

*Government Orders*

[English]

To highlight the importance of the principles underlying these amendments, Bill C-49 includes the unique feature of a preamble. The preamble sets out Parliament's policy in enacting the bill. It speaks of Parliament's grave concern about the incidents of sexual violence and abuse in Canadian society. It recognizes the unique character of the offence of sexual assault.

The preamble also addresses the driving force behind this bill, appropriate protection for the complainant, specifically in relation to the use of evidence of his or her sexual history.

Bill C-49 will subject the admission of evidence of the complainant's sexual activity to meticulous scrutiny. The preamble also sets out in black and white the fundamental principle that the rights of accused persons must not be infringed. Offenders shall continue to be prosecuted within a framework of laws that is consistent with the principles of fundamental justice.

Let me outline the specifics of the bill. Bill C-49 addresses three key issues regarding sexual assault.

First, as mentioned earlier, it proposes a new test that judges will use to determine whether a complainant's sexual history may be admitted at trial. It will contain clear direction on how the admissibility of such evidence must be determined. Second, it provides a definition of consent for the purpose of sexual assault offences. Third, it restricts the defence of mistaken belief in consent for the purpose of sexual assault.

The central feature of Bill C-49 relates to evidence concerning the past sexual history of the complainant, the victim of the alleged sexual assault.

The Supreme Court recognized that the complainant's reputation and past sexual history are not relevant to the issue of consent nor are they relevant to the credibility of the complainant.

The package of the new legislative provisions will ensure that the admission of any sexual history evidence is subject to meticulous scrutiny in an *in camera* or closed hearing to assess whether it has a legitimate purpose, whether it is relevant and to examine its prejudicial effect on the trial process.

The proposed provision follows from the first principle outlined by the Supreme Court of Canada. The fact that the complainant has engaged in other sexual activity with any person, including the accused, should not lead to the inference that the complainant is more likely to have consented to the sexual activity in question, nor should it lead to the inference that the complainant is less worthy of belief.

This provision clearly states that evidence that the complainant has engaged in sexual activity is not admissible solely for these purposes. In other words, people should not be regarded as more likely to have consented or as less credible by the simple fact of their sexual experience.

Bill C-49 does not prohibit the admission of evidence of sexual activity. Such a prohibition would clearly violate the accused's rights. Rather, the evidence of the complainant's sexual activity would be admissible only if it related to specific instances of sexual activity which are relevant to the case and if it would not unfairly prejudice the administration of justice. This follows from the test for admissibility suggested by the Supreme Court of Canada.

In addition, the new law, while giving trial judges the difficult task of weighing and assessing the evidence, will also guide and assist them by requiring them to consider a series of factors emphasizing the policy underlying these amendments.

Bill C-49 re-enacts and improves the procedures that govern whether evidence of previous sexual activity will be admissible. It also provides basic protection for sexual assault victims to ensure that victims are not re-victimized by the very system that is meant to protect them.

The procedural provisions set out a two-stage procedure. First, a judge must consider whether the accused's detailed written application provides a sufficient basis to hold a hearing to consider the admissibility of the evidence. If satisfied, the judge must then hold an *in camera* or closed hearing to determine whether the evidence is admissible in accordance with the new test for admissibility.

Under the new test judges must consider a series of factors set out in the legislation when making a determination of admissibility. Moreover, the bill requires that judges provide detailed reasons for their decision whether to admit such evidence.