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**IN THE YOUTH COURT  
AT ROTORUA**

**CRI-2016-277-000001  
[2016] NZYC 463**

**THE QUEEN**

v

**AL**

Hearing	26 July 2016
Appearances:	N Tahana for the Crown B Foote for the Young Person
Judgment:	26 July 2016

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**RULING OF JUDGE M A MacKENZIE**

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[1] Ms Tahana sought to ask Detective Constable Williams about AL's older brother, HL. Peppered throughout AL's interview was a reference to a sexual allegation in relation to HL. He made various comments, including a comment to the effect of, "No, she has done this exact same thing to my older brother HL." When Detective Constable Williams was out of the room and the tape was running, there was a reference, "to see how he tried shutting you down about what that HL incident was." Those two references were not the only references.

[2] Mr Foote objected to Detective Constable Williams being asked about those matters for various reasons, including:

- (a) That the question engages s 44 Evidence Act 2006, which I will address briefly shortly;
- (b) That was not a matter which was put to VL; and
- (c) That it is simply not relevant.

[3] Ms Tahana submits that it is relevant on the basis that credibility is very much the issue here in that part of AL's defence is that VL is lying and, in fact, his DVL interview is peppered with references to that effect. For example, "I do not know where VL is getting all this from, but she needs to know that she should not be lying" (page 40 of the transcript). Again at page 49, "Yeah a bunch of shit." There were other references, for example, "cunning little bitch", page 55 of the transcript.

[4] The issue of s 44 is this:

- (a) That questions cannot be asked of a complainant's sexual experience with a person other than AL without the leave of the Court; and
- (b) Any questions about VL's sexual reputation can never be asked, irrespective of their relevance.

[5] There are limited circumstances in which questions can be asked about a complainant's sexual experience with a person other than the defendant in this case, AL, the young person.

[6] Leave must be granted and Ms Tahana ought to have known that it is a matter where she should have sought my leave if she wished to ask Detective Constable Williams that question. However, I will allow the question to be asked. The genie is out of the bottle in a sense in that Ms Tahana told me in her submission that HL was, in fact, convicted of indecent assault in relation to VL. In fact, VL's father, JL, alluded to an issue about abuse.

[7] I am going to grant Ms Tahana leave to ask the question, because the issue is central in terms of an issue in the trial which is whether these things happened and that will, in part, turn an assessment of who and what to believe because very clearly, AL challenges VL's credibility and says that she is a liar, and that is one of the aspects that AL himself put in issue.

[8] I will not, however, allow wide-ranging evidence-in-chief about the matter.

[9] Detective Constable Williams can be asked about the allegation and the nature of the conviction, but it is not to be any further ranging than that.

M A MacKenzie  
Youth Court Judge