



# The New Zealand Herald

Wednesday, February 17, 2021

## Irony and obfuscation in Sexual Violence Bill

Last week the Government, goaded by the Greens, began expediting the passage of the Sexual Violence Bill. The bill has two clauses of great danger to innocent men.

First – and astoundingly – it would prohibit them prima facie from producing relevant evidence that could lead to their deserved acquittal.

Secondly, it would force them to announce their defences pre-trial, so that prosecution witnesses could later make their stories more “winnable”, thereby doing real damage to the right to silence; a fundamental right – being a corollary to the presumption of innocence - that Prime Minister Jacinda Ardern has recently defended with true courage.

Watching last week’s second reading debate, I was saddened by the unhappy irony that there are left-leaning MPs - without any relevant legal training, legal experience or insight into their lack thereof – who feel able to proclaim the assuredness of maintaining nuanced fair trial rights, about which nuance they have never formally learned, and to foretell of safe outcomes that they are not credentialled to foresee.

Green MP Jan Logie (BA and not LLB) gave a speech that included emotive hyperbole, mischaracterisation as to present court processes and attribution of



Samira Taghavi  
comment

Samira Taghavi is a barrister and practice manager with ActiveLegal.

supreme authority in this area to non-specialist and minority legal voices – not to mention “proof” by bare assertion and mere repetition.

Emphasised unquestioningly by many on the left has been much-repeated offence-attribution-rate “science”, which claims ascertainable proof as to the true offence-to-conviction-figure ratio.

Yet this (soft) science tends to ascribe total truthfulness and accuracy to all interviewee claims of assault, many of which do not then, for a number of sound reasons, survive through to convictions via the judicial process, where juries, applying the correct standard of proof - beyond reasonable doubt – often ultimately decide wisely not to convict.

But there is some real science in this area, via post-conviction DNA-supported analysis, which in one recent government-funded American study found a wrongful conviction rate of 11.6 per cent in cases with a sexual component, meaning that prosecutors (and complainants) who had been confident of defendant guilt got it dead wrong in at least one case out of 10.

That is an inversion of the “Blackstone ratio”, which, as ex-sexual-assault prosecutor and uniquely-qualified MP Simon Bridges reminded the House, prescribes,

“better that 10 guilty men escape than one innocent man suffer”. Violations of that maxim will be multiplied by the unwise measures in the present bill.

Ironically, again, the clauses discussed above are actually antithetical to Labour’s present political interest and were designed when Labour needed the Greens rather than to please most voters in the political centre. Indeed, the general public has shown its extreme distaste for imprisonment of the innocent as notorious instances have loudly proven, not to mention the serious sums that the taxpayer is then asked to find for compensation payouts.

Obviously, for any of us, being charged with a serious offence and not being allowed to present all the relevant evidence of one’s innocence is a nightmare befitting a Third World system of injustice and completely incongruent with the system of fair impartiality that our citizenry expects.

Even more unjust is that the pain will not be inflicted equally across all demographics.

Most particularly, of course, Māori, Pacific Island and low-income men generally can expect to be more severely impacted by this bill than others, as is the pattern with criminal justice ‘reforms’ that favour a harsher

criminal justice system.

The poor are less able to defend themselves and as Bridges said, the prosecutor “has all the resource”.

Indeed, to quote a Herald journalist, court processes penalise “frequently young Māori men who do not have good support or understanding of the system – and feel the odds are already stacked against them. That is definitely true”.

The Māori Party then should be extremely wary about getting manipulated into supporting these measures against the interests of their own people.

Indeed, it and Labour should quickly decide which voters are more important.

Ardern needs to look after that great mass in the centre along with her own working-class base, rather than trying to appease the feminist fringe.

Giving in to feminist ambition, however, would be another sad step towards the eventuality that the more fanatical apologists of these proposals want most – a presumption of guilt.

By this bill, we in the longer term are being pushed towards that dystopian result and in the meantime, towards many tragic individual injustices.