



ANALYSIS

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1985, No. 161

An Act to amend the Evidence Act 1908

[12 December 1985]

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 (No. 2) 1985, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).

(2) Section 2 of this Act shall come into force on the 1st day of February 1986.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. New sections (relating to complainant's evidence in cases involving sexual violation) substituted—The principal Act is hereby amended by repealing section 23A (as inserted by section 2 of the Evidence Amendment Act 1977), and substituting the following sections:

“23A. Evidence of complainant in cases involving sexual violation—(1) For the purposes of this section, ‘case involving sexual violation’ means proceedings in which a person is charged with, or is to be sentenced for, any of the following offences:

“(a) Sexual violation:

“(b) Attempted sexual violation:

“(c) Assault with intent to commit sexual violation:

“(d) An offence against section 129A of the Crimes Act 1961 (inducing sexual connection by coercion):

“(e) An offence against section 142A of that Act (compelling indecent act with animal):

“(f) Being a party to the commission of any offence referred to in paragraphs (a) to (e) of this subsection:

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

“(2) In any case involving sexual violation, no evidence shall be given, and no question shall be put to a witness, relating directly or indirectly 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 the Judge 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 directly or indirectly, 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 an offence referred to in subsection (1) of this section against the complainant, to the giving of evidence or the putting of a question relating directly or indirectly to the sexual experience of the complainant with that other person.

“(5) 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; and

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

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

“(6) 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.

“**23AA. Name, address, and occupation of complainant not to be disclosed in open court—**(1) This section applies to proceedings in which a person is charged with, or is to be sentenced for, any offence specified in section 23A (1) of this Act.

“(2) In any proceedings to which this section applies, the following provisions shall apply:

“(a) Except where leave is given under paragraph (c) of this subsection, the complainant shall not be required to state his or her address or occupation in court:

“(b) Except where leave is given under paragraph (c) of this subsection, no barrister, solicitor, officer of the Court, or other person involved in the proceedings shall state the address or occupation of the complainant in court:

“(c) No oral evidence shall be given, and no question shall be put to a witness, relating to the name, address, or occupation of the complainant except by leave of the Judge.

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

to facts in issue that to exclude it would be contrary to the interests of justice.

“(4) 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 any hearing or other proceeding; and

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

3. New sections (relating to sexual cases) inserted—The principal Act is hereby amended by inserting, after section 23AA (as substituted by section 2 of this Act), the following sections:

“**23AB. Corroboration in sexual cases—**(1) Where any person is tried for an offence against any of sections 128 to 144 of the Crimes Act 1961 or for any other offence against the person of a sexual nature, no corroboration of the complainant’s evidence shall be necessary for that person to be convicted; and in any such case the Judge shall not be required to give any warning to the jury relating to the absence of corroboration.

“(2) If, in any such case, the Judge decides to comment on the absence of any evidence tending to support any other evidence, no particular form of words shall be required.

“**23AC. Delay in making complaint in sexual cases—**Where, during the trial of any person for an offence against any of sections 128 to 144 of the Crimes Act 1961 or for any other offence against the person of a sexual nature, evidence is given or a question is asked or a comment is made that tends to suggest an absence of complaint in respect of the alleged offence by the person upon whom the offence is alleged to have been committed, or to suggest delay by that person in making any such complaint, the Judge may tell the jury that there may be good reasons why the victim of such an offence may refrain from or delay in making such a complaint.”

4. Transitional provisions—(1) Nothing in section 3 of this Act, so far as it effects a change in the law, shall apply in respect of any trial that has commenced before that section comes into force.

(2) Notwithstanding section 1 (2) of this Act, the provisions of section 23AA of the principal Act (as substituted by section

2 of this Act) shall apply, with all necessary modifications, to any hearing or other proceeding relating to any offence specified in subsection (4) of this section if that hearing or other proceeding commences after this section comes into force.

(3) Notwithstanding anything in sections 1 and 2 of this Act, section 23A of the principal Act (as originally enacted) shall continue to apply to any hearing or other proceeding relating to any offence specified in subsection (4) of this section and commencing on or after the 1st day of February 1986 as if section 2 of this Act had not been passed.

(4) Subsections (2) and (3) of this section apply to the following offences:

- (a) Rape:
- (b) Attempted rape:
- (c) Assault with intent to commit rape:
- (d) Being a party to the commission of any offence referred to in paragraphs (a) to (c) of this subsection:
- (e) Conspiring with any person to commit any such offence.

5. Repeal—Section 2 of the Evidence Amendment Act 1977 is hereby repealed.

This Act is administered in the Department of Justice.