

*Government Orders*

If that is the case then I think that would be a real problem. That would be a very important and serious problem because that would not be the intent. I do not think it would be taken into consideration. The precedent that may be used is the Young Offenders Act, but that does not relate to a preamble. That relates to some general thought in the body of the legislation itself. I think that is important.

I also think we have to examine in committee the whole idea of a preamble to our legislation. Is it helpful? Do we really want to spoon-feed the judges? Is it going to be necessary? If we do it on this bill, are we going to have to do it on other bills? Is it really something we want to do? Is it absolutely necessary?

It is an important question. It is a precedent. It should be discussed. I think that preambles are something that can be a problem if we do not deal with this very novel concept as far as this type of action is concerned.

The other aspects that I want to talk about relate to the actual consent and to the other matters addressed by the minister. As I mentioned, it is very important to have the definition of consent because in the definition we are saying to the judges: "This is what we determine consent. We are not leaving it to you to define consent. This is consent". The judges will then look upon the definition and determine the actual definition as to whether or not consent has been given. It is a bold innovation.

I want to read the section that deals with the exceptions to consent.

Section 273.1(2) says:

(2) No consent is obtained, for the purposes of sections 271, 272, and 273, where

(a) the agreement is expressed by the words or conduct of a person other than the complainant;

(b) the complainant is incapable of consenting to the activity by reason of intoxication or other condition;

(c) the complainant engages in the activity by reason of the accused's abuse of a position of trust or authority;

(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

(e) the complainant expresses, by words or conduct, a revocation of agreement to engage in the activity.

It is important that these exceptions be well drafted and be tight. If they are not we could cause a problem which would lead to the actual well-being of the legislation itself.

We want to protect women in situations where otherwise they would have no protection whatsoever. We must remember that 276 has been struck down. We want to bring forward law that will give this protection. Not the same protection as 276. Maybe better protection, maybe not as good protection, but certainly better protection than exists without some form of law.

For that reason we have to examine this wording. When it gets to committee I am going to be interested in discussing this to make sure that the wording is as it should be. I want to mention one of the exceptions, the second one. It says:

(b) the complainant is incapable of consenting to the activity by reason of intoxication or other condition;

A couple of questions arise. For instance, what other condition? The other one is: What level of intoxication?

Of course it cannot be an objective test in a situation like this. I do not mean to demean the situation but they cannot have breathalyzers. There is no means of objectively determining the level. Therefore it must be a subjective test.

Is it fair to have intoxication not available to the accused as an offence by saying he was too intoxicated. They cannot say that under this bill. They cannot use that as an excuse for the sexual assault. Nor can they use as consent the fact that the complainant was intoxicated. If the complainant was intoxicated and she still consented, that is not consent under this bill.

The fact of the matter is whether this is wrong. I do not disagree frankly that the intoxication factor should be denied to the accused as an excuse. I think that is fair.

There will be some question undoubtedly as to whether the ability to perform the actual act could have been possible under a high level of intoxication. There will be some people who will bring forward that concern. I think that is valid. That is the sort of concern we want to see and hear in committee.