1. **How did Canadians get the law regarding the drunkenness defence changed?**

   Canadians had to show outrage as this was a mockery to society. This was seeing as allowing individual to make an extenuating and till an excuse to sexual assault individuals. This drunkenness defense change caused havoc in the Canadian society and it created a substantial and continuing commotion; Canadian saw both the legal excuse and the drunkenness as defense as a not fair representation of the society values and turn its humor through the astonishment, indignation and annoyance.

   Angela Paglia and Robin Room [1] have studied the public’s perception about alcohol as a causal agent in aggressive behavior, and to assess how these beliefs are associated with notions of responsibility and the excuse-function of alcohol. They have studied the referred legal case, and in between many very interesting conclusions, they stress the public’s perception in relationship with this case:
   - The study suggests that the expectancy that aggression or violence can result from drinking is quite widespread.
   - While alcohol is vested with such powers, few will honor the alcohol excuse.
   - The present study found that the greater the causal power attributed to alcohol, the more likely the intoxicated person will be held accountable.
   - Further, attempts should be made to connect such beliefs to actual drinking-aggression incidents.

   So, clearly, this change in drunkenness defense is not supported by the society.

2. **To whom should Canadians turn if they feel that case law is going in the wrong direction?**

   Criminal law is primarily a federal matter, following the common law system. The precedents cases play a very important role setting precedents and guiding for future judgments. Judges also make laws in any verdict. Court decisions and conventions are parts of the Canada’s Constitution under the common law system.

   Canadian could pressure their rules (e.g. MP’s, cabinet members) to change the common law through legislation (both statutes and regulations) if they believe that some law is going in the wrong direction. The paramount of this pressure in the Canadian democracy is the vote, and many proves of that are found in the Canadian history. In particular for
In this case, the Criminal Code was amended, considering the gap that this case generated in the public perception; the Parliamentary Supremacy was put in place.

But due to the Common Law mechanisms getting feedback of the evolutionary changes in the society, the society could also put pressure on judges trying to keep on track the direction that the law should be going. The Canadian's constitution is continually reformed, and improved through court decisions and conventions. This evolution, such as any natural evolution, sometimes could generate a sample that it moves in the wrong direction (e.g. referred case) or so far in the time in that was taken (e.g. use of bikini in the ‘50 in public beaches). The most important is that the system allows playing all the possible mechanisms in the auto-correction of these cases, but allowing to evolve to the system. In the referred case, these mechanisms have acted, and we could see the public pressure to judges and how they have reacted [2]:

- Five weeks after the decision was announced, the Toronto Star reported that judges across Canada admit to being under fire because of the perception that the Supreme Court of Canada has given drunk men an excuse to rape women.
- "It's wreaked havoc on the public view of judges," a British Columbia judge said. "Everywhere you go, you get it. You can't go for a coffee or to lunch or a party without being attacked."
- "I'm constantly being confronted by people."
- Most of the judges interviewed anonymously by the Star backed the Supreme Court decision. But an Alberta judge added, "I don't know how you alleviate the public concern, because the public is already so poisoned by the decision. They have jumped on it with a vengeance."
- An Ontario judge felt that "the special-interest groups are whipping it up, but they are taking it out of context. It's a fear campaign. If this case had involved a robbery or a simple assault there wouldn't be all this clamour." Another Ontario judge, however, was more critical of the decision: "The law is more than just logic with blinkers on."
- The furor was stoked by reports of a series of decisions where the Daviault precedent was invoked by trial-court judges to dismiss charges.

Finally, we can see in this referred case how both mechanisms have acted as Canadian society reaction; first of all the embarrassing feeling of judges face on this verdict, and second the amendment that the Criminal Code incorporate in 1995 establishing explicitly the responsibility of the act under self-induced intoxication.

In [3], we can read: in the 13 months between September 1994 and September 1995, the legal status of a defense of self-induced intoxication in Canadian criminal law was drastically altered--twice. First, a landmark ruling of the Supreme Court of Canada made it possible for the first time to use the defense of intoxication (under specific circumstances) for crimes of general intent; second, the Government of Canada enacted legislation to restrict use of this defense to crimes involving bodily harm. This issue of Contemporary Drug Problems focuses on the issue of self-induced intoxication as a legal defense for criminal offenses in Canada. The individual papers in this collection describe the Supreme Court decision, the response to this decision by the public and the scientific
community, and, ultimately, new legislation enacted by the Canadian Parliament in response. The case in question, Daviault v. R., involved an alleged violent sexual assault…..

3. Name and explain the legal concept this illustrates.

The s 33.1 of the Criminal Code states the “self-induced intoxication” concept. This section states that it is not a reason of defense the self-induced intoxication. This section points out the lack of the duty of care in the voluntary action of self-induced intoxication. The code recognizes that the intoxication could render a person in a state of not full control of his/her actions, but it represents a breach of his/her duty of care to fall in this state when interferes with the integrity of another person. The s 33.1 also does mention to the standard of reasonable care generally recognized in Canadian society. This concept was discussed in the question 2.

The amendment of de Criminal Code was introduced as Bill C-72 in the parliament; this process illustrate the concept of Parliamentary Supremacy that requires that we look to the enactments of the federal parliament or provincial legislatures as the primary source of law.

References:

