

National Affairs by Claire Hoy ? Presumption of innocence crumbling



The notion that a person charged with a criminal offence is innocent until proven guilty obviously has been a mainstay of our court system for centuries.

But with the recent success of determined sexual assault activists, that bedrock belief is beginning to crumble.

We saw this a while back in the over-the-top coverage of the Jian Ghomeshi affair where he was acquitted ? thanks largely to the demonstrable disingenuousness and misleading information from his accusers ? yet they became folk heroes in certain communities and he became the country's number one leper.

There is little doubt that Ghomeshi was a cad, a thoroughly unlikeable person who used his so-called CBC celebrity status to satisfy his own lust. But ?? at least until the horrible new Liberal legislation aimed at making conviction pretty much guaranteed becomes law ? being a cad is not a Criminal Code offence worthy of jail time.

I'm reminded of the strident anti-male propaganda out there by the Toronto Star's Third World War-type coverage of the decision last week by the Ontario Superior Court to overturn an appalling decision by now-retired Ontario Court Justice Marvin Zuker against Mustafa Ururyar, who was found guilty of sexually assaulting his fellow York University PhD student Mandi Gray. It's difficult to remember a judicial decision which was as strongly ripped apart as Zuker's initial conviction of Ururyar was. There is not enough space here to outline the criticisms of Zuker's findings by the higher court, but one obvious example, cited by Toronto Star columnist Rosie DiManno, was his issuing of ?a pre-written sentencing decision immediately after hearing defence submissions without even taking time to consider those materials.?

DiManno notes also that ?from the moment Gray testified, Zuker had obviously made up his mind and he jumped through incoherent hoops to get there.?

While DiManno ? who, with the possible exception of Christie Blatchford at the National Post, has probably covered more trials than any journalist in the country ?dealt fairly with what was clearly an injustice to the accused, most of the so-called ?straight? news coverage highlighted the politically inspired outrage from those who believe that a man, once charged, is clearly guilty.

No doubt most men charged are, in fact, guilty. But a)- despite the notion that most men are predators by nature, in fact only a small percentage are; and b)- sometimes, although not often, the accusations are false; and c)? everybody deserves to defend themselves, particularly when it could result in jail time.

It is true that sexual assault cases are usually more difficult to prove than many other types of crime, and therefore the rate of convictions is lower. That's because it's too often a he-said, she-said situation, which is rarely the case in other crimes. Even so, some 55 per cent of people (overwhelmingly men) accused of sexual assault are convicted, as are 67 per cent of those accused of other sexual offences.

Yet the Star uncritically reports Angela Chaisson, described as a Toronto activist lawyer, saying that the acquittal of Ururyar ?will have an impact on women's willingness to report sexual assault to the police, which we already know is already dismal. In the rare cases where we actually get a conviction on sexual assault and we see those being overturned on appeal, that can be discouraging...? Apparently the principle of convicting men outweighs the quaint notion of whether the guy actually did it or not. It is certainly true that many, many women suffer unwanted sexual attention yet do not report it to police, in order to avoid the terrible burden of going over it all again in public. But I think it is also true that by ignoring the specifics of a particular case, i.e. whether the accused's story is credible or not, and turning it into an example of widespread anti-woman bias in the courts, serves not to help the justice system

but to further discourage women from reporting.

The thousands of cases where men are convicted of sexual assault rarely receive the coverage of those few high-profile cases, such as Ghomeshi and now Ururyar, which didn't go the way the feminist radicals wanted them to go.

Also, even in the face of acquittals, the accusers are inevitably called 'victims.' Much is also written about the financial and emotional burden on the accusers, but little is even acknowledged about the horrible burdens on men who 'despite being men' are not guilty.

To the applause of supporters outside the court, Gray 'whose story was not believed by the higher court' said, 'I still know what happened to me, and it doesn't matter what the legal system thinks.'

Actually, it does matter. Although, with laws rapidly eliminating the notion of a man being able to defend himself, it's beginning to matter less and less.