’s sexual activity and require a hearing to have a judge determine whether evidence intended to be adduced by or on behalf of the accused is admissible. [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 276 and 278.93.

80 JUST, [Evidence](#), 14 November 2022 (Rhiannon Thomas, Women and Harm Reduction International Network).

81 JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

82 Ibid.

83 JUST, [Brief](#), Hugues Parent, 2 November 2022.



the *Criminal Code* to cases akin to automatism, “cases of intoxication that do not affect the accused’s ability to consciously control behaviour but which prevent that person from appreciating that his/her act is wrong,”⁸⁴ such as psychotic episodes, are excluded. According to him, a person who commits an offence in that state could then “plead extreme intoxication at the threshold of insanity and they would be released, plain and simple.”⁸⁵

3.6 Practical Effects of New Section 33.1 of the *Criminal Code*

During his appearance, the Minister of Justice said that the defence provided in section 33.1 of the *Criminal Code* is “rarely used as a defence, and even more rarely invoked successfully,” particularly because of the burden of proof on the accused and that “only a very rare set of circumstances would put you [in a state of extreme intoxication].”⁸⁶ He said that “[t]here have been no reported cases since we’ve amended the legislation. Since the earlier Supreme Court decision, it was only rarely used, and was very, very infrequently successful.”⁸⁷

Nevertheless, during her appearance, University of Ottawa professor Elizabeth Sheehy said that “the defence of extreme intoxication will be invoked most frequently for crimes of male violence against women, with consequential effects for the reporting, policing, and prosecution of these crimes.”⁸⁸ As mentioned earlier, some witnesses were also concerned that prosecutors or police may decide not to lay charges in cases where an accused is highly intoxicated if they consider new section 33.1 of the *Criminal Code*.⁸⁹ Since it is important to look at how the law is actually applied, some witnesses recommended that data be collected on the use of the defence.⁹⁰ Benjamin Roebuck recommended that the legislation be reviewed after two years to determine how the

84 JUST, [Evidence](#), 31 October 2022 (Hugues Parent, Full Professor, Université de Montréal, As an Individual).

85 Ibid.

86 JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada).

87 Ibid.

88 JUST, [Evidence](#), 27 October 2022 (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual).

89 For example, see JUST, [Evidence](#), 27 October 2022 (Isabel Grant, Professor, As an Individual) (Elizabeth Sheehy, Professor Emerita of Law, University of Ottawa, As an Individual) (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

90 For example, see JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law); JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

defence has been employed before the courts.⁹¹ Similarly, Suzanne Zaccour of the National Association of Women and the Law recommended “a three-year review of the law.”⁹²

CHAPTER 4: IMPORTANCE OF ADDRESSING OTHER SIGNIFICANT ISSUES IN THE CRIMINAL JUSTICE SYSTEM

Over the course of the study, several witnesses emphasised that amending section 33.1 of the *Criminal Code* to address a specific shortcoming in response to *Brown* is not enough: broader issues related to the criminal justice system, including systemic issues and root causes of violence, need to be addressed while protecting victims and providing services tailored to their needs.⁹³ As explained by Adam Bond, Manager of Legal Services for the Native Women’s Association of Canada, these systemic issues cannot be addressed by changes to the *Criminal Code*: “We need more substantive policies and programs to address the underlying issues.”⁹⁴

In particular, some witnesses suggested that in order to effectively address violence, it is essential to address the various factors that contribute to crime, the disproportionate impact of the criminal justice system on certain groups, and the over-representation of certain groups in the prison system.⁹⁵ As Pam Hrick of the Women’s Legal Education and Action Fund explained,

Canada’s criminal legal system is a site of systemic discrimination. It disproportionately criminalizes Black, indigenous and racialized people while at the same time failing to

91 JUST, [Evidence](#), 14 November 2022 (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime).

92 JUST, [Evidence](#), 27 October 2022 (Suzanne Zaccour, Head of Feminist Law Reform, National Association of Women and the Law).

93 For example, see JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada); JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund); JUST, [Evidence](#), 14 November 2022 (Rhiannon Thomas, Women and Harm Reduction International Network).

