

Obiter ♦ Dicta

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ADDING INJURY TO INJURY THE CASE FOR PIERCING TCHC'S CORPORATE VEIL



► Lucas Oleniuk of the Toronto Star

- ESTHER MENDELSON

On 5 February 2016, a fire in a Scarborough residence run by Toronto Community Housing Corporation (TCHC) claimed the lives of three seniors and injured several others, including twelve people who had to be hospitalized. The Toronto Fire Marshal announced that it would be filing non-criminal charges under section 2.4(2) of the Ontario Fire Code against the TCHC for placing combustible materials near a fire exit. The following is an articulation of why those charges should be left at the doorstep of the individual officers of the TCHC, and not the corporation itself.

Those who have had the distinct pleasure of taking “Biz Ass” (Osgoode students’ diminutive nickname for Business Associations, otherwise known as “Business Law”) will no doubt recall, at least vaguely, discussing “piercing the

corporate veil.” It refers to what happens when a court looks behind a corporation’s “veil”—the notion that the corporation is a separate entity and independent of the people who run it—and finds that the officers of otherwise faceless businesses can be held personally liable for the actions they take in the name of those corporations. It flies in the face of the most fundamental tenets of corporate law, but increasingly citizens are demanding more direct accountability when the corporations in their midst engage in ethically problematic and harmful behaviour, and “piercing” is the judicial system’s answer to those demands.

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Misogyny, Music, Malaise: Free Kesha

- ERIN GARBETT

To be honest, this isn't the editorial I planned to write this issue. Rather than a riveting ride through the necessity defence and illegal environmental activism (stay tuned!), I felt compelled to write about Kesha and what's happening to her.

In case you're unaware--after being under contract with Dr. Luke since 2005, Kesha filed a suit against him in 2014, alleging he drugged and raped her around the time she signed with him. She has also alleged gender violence, sexual harassment, intentional and negligent infliction of emotional distress and unfair business. The trial will not begin until late next year. In the meantime Kesha filed a motion of injunction to allow her to record outside her current contract with Dr. Luke's label, which is under Sony. On September 19th, the injunction was denied. Admitting she didn't totally fully believe Kesha, Judge Shirley Kornreich denied the motion in part because her "instinct [was] to do the commercially reasonable thing."

When I saw pictures of Kesha crying in the courtroom a couple weeks ago, I was at first disgusted that such an emotional moment was so publically accessible. Swiftly however, that disgust was displaced by a deep and visceral dread.

I remembered walking into a coffee shop to meet a friend and seeing my abusive ex-partner. I remembered calmly getting a coffee, leaving, then throwing it into the garbage and running away as fast as I could as soon as I couldn't be seen from inside. I remembered my lungs burning and my heart pounding as I cried. I remembered worrying for the next few weeks that he may try to contact me. I remembered how the possibility of interacting with this person was enough to trigger a fight or flight response. I considered being in Kesha's shoes and was filled with the profoundest dread.

A few days after the ruling came out, I overheard someone agreeing with Judge Kornreich because "there isn't any proof," and because if musicians could get out of their contract by alleging sexual assault without proof, everyone would do it. I haven't taken evidence, but I find it disconcerting that an accuser's words mean so little that in "he-said-she-said" cases, we say there's no proof against the accused. If that's the case, why don't we also say there isn't proof the accused didn't do it? Why are only the words of accuser invalid? I understand to some extent--criminal law is not my jam--the presumption of innocence in criminal cases. But even if this was a criminal case and not a civil one, the presumption of innocence doesn't make words meaningless,



► Kesha leaving the New York Supreme Court on February 19th. Source: James Devaney/GC Images

does it? Maybe Kesha's testimony won't be enough to convince a judge on a balance of probabilities that Dr. Luke committed the acts she is accusing him of, but we shouldn't devalue her words to the extent that they offer nothing in the way of evidence.

