

*Government Orders*

Amendments are also included in the bill to restore basic protections for victims. The public and the jury are excluded from the hearing. The victim cannot be compelled to be a witness, although he or she may voluntarily take the stand. Evidence taken or information given at the hearing shall not be published in any newspaper or broadcast.

I feel very strongly about these provisions. They are essential in order to protect victims from embarrassment, to preserve their privacy and dignity and to encourage their co-operation in prosecutions.

Another key area addressed in the bill concerns the concept of consent. No one can deny that every person has the right to make decisions about their body, including whether or not to engage in sexual activity. Yet historically false assumptions and myths have intruded into the law regarding the issue of consent to sexual activity.

• (1540 )

The press have termed Bill C-49 the no means no bill.

Bill C-49 does much more. The consent provisions are crucial. For the first time in Canadian history the bill defines the type of conduct that constitutes consent in sexual assault cases and specifically lists certain types of situations in which consent is not possible.

[*Translation*]

Consent is defined as the voluntary agreement of the complainant to engage in sexual activity. This definition is the ordinary, common sense meaning of consent. As a matter of law, conduct that falls short of a voluntary agreement is not consent.

Particular situations are specified where, as a matter of law, there is no consent. Specifically, no consent is obtained where: the agreement to engage in the sexual activity in question is given by someone else, not the complainant; the complainant is incapable of consenting because of intoxication or other condition; the complainant engages in the activity because of the accused's abuse of a position of trust or authority; the complainant shows, by words or conduct, that he or she does not consent to the activity; and the complainant shows, by words or conduct, that he or she no longer consents to the activity.

Furthermore, the list of situations in which no consent is obtained is not exhaustive, that is there will be other situations in which the law will find no consent to have been obtained.

[*English*]

Last but certainly not least, the bill addresses the area of mistaken belief in consent. Under the current law an accused is innocent if he or she mistakenly believed the complainant was consenting to the sexual activity in question. The mistaken belief must have been honestly held but need not have been reasonable in order for the accused to be judged innocent. This common law principle has been widely criticized as condoning mistaken but unreasonable sexual aggression.

The proposed legislation will both clarify and restrict the circumstances under which an accused can claim mistaken belief and consent. It will expressly state that the accused may not claim that he or she believed the complainant consented to the activity where the accused's belief arose from the accused's self-induced intoxication or the accused's belief arose from the accused's own recklessness or wilful blindness. This provision would essentially codify the prevailing common law in these areas. Moreover, belief in consent will not be a defence unless the accused took all reasonable steps in the circumstance known to the accused at the time to ascertain that the complainant was consenting.

This will substantially modify the law in relation to mistaken belief and consent. The judge must determine whether the accused took all reasonable steps in the circumstances known to the accused at the time to be sure that the complainant was consenting. What constitutes all reasonable steps will vary according to the particular circumstances. The legal concept expressed in the word reasonable adapts itself to each individual situation.

This amendment reflects the realities of the 1990s and the responsibilities of all people to their sexual partners. As we look around us we can hardly deny that the landscape, particularly with regard to sexual activity, has changed dramatically. Recognition of the fundamental rights of women has redefined the way we approach our relationships. Clearly consent to sexual activity cannot be assumed, presumed or believed unless reasonable steps have been taken to ascertain that consent has in