94 JUST, [Evidence](#), 20 October 2022 (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada).

95 For example, see JUST, [Evidence](#), 24 October 2022 (Hon. David Lametti, Minister of Justice and Attorney General of Canada); JUST, [Evidence](#), 14 November 2022 (Rhiannon Thomas, Women and Harm Reduction International Network); JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund); JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada).



effectively respond to the high levels of violence faced by members of these same communities.⁹⁶

In addition, some witnesses said that it is important that our laws, policies, programs and the criminal justice system be sensitive to substance abuse issues, particularly in certain marginalized communities, including Indigenous communities, given the legacy of systemic racism and intergenerational consequences of colonization.⁹⁷ As illustrated by Grand Chief Carol McBride, President of the Native Women’s Association of Canada, the overrepresentation of women in the federal prison system is an example of the “links between colonization, systemic discrimination and intergenerational trauma.”⁹⁸ A variety of witnesses referred to data reported by the Correctional Investigator that Indigenous women make up nearly 50% of the incarcerated population in federal institutions despite representing less than 5% of the population of women in Canada.⁹⁹

Not only do Indigenous women make up a large proportion of women incarcerated in federal institutions, they also face a disproportionate likelihood of being victims of violent crime.¹⁰⁰ Over the course of the study, several witnesses reported that certain groups are more likely to be victims of violent crime, including sexual violence. Among the groups identified by witnesses were women and girls, Indigenous women and girls, Two-Spirited people, people of various Indigenous gender identities, transgender people, young people, and people who are socially or economically disadvantaged.¹⁰¹

96 JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

97 JUST, [Evidence](#), 31 October 2022 (Michele Jules, Executive Director, Manitoba Prosecution Service); JUST, [Evidence](#), 20 October 2022 (Jennifer Dunn, Executive Director, London Abused Women’s Centre) (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada).

98 JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada).

99 Office of the Correctional Investigator, [Proportion of Indigenous Women in Federal Custody Nears 50%: Correctional Investigator Issues Statement](#), 17 December 2021; Office of the Correctional Investigator, [Annual Report 2021–2022](#). For example, see JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada) (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund); JUST, [Evidence](#), 14 November 2022 (Rhiannon Thomas, Women and Harm Reduction International Network).

100 JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada).

101 JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada) (Adam Bond, Manager of Legal Services, Native Women’s Association of Canada); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

According to Statistics Canada’s General Social Survey on Victimization,

the rate of violent victimization was nearly twice as high among women (106 incidents per 1,000 women) than men (59 incidents per 1,000 men) in 2019 (Table 3). This difference was driven entirely by sexual assault, the rate of which was more than five times higher among women (50 per 1,000) than men (9 per 1,000) (Chart 4).¹⁰²

Witnesses put forward various recommendations to further protect these groups, such as:

- provide support and adequate funding for education and prevention programs, including those to address sexual assault¹⁰³;
- establish “a fully funded intersectional national action plan to end gender-based violence and violence against women”¹⁰⁴;
- provide victims access to adequately funded, culturally appropriate services, including independent legal advice¹⁰⁵;
- provide Indigenous victims of violence access to adequately funded “community-driven, gender-specific healing and support services”¹⁰⁶; and
- increase funding and access to restorative justice, transformative justice processes and community-based accountability mechanisms.¹⁰⁷

102 Adam Cotter, [Criminal victimization in Canada, 2019](#), Canadian Centre for Justice and Community Safety Statistics, Statistics Canada, 25 August 2021.

103 JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund) (Holly Foxall, Program Director, Action Now Atlantic).

104 JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

105 JUST, [Evidence](#), 14 November 2022 (Rhiannon Thomas, Women and Harm Reduction International Network) (Benjamin Roebuck, Federal Ombudsperson for Victims of Crime, Office of the Federal Ombudsman for Victims of Crime); JUST, [Evidence](#), 31 October 2022 (Farrah Khan, Executive Director, Possibility Seeds) (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund).

106 JUST, [Evidence](#), 20 October 2022 (Grand Chief Carol McBride, President, Native Women’s Association of Canada).

107 JUST, [Evidence](#), 31 October 2022 (Pam Hrick, Executive Director and General Counsel, Women’s Legal Education and Action Fund) (Farrah Khan, Executive Director, Possibility Seeds).



