The Minister of Justice intends that the preamble to the bill will be used for guidance by trial judges and lawyers alike. I would point out, however, that to my knowledge the preamble to a bill is not a direction that courts can or should follow. My understanding of preambles to bills is that they are simply so many words put together which any court or any judge across the land essentially would ignore. The minister may be overly sanguine in thinking it is going to act as a guide to judges and lawyers alike.

• (1850)

All members in this House hope the fact that an accused has to make a written application to the court for a hearing to determine the admissibility of sexual conduct evidence will help. The prosecutor and the court clerk would then have seven days to review the submission before any hearing to determine admissibility. Such evidence would have to be of specific instances of sexual activity, be relevant to an issue to be proved at trial and have significant probative value not "substantially outweighed by the danger of prejudice against the complainant". There would, of course, be a publication ban on all evidence obtained in such a submission.

There are matters that the court should consider in determining whether to admit such evidence. The Supreme Court of Canada will presumably have to decide whether this is valid under the charter of rights.

The boldest feature of the bill is its attempt to define consent. It defines it in the bill as "the voluntary agreement of the complainant to engage in sexual activity but also removes or limits the defence of honest but mistaken belief in consent". It also, thank goodness, invalidates consent obtained in a number of circumstances which I will not go into. It removes the defence of mistaken belief in consent where the belief was based on the accused's self-induced intoxication or recklessness or wilful blindness. It also adds "all reasonable steps" must be taken by the accused to ascertain consent. It places an evidentiary burden upon the accused using the defence of mistaken belief and consent.

I think it is clear, it seems to be clear, to everybody in the House that we do need a new law against sexual assault which will deal with the reality of the crime, in some cases lifelong devastation on victims who find themselves victims of this type of horrific crime. I think that it will be no surprise to other members—and my time is up too, or virtually up—that we will be voting for this bill and hoping that the courts, defence counsel and Crown counsel across the country and above all the victims of these crimes will be significantly better off with its passage.

Mr. George S. Rideout (Moncton): Mr. Speaker, it is a pleasure to speak on this particular bill as I did during second reading and to reiterate what has been said by other of my colleagues that we on this side are supportive of the bill, supportive of its direction and will support the bill when it is voted upon. That is not to say that there are not some concerns, some worries, but as to the general direction and what was trying to be accomplished with the legislative process, we are supportive. Everyone knows that the Supreme Court of Canada struck down the law and there is some question mark as to whether this bill will follow the same fate. It is possible that this legislation is not charter-proof.

When we read the statistics and hear the information as to the number of unreported rapes that occur and the number of rapes that occur and get a sense of the magnitude of the problem, I think we have to go that extra mile to try to come forward with legislation which encourages women to report rapes and encourages the process of reporting and dealing with this particular problem because it is a major problem.

As some have mentioned earlier, I had the privilege of being on the committee that looked at Bill C-36. We met the victims of the Takahashi rape case and realized that perhaps over 150 women were raped and only six to nine were considered for charges. The lesser number were charged. We heard about the trauma that those women went through. Some came forward and reported the rapes and some could not face that reality. We have to put in place a system which makes women feel comfortable in dealing with that particular problem. We have to come up with the necessary support mechanisms to assist the victims. Some of the information that came forward was really quite horrendous as to victimizing the victims throughout the whole process rather than rendering that kind of assistance.

In my opinion, one of the victimizations would be the introduction on a wholesale basis of a person's previous sexual conduct which, in all candour, has nothing to do with the particular case or 99.44 per cent of the time has nothing to do with the particular case before the bar. Therefore, in that sense, it is incumbent upon us to come forward with some legislation to deal with that.