

THE EVIDENCE (AMENDMENT) (No. 2) BILL, 2010

Arrangement of Clauses

Clause

1. Short title and commencement
2. Interpretation
3. Act inconsistent with Constitution
4. Sections 15AA and 15AB inserted
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No. 7 of 2010

First Session Tenth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

THE EVIDENCE (AMENDMENT) (No. 2) BILL, 2010

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Evidence Act, Chap. 7:02, (“the Act”) to revive the common law doctrine of recent complaint. The Bill also proposes to extend the use of video recorded evidence to encompass all criminal proceedings and to allow for the admissibility of the video recorded statements of both accused persons and witnesses, even where witnesses are absent at the trial.

This Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required, pursuant to section 13, to be passed by a special majority of three-fifths of all the members of each House of Parliament.

Clause 1 would provide for the short title and commencement provision of this Act, for which this is the Bill.

Clause 2 would provide the interpretation provision.

Clause 3 would provide for this Act to have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 4 would amend the Act by inserting after section 15A, sections 15AA and 15AB. The proposed section 15AA seeks to revive the doctrine of recent complaint which is an exception to the general rule that a previous statement made by a witness is not admissible in order to bolster his credibility. At common law recent complaint evidence is only admissible in trials for sexual offences and is admitted to show consistency and to rebut consent. It cannot be used as evidence of the truth of the fact that the sexual offence was committed by the defendant.

Additionally, the proposed section 15AB seeks to impose a requirement on the trial Judge to warn the jury that an absence of complaint or a delay in making a complaint does not necessarily indicate that the allegation that the offence was committed is false, as there may be good reason why the victim of a sexual assault may refrain or hesitate from making a complaint.

Clause 5 would amend section 15C of the Act. Section 15C provides that the written statement of a person is admissible as direct oral evidence in criminal proceedings where the person is unavailable by reason of death, physical or mental infirmity, cannot be found, is outside the jurisdiction, is kept away by threats

of physical harm or is fearful. It is proposed that section 15C be amended to expand the application of this principle by providing for the use of video recorded statements of those witnesses. The admissibility of the video recorded statements will be subject to procedural safeguards.

Clause 6 would amend section 15I of the Act. Section 15I makes provision for the admissibility of evidence given by video recording. The section is restricted in its application to the recorded statement of a witness who is required to be present in court and to proceedings for an indictable offence or for the summary trial of an indictable offence. It is proposed that section 15I be amended to provide that a video recording of a person making a statement would be admissible whether or not there is an existing written statement. Additionally, it is proposed that the recorded statements of both the accused and witnesses shall be admissible in all criminal proceedings.

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[, 2010]

Whereas it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title and commencement **1.** (1) This Act may be cited as the Evidence (Amendment) Act, 2010.

(2) This Act shall come into force on a date to be fixed by the President by Proclamation.

Interpretation
Chap. 7:02 **2.** In this Act, “the Act” means the Evidence Act.

Act inconsistent with
Constitution **3.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Sections 15AA and
15AB inserted **4.** The Act is amended by inserting after section 15A the following sections:

“Recent
complaint 15AA. Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, that were in force in England prior to 4th April 2005, shall apply, from the date this Act comes into force, as if those rules had not been abolished in this jurisdiction.

Judge’s
warning in
absence of or
delayed
complaint 15AB. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of recent

complaint in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—

- (a) give a warning to the jury that an absence of recent complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reason why a victim of a sexual assault may refrain from making or may hesitate in making such a complaint about the assault.”.

5. Section 15C of the Act is amended—

Section 15C amended

- (a) by renumbering subsections (1) to (6) as subsections (4) to (9), respectively;
- (b) by inserting before the renumbered subsection (4), the following subsections:

“ (1) Where a person, including an accused, gives a statement in relation to an offence, that statement may be video recorded.

(2) A video recorded statement made under this Part is admissible whether or not the statement is made on oath.

(3) A person making a video recorded statement under this Part is entitled to make the statement on oath.”;

- (c) in the renumbered subsection (4), by deleting the words “Subject to subsection (2), a statement made by a person in a document” and substituting the words “Subject to subsections (5) and (5A), as the case may be, a statement made in a document or in a video recording by a person, who is a witness,”;
- (d) in the renumbered subsection (5) by deleting the word “(1)” wherever it appears and substituting the word “(4)”;
- (e) by inserting after the renumbered subsection (5), the following subsection:
 - “ (5A) Where under subsection (5), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:
 - (a) the interval between the time of the events in question and the time when the video recorded statement was made;
 - (b) the quality of the video recording; and
 - (c) any other factors that might affect the reliability of what the person said in the video recorded statement.”; and
- (f) in the renumbered subsection (8) by deleting the word “(1)” and substituting the word “(4)”.

6. The Act is amended in section 15I—

Section 15I amended

- (a) by deleting subsections (3) and (8);
- (b) by renumbering subsections (1), (2), (4), (5), (6), (7) and (9) as subsections (4), (5), (6), (7), (8), (9) and (10), respectively;
- (c) by inserting before the renumbered subsection (4), the following subsections:

“ (1) The existence of a written statement in relation to the same matter by the maker of a video recorded statement shall not affect the admissibility of that video recorded statement in criminal proceedings.

(2) Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined.

(3) Where a child gives a video recorded statement under section 15C(1), that statement shall be made in the presence of a person who belongs to one of the following categories of persons chosen by the police officer conducting the investigation into the matter in which the child is a witness—

- (a) the parent or legal guardian of the child;

(b) any person over the age of eighteen years who has the custody, charge, or care of the child;

(c) an attorney-at-law;

(d) a Justice of the Peace; or

(e) a qualified social worker.”;

(d) in the renumbered subsection (4)—

(i) in paragraph (a) by deleting the words “in proceedings for an indictable offence or for the summary trial of an indictable offence” and substituting the words “in criminal proceedings”;

(ii) by deleting paragraph (f); and

(iii) by renumbering paragraphs (g) and (h) as paragraphs (f) and (g), respectively;

(e) in the renumbered subsection (5)—

(i) by deleting the words “(1)(g)” and substituting the words “(4)(f)”;

(ii) in paragraph (a) by deleting the word “not”; and

(iii) in paragraph (b)(ii) by deleting the words “subsection (3)” and substituting the words “section 15C(5) and (5A)”;

(f) in the renumbered subsection (7) by deleting the words “(1)(g)” and substituting the words “(4)(f)”.

Passed in the Senate this day of , 2010.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of , 2010.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

No. 7 of 2010

FIRST SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time

Second time

Third time
