

House of Representatives
Supplementary Order Paper

Wednesday, 17 August 2016

Evidence Amendment Bill

Proposed amendment

Jan Logie, in Committee, to move the following amendment:

Clause 32

In *clause 32*, after *new section 107B* (page 15, after line 18), insert:

Giving of evidence by complainants in criminal proceeding that is sexual case or concerns domestic violence

107C Alternative ways of giving evidence by complainant in criminal proceeding that is sexual case or concerns domestic violence

- (1) A complainant, when giving evidence in a criminal proceeding that is a sexual case or concerns domestic violence, is entitled to give evidence in 1 or more alternative ways so that—
- (a) the witness gives evidence in 1 or more of the following ways:
 - (i) by a video record made before the hearing of the proceeding:
 - (ii) while in the courtroom but unable to see the defendant or some other specified person:
 - (iii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere:
 - (b) by use of any appropriate practical and technical means the Judge, the jury (if any), and any lawyers can see and hear the witness giving evidence, in accordance with any regulations made under section 201:

- (c) the defendant can see and hear the witness, unless the Judge directs otherwise.
- (2) If a video record is shown as a complainant's evidence in chief, the witness is entitled to give the other parts of his or her evidence, including any further evidence in chief, in 1 or more other alternative ways.
- (3) To avoid doubt, section 106 applies to a video record offered as an alternative way of giving evidence under this section.
- (4) Any party intending to call a complainant in a criminal proceeding that is a sexual case or concerns domestic violence to give evidence must provide every other party and the court with a written notice stating the 1 or more alternative ways in which the witness will give his or her evidence.
- (5) Unless a Judge permits otherwise, the notice required under **subsection (4)** must be given no later than when a case management memorandum (for a judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
- (6) If a party has given notice under **subsection (4)** and it is no longer possible or desirable for the witness to give evidence by the means stated in the notice, the party may file an amended notice but must do so as early as practicable before the case is to be tried.
- (7) This section is subject to **sections 107D and 107E**.

107D Application by party calling complainant in criminal proceeding that is sexual case or concerns domestic violence for witness to give evidence in ordinary way

- (1) Despite **section 107C**, if a complainant in a criminal proceeding that is a sexual case or concerns domestic violence indicates his or her wish to give evidence or any part of his or her evidence in the ordinary way under section 83, the party calling the witness may apply to a Judge for a direction that the witness be permitted to do so.
- (2) Unless a Judge permits otherwise, an application under **subsection (1)** must be made no later than when a case management memorandum (for a judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
- (3) The Judge—
- (a) may direct that the witness give evidence or any part of his or her evidence in the ordinary way, if satisfied that the witness

- fully appreciates the likely effect on him or her of doing so;
and
- (b) before giving a direction, may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
- (a) whether the interests of justice require a departure from the usual procedure under **section 107C** in the particular case; and
 - (b) the matters in section 103(3) and (4).

107E Application by any other party for complainant in criminal proceeding that is sexual case or concerns domestic violence to give evidence in ordinary way or different alternative way

- (1) Despite **section 107C**, if a party is calling a complainant in a criminal proceeding that is a sexual case or concerns domestic violence to give evidence, any other party may apply to a Judge for a direction that the witness give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under **section 107C**.
- (2) An application for a direction under **subsection (1)** must be made as early as practicable before the case is to be tried, or at a later time permitted by a Judge.
- (3) Before giving a direction under this section, the Judge—
 - (a) must give each party an opportunity to be heard in chambers; and
 - (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the witness of giving evidence in the ordinary way or any alternative way.
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
 - (a) whether the interests of justice require a departure from the usual procedure under **section 107C** in the particular case; and
 - (b) the matters in section 103(3) and (4).

Explanatory note

This Supplementary Order Paper amends *clause 32* to insert *new sections 107C to 107E* into the Evidence Act 2006, extending the use of alternative ways to give evidence beyond the current age limitation of 18 years, to all complainants of family and sexual violence. This would mean the presumption for using alternative ways of giving evidence, such as video evidence, would be best practice for all sexual violence cases. This is needed because these cases can take so long to get to trial, requiring complainants to hold on to the experience in order to confidently give evidence in the court after a long period of time. If alternative ways of giving evidence, like video, was an option for all, it would enable the complainants to move on.