

Mr McLay

EVIDENCE AMENDMENT

ANALYSIS

Title	23A. Evidence of complainant in cases of rape and attempted rape
1. Short Title and commencement	23B. Evidence of accused in cases of rape and attempted rape
2. New sections inserted	

A BILL INTITULED

An Act to amend the Evidence Act 1908

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

- 1. Short Title and commencement**—(1) This Act may be
cited as the Evidence Amendment Act 1976 and shall be read
together with and deemed part of the Evidence Act 1908
(hereinafter referred to as the principal Act).
10 (2) This Act shall come into force on the 1st day of
December 1976.

2. New sections inserted—(1) The principal Act is hereby
amended by inserting, after section 23, the following new
section:

No. 48—1

Price 10c

“23A. Evidence of complainant in cases of rape and attempted rape—(1) In any criminal proceeding in which a person is charged with an offence against section 128 or section 129 of the Crimes Act 1961 (or as a party to any such offence) no evidence shall be adduced and no question shall be put to a witness in cross-examination by or on behalf of an accused on a question relating to— 5

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

“(b) The bad character of the complainant; except by leave of the Judge. 10

“(2) The Judge may grant leave to adduce evidence or put a question as aforesaid if he is satisfied that the evidence to be adduced or the question asked—

“(a) Would tend to show that the behaviour of the complainant on a previous occasion was strikingly similar to her alleged behaviour on the occasion of the alleged offence or in relation to events immediately preceding or following the alleged offence; and 15 20

“(b) Is of such relevance to issues arising in the proceeding that it would be unfair to the accused to exclude such evidence.

“(3) Nothing in this section shall—

“(a) Authorise evidence to be adduced or questions asked which cannot be adduced or asked apart from the provisions of this section; or 25

“(b) Require an accused to obtain leave to adduce evidence or ask questions in respect of the sexual experience of a complainant with a man other than the accused, or in respect of her disposition in sexual matters with respect to such other man, if the accused cannot be convicted of the particular offence with which he is charged unless it is shown that the other man had, or attempted to have, sexual intercourse with the complainant; or 30 35

“(c) Require an accused to obtain leave to adduce evidence or ask questions for the purpose of contradicting evidence given at the trial, by a witness called otherwise than by the accused, that the complainant is of good character in sexual matters. 40

“(4) Any application to the Judge pursuant to this section may be made before the commencement of the proceeding or at the proceeding.”

(2) The principal Act is hereby further amended by inserting after section 23A (as inserted by section 2 (1) of this Act) the following section:

“23B. **Evidence of accused in cases of rape and attempted rape**—(1) Except as provided in this section and notwithstanding the provisions of section 5 (2) (d) of this Act or section 341 (2) of the Crimes Act 1961, in any criminal proceeding in which a person is charged with an offence against section 128 or section 129 of the Crimes Act 1961 (or as a party to any such offence) and where the accused gives evidence no evidence shall be adduced and no question shall be put in cross-examination tending to show—

15 “(a) That he has committed, or has been charged with or convicted or acquitted of any offence other than the offence charged; or

“ (b) He is generally or in a particular respect a person of bad disposition or reputation.

20 “(2) An application to adduce evidence or cross-examine on the matters set out in subsection (1) of this section may be granted if the presiding Judge is satisfied that—

“ (a) The accused has personally or by his counsel asked any witness for the prosecution, or any witness for any person jointly charged with him, either—

25 “ (i) Any question concerning that witness’s conduct on any occasion; or

“ (ii) Any question on any matter set out in section 23A of this Act; and

30 “ (b) The Court is of the opinion that the main purpose of that question was to raise a question as to that witness’s credibility; and

“ (c) The Court is of the opinion that the evidence to be adduced or the question to be asked is relevant to the credibility of the accused as a witness.

35 “(3) Where, in any criminal proceeding in which two or more persons are jointly charged, any of the accused gives evidence, the provisions of this section shall not apply to any question tending to show a fact about him of the type specified in subsection (1) of this section if evidence of that fact is otherwise admissible for the purpose of showing any other
40 of the accused to be not guilty of the offence with which that other accused is charged.

“(4) Nothing in this section shall—

“(a) Authorise evidence to be adduced or questions asked which cannot be adduced or asked apart from the provisions of this section; or

“(b) Apply to a question tending to show a fact about the accused if evidence of that fact is (by virtue of the rules of common law relating to similar facts) admissible for the purpose of proving the commission by the accused of the offence with which he is charged. 5 10

“(5) This section shall not apply where the accused has, himself, given evidence against any person jointly charged with him in the same proceeding.”