

House of Representatives

Supplementary Order Paper

Tuesday, 9 March 2021

Sexual Violence Legislation Bill

Proposed amendment

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

Clause 8

In *clause 8*, delete *new section 44(1)(a)* (page 7, lines 10 to 16).

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 if fair trial rights are to be upheld. More particularly, evidence about the complainant's sexual experience with the defendant (under *new section 44(1)(a)* in the Bill as introduced) should not be subject to the same heightened threshold as will apply either to the complainant's sexual experience with any other person (under *new section 44(1)(b)*, again in the Bill as introduced) or the sexual disposition of the complainant (under *new section 44(1)(c)*, again in the Bill as introduced).

The latter categories are less likely to be relevant to a court determining whether a person has committed an offence, particularly as to whether or not the defendant had

reasonable belief that they were acting with the consent of the complainant. The effect of this amendment is to delete the Bill's proposed *new section 44(1)(a)*, being the provision in relation to the prima facie inadmissibility of evidence of complainant's sexual experience with the defendant.