

House of Representatives

Supplementary Order Paper

Tuesday, 23 February 2021

Sexual Violence Legislation Bill

Proposed amendments

Chris Penk, in Committee, to move the following amendments:

Clause 8

In *clause 8*, replace *new section 44(1)* (page 7, lines 6 to 19) with:

- (1) In a sexual case, unless a Judge gives permission (on an application made under this subsection and in accordance with **section 44A**), no evidence can be given and no question can be put to a witness that relates directly or indirectly to the sexual experience of the complainant with any person other than the defendant.

In *clause 8*, *new section 44(4)*, replace “**subsection (1)(b)**” (page 7, line 29) with “**subsection (1)**”.

Explanatory note

This Supplementary Order Paper amends *clause 8*, *new section 44(1)* of the Bill as introduced, which would allow the following evidence to be given only with a judge’s permission:

- evidence about the complainant’s sexual experience with the defendant (except to establish either (i) the mere fact that the complainant has sexual experience with the defendant or (ii) an act or omission that is an element of the offence (or the cause of action if a civil case));
- the complainant’s sexual experience with anyone other than the defendant;
- the sexual disposition of the complainant.

It would be inappropriate to apply the same admissibility threshold across those various categories of evidence, however, if fair trial rights are to be upheld.

More particularly, evidence about the complainant's sexual experience with the defendant (under section 44(1)(a)) and the sexual disposition of the complainant (under section 44(1)(c)) should not be subject to the same heightened threshold as will apply to the complainant's sexual experience with any other person (under section 44(1)(b)). The latter category is less likely to be relevant to a court determining whether a person has committed an offence, particularly as to whether the defendant has acted without the consent of the complainant.

The effect of this amendment is to delete the Bill's proposed new subsections 44(1)(a) and (c), being the provisions in relation to the prima facie inadmissibility of evidence of complainant's sexual experience with the defendant and the complainant's sexual disposition (respectively).