

# Damages awarded in sexual assault false complaint case



By Jacob Stilman

The criminal offence of sexual assault is under-reported, under-charged and, when prosecuted, results in a disproportionate number of acquittals and withdrawals.

In the current climate, these statements are accepted as unassailable truths. Victims of sexual assault do indeed face significant hurdles when navigating the criminal justice system — from their reluctance to come forward with complaints out of fear or shame, police officers being unfairly skeptical of their accounts, their treatment by overly aggressive defence counsel who may resort to questionable tactics, and finally, the risk that some judges will filter the evidence through the lens of “sexual stereotyping.”

Under-reporting, unfair police scrutiny, ethically questionable defence tactics, and sexism within the ranks of the judiciary do occur, and justice is not always served on account of some, or all, of these factors.

That being said, ought this mean that each and every complainant in a sexual assault is to be regarded as presumptively truthful, or that we should categorically reject the notion that there are, sadly, people who will fabricate sexual assault allegations?

The recent outcry over a decision by a Superior Court justice to uphold a small claims award of about \$24,000 against a woman who was found to have made a false allegation of sexual assault is a lamentable example of an imbalance that has distorted an important discussion.

The case involved an allegation of forced intercourse brought by the complainant against a former intimate partner. Numerous inconsistencies in her narrative and a very contradictory record of text messages resulted in the Crown withdrawing the charges in the midst of the preliminary inquiry.

Subsequently, the accused sued the complainant in small claims court and was awarded \$24,000 for defamation. This decision was appealed but the award and the findings were recently upheld by the Superior Court.

The reaction to the recent Superior Court ruling from the victim-support community is disheartening. Both the Niagara- and Hamilton-area sexual assault support centres are reported to have strongly condemned the decision, declaring that it will have a “chilling effect” on future complaints and that it resorted to “victim blaming and sexual stereotyping.”

Only the litigants and the judge who heard the legal action can definitively comment on the evidence heard at these proceedings. Nevertheless, these declarations by sexual assault advocacy groups, reflexively condemning the awarding of damages against someone who levelled a false complaint, does a tremendous disservice to real victims.

The reality is that some complaints of sexual assault are fabricated, whether out of malice, greed, jealousy, or mental imbalance. This is something that is known by anyone with familiarity of the criminal justice system — be they defence, prosecution, law enforcement, or the judiciary.

Occasionally false complaints are made.

Moreover, the alarmist response by the sexual assault clinics grossly overstates the problem.

Civil lawsuits brought by defendants against their accusers are exceedingly rare. Where litigation ensues following the exoneration of an accused it generally entails actions against the police and/or the Crown that prosecuted the charges, and even then, charges against the Crown for malicious prosecution are rarely successful.

Few complainants, even where their accusations have been shown to be demonstrably false, have been sued or criminally charged for making false complaints.

By resorting to the tropes of "victim blaming," "chilling effects," and "sexual stereotyping" in a case where the prosecutors, the small claims court, and the Superior Court, have each determined the allegations to have been a fabrication, these sexual assault clinics have devalued the real concerns of sexual assault victims.

We must guard against slipping into the mentality where, simply by virtue of the accusation, it is presumed that the complainant is being truthful. Too much is at stake for all the players in the criminal justice system, beginning with complainants, for us to retreat to a mentality where objectivity and procedural safeguards, which protect everyone against prosecutorial excess, are sacrificed at the altar of polemics.