



ANALYSIS

Title
1. Short Title

2. Undercover Police officers
3. Transitional provision

1986, No. 74

An Act to amend the Evidence Act 1908

[30 September 1986

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—This Act may be cited as the Evidence Amendment Act 1986, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).

2. Undercover Police officers—The principal Act is hereby amended by inserting, after section 13, the following section:

“13A. (1) This section applies in any case where a person is being or is to be proceeded against by indictment—

“(a) For any offence that is punishable by imprisonment for life or for a term of at least 7 years; or

“(b) For any other offence against any of the provisions of the Misuse of Drugs Act 1975 except sections 7 and 13; or

“(c) For conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or paragraph (b) of this subsection.

“(2) For the purposes of this section the term ‘undercover police officer’, in relation to any proceedings to which this section applies, means a member of the Police whose identity was concealed for the purposes of any investigation relevant to the proceedings.

“(3) Where, in any proceedings to which this section applies, it is intended to call an undercover Police officer as a witness for the prosecution, the Commissioner of Police may, at any time before an indictment is presented, file in the Court in which the proceedings are to be held a certificate given under the Commissioner’s hand stating in respect of that witness the following particulars:

“(a) That during the period specified in the certificate the witness was a member of the Police and acted as an undercover Police officer:

“(b) That the witness has not been convicted of any offence or (as the case may require) that the witness has not been convicted of any offence other than the offence or offences described in the certificate:

“(c) That the witness has not been found guilty of an offence of misconduct or neglect of duty under the Police Act 1958 or (as the case may require) that the witness has not been found guilty of any such offence except the offence or offences described in the certificate.

“(4) If, to the knowledge of the Commissioner, the credibility of the witness in giving evidence in any other proceedings has been the subject of adverse comment by the Judge or other person before whom those proceedings were held, the Commissioner shall also include in the certificate a statement of the relevant particulars.

“(5) It shall be sufficient for the purposes of subsections (3) and (4) of this section if the certificate includes a statement of the nature of any offence or comment referred to in the certificate and the year in which the offence was committed or the comment was made; and it shall not be necessary to include the venue or precise date of the proceedings or any other particulars that might enable the true name or true address of the witness to be discovered.

“(6) If, in any proceedings to which this section applies, the Commissioner of Police files a certificate under subsection (3) of this section relating to any witness, the following provisions shall apply:

“(a) If a witness is subsequently called for the prosecution and attests that, during the period specified in the certificate, he or she was a member of the Police and acted as an undercover Police officer under the name specified in the certificate, it shall be presumed in the absence of proof to the contrary

that the certificate has been given in respect of that witness:

“(b) It shall be sufficient if the witness is identified by the name by which the witness was known while acting as an undercover Police officer, and, except where leave is given under paragraph (d) of this subsection, the witness shall not be required to state his or her true name or address or to give any particulars likely to lead to the discovery of that name or address:

“(c) Except where leave is given under paragraph (d) of this subsection, no barrister, solicitor, officer of the Court, or other person involved in the proceedings shall state in Court the true name or the address of the witness or give any particulars likely to lead to the discovery of that name or address:

“(d) No evidence shall be given, and no question shall be put to the witness or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge:

“(e) On an application for leave under paragraph (d) of this subsection, the certificate shall, in the absence of evidence to the contrary, be sufficient evidence of the particulars stated in it.

“(7) The Judge shall not grant leave under subsection (6) (d) of this section unless the Judge is satisfied—

“(a) That there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the witness; and

“(b) That it is necessary in the interests of justice that the accused be enabled to test properly the credibility of the witness; and

“(c) That it would be impracticable for the accused to test properly the credibility of the witness if the accused were not informed of the true name or the true address of the witness.

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

“(a) May be made from time to time and at any stage of the proceedings; and

“(b) Shall, where practicable, be made and dealt with in chambers; and

“(c) Where the application is made during the trial before a jury, shall be dealt with and determined by the judge in the absence of the jury.

“(9) Where the Commissioner of Police gives a certificate under subsection (3) of this section in respect of any witness, the Commissioner shall serve on the accused or any solicitor or counsel acting for the accused, at least 14 days before the witness is to give evidence, a copy of the certificate.”

3. Transitional provision—Nothing in section 13A of the principal Act (as inserted by section 2 of this Act) shall apply in any case where the information was laid before the commencement of this Act.

This Act is administered in the Department of Justice.
