GOVERNMENT ORDERS

[*English*]

CRIMINAL CODE

MEASURE TO AMEND

Hon. Kim Campbell (Minister of Justice and Attorney General of Canada) moved that Bill C-49, an act to amend the Criminal Code (sexual assault), be read the second time and referred to Legislative Committee G.

She said: Mr. Speaker, it is my pleasure to submit to the House for second reading, Bill C-49, an act to amend the Criminal Code respecting sexual assault.

This legislation has been debated thoroughly in the media and elsewhere so I am sure most members will be familiar with it. Most important, it has received resounding support from women's organizations, women's groups and many Canadians who have recognized that the very essence of the legal system rests in its accessibility to all Canadians and in its ability to address, in a fair and balanced way, the concerns and needs of the people it is meant to serve.

As members know, on August 22, 1991, the Supreme Court of Canada struck down section 276 of the Criminal Code, which was commonly known as the rape shield provision in the cases of Regina *v.* Seaboyer and Regina *v.* Gayme. Section 276 prohibited the use of evidence in sexual assault cases of a victim's previous sexual activity in certain circumstances.

The Supreme Court of Canada held that section 276 overshot the mark in protecting complainants by excluding evidence that could be relevant to the defence. It was, therefore, a violation of the Canadian Charter of Rights and Freedoms.

[*Translation*]

I must emphasize here that, although the old "rape shield" provision was struck down, the philosophy behind the provision has never been criticized or questioned. Both the majority of the Supreme Court of Canada and the dissenting opinion supported the underlying philosophy and aims of the provision. The only dispute relates to how those aims should be achieved.

This is what Bill C-49 addresses. The fundamental principles which gave shape to the original rape shield law should remain constant. As Madam Justice L'Heureux-Dubé of the Supreme Court of Canada has said, sexual assault is not like any other crime. It is a crime which can victimize men, women and children, with appalling and lasting effects. And it affects the life of almost every woman, whether or not she has been sexually assaulted herself. The high rate of sexual assault, and the constant fear of victimization, cast the daily lives of women in ways which, sadly, most of us now consider unremarkable.

[*English*]

As a society, we now frequently acknowledge that historically the law has not served complainants of sexual assault well.

Both the majority and the minority judgments in the Seaboyer case refer to old and notorious rules of evidence which permitted liberal and often inappropriate admission of evidence of the complainant's sexual conduct and which often allowed fishing expeditions into the complainant's sexual past.

As many people pointed out, the question of whether the accused was guilty or innocent had a tendency to be transformed into an inquiry as to whether the complainant was morally worthy of the law's protection. Some of the old, unwritten common law rules were based on the assumption that a complainant with sexual experience was a complainant who was less worthy of belief and who was more likely to have consented to the sexual activity in question.

Those were some of the old myths and stereotypes which the old section 276 sought to address and although the majority judgment of the Supreme Court found that section 276 reached too far in its attempt to correct past wrongs, it also acknowledged the legitimacy of Parliament's policy in enacting that section. It recognized that sexual assault complainants must be protected, that improper fishing expeditions should be a thing of the past.

Parliament now has the opportunity to build on this principle and to express it in our criminal law in a fashion that will restore the confidence of victims of sexual assault in the criminal justice system and will articulate