The Committee wishes to highlight the report entitled *Improving Support for Victims of Crime* it tabled in the House of Commons, on 7 December 2022, in which it made several recommendations, among others, to improve services to victims of crime and expand restorative justice opportunities.¹⁰⁸

CONCLUSION AND COMMITTEE RECOMMENDATIONS

Bill C-28 was passed in a specific context given the urgency of responding to *R. v. Brown* to protect victims of violent crimes committed while intoxicated and to hold perpetrators accountable. While section 33.1 of the *Criminal Code* has become law, the Committee recognizes that the issue is not settled. For this reason, the Committee held hearings to hear the perspectives and recommendations of a variety of witnesses.

The Committee has therefore formulated its recommendations based on the evidence heard to ensure that section 33.1 of the *Criminal Code* fulfills Parliament's objective constitutionally. The Committee agrees that enacting the new section 33.1 of the *Criminal Code* was only one piece of the puzzle: there are larger issues within the criminal justice system and it is important to protect and provide adequate services to victims and to address the root causes of violence.

In light of the testimony heard, the Committee recommends:

Recommendation 1

That the Department of Justice launch a public awareness campaign to communicate in plain language the conclusions of the Supreme Court of Canada decision in *R. v. Brown*, the new version of section 33.1 of the *Criminal Code* and its practical effects.

Recommendation 2

That the Government of Canada ensure that a public communication plan is in place and implemented to accompany the decisions of the Supreme Court of Canada when they have significant consequences for the public, including victims of crime.

Recommendation 3

That the Department of Justice compile data on the use of the defence provided in section 33.1 of the *Criminal Code*.

108 JUST, *Improving Support for Victims of Crime*, Seventh Report, 7 December 2022.

Recommendation 4

That Parliament carry out a formal review of the legislation amending section 33.1 of the *Criminal Code* three years after it came into force to ensure that the application and interpretation of this new provision adequately fulfills Parliament’s objectives, and to evaluate its impact on victims of crime. During this review, Parliament should consider the option of amending the legal standard of criminal negligence in new section 33.1 of the *Criminal Code* to require only foreseeability of a loss of control of an individual’s actions, instead of “foreseeability of the risk that the consumption of the intoxicating substances could cause extreme intoxication and lead the person to harm another person”.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
London Abused Women's Centre Jennifer Dunn, Executive Director	2022/10/20	32
Mothers Against Drunk Driving (MADD Canada) Eric Dumschat, Legal Director	2022/10/20	32
Native Women's Association of Canada Adam Bond, Manager of Legal Services Carol McBride, President	2022/10/20	32
Department of Justice Joanne Klineberg, Senior Counsel Criminal Law Policy Section Chelsea Moore, Counsel Criminal Law Policy Section Matthew Taylor, General Counsel and Director Criminal Law Policy Section Hon. David Lametti, Minister of Justice and Attorney General of Canada	2022/10/24	33
As an individual Dr. Kerri A. Froc, Associate Professor University of New Brunswick Prof. Isabel Grant, Professor University of British Columbia Prof. Elizabeth Sheehy, Professor Emerita of Law University of Ottawa	2022/10/27	34
National Association of Women and the Law Suzanne Zaccour, Head of Feminist Law Reform	2022/10/27	34

Organizations and Individuals	Date	Meeting
As an individual Hugues Parent, Full Professor Université de Montréal	2022/10/31	35
Action Now Atlantic Holly Foxall, Program Director	2022/10/31	35
Manitoba Prosecution Service Michele Jules, Executive Director Ami Kotler, General Counsel	2022/10/31	35
Possibility Seeds Farrah Khan, Executive Director	2022/10/31	35
Women's Legal Education and Action Fund Pam Hrick, Executive Director and General Counsel	2022/10/31	35
Office of the Federal Ombudsman for Victims of Crime Benjamin Roebuck, Federal Ombudsperson for Victims of Crime	2022/11/14	36
Women and Harm Reduction International Network Rhiannon Thomas	2022/11/14	36

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

Parent, Hugues

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 32 to 36, 43 and 44](#)) is tabled.

Respectfully submitted,

Randeep Sarai
Chair

