The New Zealand Herald
Wednesday, July 22, 2020

Rape law devised inside an echo chamber

The Green Party's dangerously toxic Sexual Violence Bill is presently perambulating through Parliament.

In brief, the proposed law would presumptively prohibit (mainly) men from introducing relevant evidence to establish their innocence and would force them to describe their defences before trial so that prosecutions could then be more convincingly "re-moulded" later at trial.

With unerring nonchalance, proponents of the bill oddly never seem to address the increase in the imprisonment rate of innocent defendants which it will trigger. I discussed the scourge of these false complaint cases in a Herald piece recently.

To address my views, the Minister of Justice, in a brave attempt to prop up this Green trophy-piece, provided a response that — as is now the pattern — made absolutely no reference to the morally-certain increase in imprisonment of the innocent.

Instead, monochromatically, the "low conviction rate" compared to other crimes was again posited as an excuse for destroying defendant trial rights, but nothing said about sexual allegations often differing from other alleged offences in that the evidence here routinely comes down to "she said/he said". Without the collateral evidence often available in other prosecutions, jurors will naturally err on the side of caution.

Samira Taghavi
comment

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Concerningly as well, the minister's statements also included that what a complainant consented to on other occasions with the defendant "is seldom relevant to the particular occasion". As experienced barrister Elizabeth Hall of the Defence Lawyers Association learnedly puts it however, prior sexual experiences between a couple who were in a relationship "will almost always be relevant" in ascertaining the defendant's reasonable belief in consent on this occasion.

The minister added that defendants "lose no rights" in having to apply under the bill (hopefully successfully) to a judge to have relevant evidence heard by the jury. Plainly he does not comprehend that the word "right" does not describe something for which one must apply. Rights are things we have without asking — not things for which we must plead.

But one of the most-exploited methods of defending this bill was again wheeled forward, it being the handy corroboration the minister found in Establishment "alibi evidence" produced in bureaucrat-filled echo chambers that conveniently endorse partisan policies.

These policies can then be claimed to have originated organically within officialdom (rather than, as with this bill, out of Green-aligned dogma). Hence, the minister attributed parentage to the Law Commission, where, he assured, the bill was born. This corroborative alibi model may be familiar — the government's "independent" Tax Working Group for example.

Established by a previous Labour Government, the Law Commission is a body of (usually) lawyers, presently being three people ("law commissioners"), assisted by perhaps half a dozen more junior advisors. None of the current commissioners have criminal defence or prosecution careers behind them.

The commission (with formerly a fourth commissioner) recently reviewed our evidence law and - as before - was not enthused about the protection of trial rights where it could instead declare priority for other objectives.

Moreover, in eschewing my thesis that ideology infuses this bill, the minister didn't notice that the commission itself gratefully notes the assistance of an academic of decidedly "feminist-perspective" on its "expert advisory group", her counsel earning repeated mentions in the commission's report.

Feminism is obviously a gender defined doctrine and most New Zealanders would, I submit, object to defendant trial rights being "gender-based". The majority of us would never dream of trial rights being reduced for particular offences in which, say, racial minorities are more highly represented in the dock, which evil we should also not entertain with charges primarily laid against one sex — men.

Another mode of skewing justification is to have given no mention to the collection of eminent legal associations opposing clauses in the bill. So, while the small commission study group approved the worst aspects of this bill, professional bodies representing almost 15,000 lawyers resoundingly do not.

Tellingly, the commission's own advisory panel of judges (including the two from the Sexual Violence Pilot Court) did not support presumptively outlawing all evidence of the complainant's relevant experience with the defendant, concerned that it would make it difficult for defendants and complainants to tell their story. This extremely bad idea therefore failed to earn the keen endorsement of the commission's most-expert experts.

My writings on this bill have now elicited the support of many, including police officers, prosecutors and lawyers but sadly also from falsely-accused men with tragic stories of life-scarring harm. Heart-wrenchingly, the wife of another man recounted that her husband had committed suicide after a false complaint.

This bill will add to the body count and one passionately hopes that even more tragedy can be avoided if the worst aspects are struck out of a dogma-conceived bill, built in the echo chamber of official alibi and skewed justifications.