

*Government Orders*

brought in the other regulations to assure that these common law rules in 276 would not reappear.

There are a lot of people who have said that this was terrible, that this decision in the *Seaboyer v. The Queen* case was wrong, that it did away with 276 and that was the wrong way to go.

In the relationship we have in Canada we make the laws and the Supreme Court of Canada judges in conjunction with the Charter of Rights and Freedoms what is right not only, as the Minister of Justice said, for the complainant but for the accused as well. It is important that fundamental justice be applied. If it can be found by the Supreme Court of Canada that this fundamental justice is being breached, regardless of whether it is the complainant or the accused it is important to remedy it.

While we want justice for the complainant, we also want to make sure that the accused's rights are protected. This is not just going to be the case in rape and sexual assault. It is going to be the case ultimately in other areas whereby the rights of one party or the other can be abused.

It is fundamental that we not allow an abuse of our law to continue to exist in this country because once it exists it can exist more easily a second time and before we know it we have the erosion of fundamental rights and justice in Canada.

It was evident that we could not leave the situation as a result of the *Seaboyer* case the way it was. As a result in December 1991 the minister brought forward Bill C-49. It has a few aspects, but particularly it was the admissibility of the past activity of the complainant. This bill relates to three main areas. First, it provides for strict guidelines in determining admissibility of the past sexual history as evidence. Second, it outlines the procedure that must be followed in admitting such evidence. Third and not least, it defines exactly what is consent. This is important because the definition of consent is fundamental to any law that is going to be brought forward to deal with this situation.

I not only want to talk about the fact that we in this party support the legislation most heartily. I also want to talk about the fundamental justice of what is being

attempted here. All parties would agree that this is important and all parties would agree that this is what we must strive for.

I want to point out some areas about which I have some concern. The first one is a concern, probably because of the fact that there has been no precedent, that for the first time in an amendment to the Criminal Code there has been included a preamble which discusses the context and rationale of the legislation. To my knowledge there has never been an amendment to the Criminal Code which has had a preamble. It is a very interesting precedent.

• (1600)

The question is whether it is helpful. Because of the sensitivity to court challenge and having the legislation thrown out, as I see it the government is attempting to clarify what its intention is with respect to the legislation. It is attempting to define the social importance and trying to show the court which consists mainly of men that this is an important piece of legislation, not that this represents fundamental justice but that it must represent fundamental justice for women who are placed in a very vulnerable position in our society.

We cannot say that women and men have the same problems in our society. Any man who has walked home after dark from a bus stop to his place of residence would never understand that a woman in the same situation may very well be in constant fear for her safety and maybe even for her life. A man would not understand that for every step the woman takes past every tree and every bush, every pole and every house, she may be well thinking: Is there somebody behind that object who would endanger my safety? When she gets into her apartment building, is there going to be somebody in the elevator who is going to be a problem? Is there somebody on her floor? Perhaps in certain areas. A man does not understand that.

I think government is attempting to set out for the justices, for the judges, exactly what this is like. There are those who say that a preamble can have a substantive effect and that it will be taken into consideration such as a clause in the legislation would be in reaching a decision.