This statement also showed a lack of understanding of the reality of accusing someone of sexual assault that saddened me to the extent that it physically hurt. How can we on one hand know that public backlash, stress, and professional setbacks are likely when accusing wealthy and/or powerful individuals of sexual assault, and on the other still believe that musicians would come out of the woodwork to accuse powerful, wealthy producers if the judge allowed Kesha to record outside her contract? Obviously Judge Kornreich also held this belief, stating that ruling in Kesha's favour could set a "troubling precedent" for the recording industry. Why forcing a musician to choose between working with the same company as her alleged abuser and not working at all isn't at the very least an equally troubling precedent--if not more troubling--is beyond me. As a quick side note, my colleague Ian Mason wrote an article in this issue that discusses the cross-examinations Jian Ghomeshi's accusers have experienced; I encourage you to read it.

Some ask why Kesha didn't come forward close to 10 years ago when it first occurred; some ask why this is a civil case and not criminal, because that's what we've been taught to do. We don't ask why 68% of sexual assault victims don't come forward. We don't ask why only 3 out of every 100 rapists will spend even 1 day in jail. We don't ask why anyone would come forward when they will almost certainly be

presumed to be lying. We don't ask why Dr. Luke is still working after being accused of such deplorable acts and Kesha isn't.

Some wonder if Kesha is lying to get a "better deal," because we're supposed to wonder what the victim is really trying to get. We don't wonder why producers like Dr. Luke refer to their business as "manufacturing" stars, or why a story about Dr. Luke referred to Kesha as "proving hard to control." We don't wonder why we focus on Dr. Luke investing in Kesha when she was the first signing name to his label Kemosabe Records, and is one of the reasons the label received financing from Sony. We don't wonder why the judge unhesitatingly compared commercial interests to the wellbeing of a human being, why "I cannot work with Dr. Luke. I physically cannot. I don't feel safe in anyway" translates to "decimat[ing] a contract." We don't wonder how the accuser's interests and the accused's interests are "not in the least bit mutually exclusive," as a Sony lawyer stated. We don't wonder why Sony's assertions that they will promote Kesha's best interests are taken at face value, while Kesha's lawyers statements that they would not are mere "speculations."

Kesha's predicament is a terrible one that I cannot truly empathize with, as I have never been forced to work at the same company with my abuser, let alone at the same company where my abuser holds a disproportionate level of power and influence. I can say however that I cannot fathom being in the same situation. Working for the same company as my abuser would quite literally be a nightmare I have in the past, and Kesha--assuming she's telling the truth, which I do--is living that nightmare. That the justice system has forced her into that nightmare is appalling.

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"Pure applesauce"
- Justice Antonin Scalia

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OWNing Our Careers:

A Cold Night Filled with Warm Company and Conversation

- ERIN GARBETT

On Thursday, February 25th, I had the pleasure of attending the fourth annual OWN Your Career event, the Osgoode Women's Network's culminating event of the school year, held at Toronto's Rosehill Venue, a warm, comfortable space a few minutes walk from St. Clair subway station. The evening is designed for two main purposes: to provide a chance for Osgoode's women students to network with professionals in the local legal field and to hear from a keynote speaker. OWN went in a slightly different direction this year, opting to have a relaxed fireside chat where everyone in the room was on the same level as the guest of honour.

This year's keynote speaker—although I hesitate to use the term speaker when what took place was a conversation and not a speech—was Justice Kelly Wright. Justice Wright spent 6 years as a police officer in Calgary before attending Osgoode. After working as an Assistant Crown Attorney for fourteen years, she was appointed to the Ontario Court of Justice in 2008, then to the Superior Court of Justice in 2013. In addition to her already heavy workload, Justice Wright has been an adjunct professor at Osgoode Hall for five years.

While her resume is nothing to scoff at, it is when you hear Justice Wright speak that you gain a real appreciation for her approach to life, work and self. She is truly a phenomenal woman, someone so fun and engaging that it is impossible to do anything but focus on every word she says. I was lucky enough to chat with Justice Wright before she spoke with the full group—and to be perfectly honest I forgot to write anything down because I was enjoying myself so much.

