



ANALYSIS

Title	2. Evidence of complainant in rape cases
1. Short Title and commencement	3. Consequential amendments and transitional provision

1977, No. 13

An Act to amend the Evidence Act 1908

[29 July 1977]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Evidence Amendment Act 1977, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day one month after the date on which it is assented to by the Governor-General.

2. Evidence of complainant in rape cases—The principal Act is hereby amended by inserting, after section 23, the following section:

“23A. (1) In this section—

“‘Complainant’ means a woman or girl upon or in respect of whom it is alleged that a rape offence was committed:

“‘Rape’ has the same meaning as in section 128 of the Crimes Act 1961:

“‘Rape offence’ means any of the following offences:

“(a) Rape:

“(b) Attempted rape:

“(c) Assault with intent to commit rape:

“(d) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in paragraphs (a) to (c) of this definition:

“(e) Conspiring with any person to commit any such offence.

“(2) In any criminal proceeding in which a person is charged with a rape offence or is to be sentenced for a rape offence, no evidence shall be given, and no question shall be put to a witness, relating to—

“(a) The sexual experience of the complainant with any person other than the accused; or

“(b) The reputation of the complainant in sexual matters,—

except by leave of the Judge.

“(3) The Judge shall not grant leave under subsection (2) of this section, unless he is satisfied that the evidence to be given or the question to be put is of such direct relevance to—

“(a) Facts in issue in the proceeding; or

“(b) The issue of the appropriate sentence,—

as the case may require, that to exclude it would be contrary to the interests of justice:

“Provided that any such evidence or question shall not be regarded as being of such direct relevance by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.

“(4) Notwithstanding subsection (2) of this section, leave shall not be required—

“(a) To the giving of evidence or the putting of a question for the purpose of contradicting or rebutting evidence given by any witness, or given by any witness in answer to a question, relating, in either case, to—

“(i) The sexual experience of the complainant with any person other than the accused; or

“(ii) The reputation of the complainant in sexual matters; or

“(b) Where the accused is charged as a party, and cannot be convicted unless it is shown that a person other than the accused committed a rape offence against the complainant, to the giving of evidence or the

putting of a question relating to the sexual experience of the complainant with that other person.

“(5) Nothing in this section shall authorise evidence to be given or questions to be put that could not be given or put apart from this section.

“(6) An application for leave under subsection (2) of this section—

“(a) May be made from time to time, whether before or after the commencement of the proceeding:

“(b) If made in the course of a proceeding before a jury, shall be made and dealt with in the absence of the jury:

“(c) If the accused or his counsel so requests, shall be made and dealt with in the absence of the complainant.”

3. Consequential amendments and transitional provision—

(1) Section 15 of the principal Act is hereby amended—

(a) By inserting in subsection (1), after the word “inquiry”, the words “or evidence given”:

(b) By inserting in subsection (1) (a), after the word “disallowed”, the words “under any provision of this Act”:

(c) By inserting in subsection (2), after the word “question”, the words “or inquiry or evidence”.

(2) Every proceeding commenced or in progress at the date of the commencement of this Act shall be continued and completed as if this Act had not been passed.

This Act is administered in the Department of Justice.
