

*Government Orders*

for all Canadians the delicate balance between the rights of victims and the rights of accused persons.

I must emphasize that the rights of the accused are equally important. There has been some criticism that these rights have not been given appropriate attention in this bill, but I can assure you that this is simply not the case.

[*Translation*]

In the Seaboyer case, the majority of the Supreme Court held that the exceptions provided in section 276 were too narrow and did not provide the accused with an opportunity to present a full answer and defence in every case. The Court indicated that given the primacy in our system of justice of the principle that the innocent should not be convicted, the right to present one's case should not be curtailed without an assurance that the curtailment is clearly justified by even stronger contrary considerations.

• (1530)

This principle is recognized and indeed underscored in the provisions of Bill C-49. In our attempts to ensure that all those who come before the law are treated fairly, we must never exact as a price the real risk that an innocent person may be convicted. Accused persons must always have access to a legitimate and full defence, and hence a fair trial. The criminal justice system is based on this fundamental principle, and it has guided the development of this bill every step of the way.

[*English*]

Also forming a basis for this bill is a broader principle, one that was emphasized during the consultation process. It is simply this. All men, women and children must have autonomy over their own lives and more specifically, their bodies. They must have the right to make decisions about their lives including their sexual lives without the fear that those decisions will later be subject to unfair scrutiny and misinterpretation.

This fundamental principle goes to the heart of what it means for anyone to live in a democratic country such as Canada. It must inform every aspect of our laws and indeed it is an integral part of the provisions of this bill.

The Supreme Court has reminded us that we must seek a middle way that protects the complainant but maintains the accused's fundamental right to a fair trial.

I am confident that through the provisions of Bill C-49 we have indeed found the middle way. In doing so, we closely followed guidelines which the Supreme Court of Canada suggested in the absence of legislation for the reception and use of evidence of the complainant's sexual activity. These guidelines are in fact the backbone of the proposed legislative amendments governing evidentiary issues.

There is no blanket prohibition on the admissibility of evidence of sexual conduct. Each case will be determined on its merits according to the test in Bill C-49. The purposes for which evidence may and may not be used are addressed. The right of the accused to make a full answer and defence are paramount. Fundamental principles governing the trial process and the reception of evidence are reflected in the amendments. And the focus is not only on the evidence itself but also on the use to which it is put.

[*Translation*]

The provisions of Bill C-49 have also been moulded by the current realities of the lives of sexual assault victims. In the consultations which led up to these amendments, the individuals and groups most affected by the striking down of section 276 have spoken with one voice.

Last June in Vancouver, at the symposium on women, law and the administration of justice, women's groups emphasized that effective law reform requires the input of the people the law seeks to serve.

The input I have received from Canadian women has been very troubling. They have very little confidence in the Canadian justice system as it deals with sexual assault. They have indicated that the admissibility of evidence of a complainant's past sexual history is only one, albeit important, aspect of the inadequacy of our sexual assault laws.

As Minister of Justice, I acknowledge this reality. I have ensured that the principles on which this bill is based and the philosophy it reflects address the concerns of the women and men who spoke so eloquently to me and my officials as we undertook the development of this bill. I felt it was essential that the bill reflect this process.