After roughly an hour of delicious hors d'oeuvres (courtesy of the Food Dudes) and mingling (including time for my brief



►Part of OWN's 2015-2016 Executive: Top Row - Karolina Iron; Christina Shum; Diana Pegoraro; Elise Dueck; Carolyn Young; Tori Nevin; Linette King; Sana Malik; Emily La Mantia; Jacqueline Ting. Bottom Row - Heather Catania; Heather Fisher; Kortney Shapiro; Paige Donnelly; Eden Wine; Jordana Keslassy.

conversation with her), Justice Wright sat down with OWN's Paige Donnelly and answered five questions. I won't list the questions because they aren't nearly as important as her answers. By the time the fireside chat began, I remembered to bring out my notebook and furiously scribbled down as many tidbits as I could.

Among the numerous brilliant pieces of wisdom Justice Wright shared (including "laugh your ass off every day," and "don't trust answers that come from a negative place"); the one that stuck with me most was "stop keeping score." As a woman—but not speaking for all women—I have generally been raised to make sure everyone else in my life is doing well before I check in with myself. My days are filled with remembering everything I've forgotten to do and everyone I've (presumably) annoyed, ticked off, or let down. It wasn't until a couple years ago that I bothered trying

to figure out me—quite frequently friends and relatives would tell me something about myself and I would think, "why don't I know that?" But it makes sense; you can't get to know yourself when you are your last priority. Justice Wright's words shot through my ears, pinged around my brain and dove down into my heart. OF COURSE I should stop keeping score, why hadn't I thought of that?

OWN's President, the lovely and gregarious Kortney Shapiro said what she wanted most was to encourage women at Osgoode and in the legal profession to "get out of the boardroom, get out of the library, get out of office and get to know each other!!" Put simply, the event succeeded on every front AND included some of the best food I will eat all year. Bravo to OWN's Executives and their volunteers!

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Ceasefire in Syria?: The Safety of Hospitals and Civilian Targets

-JERICO ESPINAS



► Source: CDC

On 28 February, an accord led by the United States and Russia started the first day of a “cessation of hostilities” in Syria. The accord was accepted by President Bashar al-Assad’s government and many of his opponents, giving some analysts in the United Nations hope that the accord can pave meaningful diplomatic ground between the parties. The ceasefire can also give aid groups time to reach civilians in war-torn areas, helping mitigate the rising number of casualties in a war that has currently killed more than 250,000 people and left eleven million homeless.

Critically, the truce does not cover all parties within the conflict. Certain jihadist groups were not signed onto the treaty, such as the Islamic State and the Nusra Front, al Qaeda’s branch in Syria. Some members of these groups continue to be hostile towards opposing parties and civilians, though others have retreated from residential areas. Given the presence of these jihadist groups, Moscow and Damascus continue to launch military strikes against supposed terrorist groups. These attacks were included in the truce despite concerns from signatories that these exemptions may justify attacks against rebel fighters.

These exemptions were condemned by international aid groups, many of which are using this ceasefire to give much-needed supplies and medical support to at-risk areas. For example, Widney Brown, the director of programs at Physicians for Human Rights, criticized the lack of provisions that address the bombing of civilian facilities. Hospitals and local health centers were often targeted by both Syrian fighters and terrorist groups before the accord, and there are

fears that they will remain prominent targets.

These concerns over the targeting of civilian facilities has renewed discussions between international aid groups over ethical military conduct both in Syria and abroad. According to studies by Physicians for Human Rights between March 2011 and December 2015, there were 346 attacks on 246 medical facilities across Syria, resulting in 746 killed medical personnel. Doctors Without Borders has confirmed some of these numbers. Internal data from 2015 show ninety-four attacks on sixty-seven the hospitals and clinics that were run by the group, resulting in the destruction of twelve facilities and the deaths of twenty-three staff members.

Notably, the opposing forces have resorted to other tactics alongside aerial strikes. According to Amnesty International, al-Assad’s army has detained health workers, arrested hospital patients, and prevented physicians from treating protestors since the hostilities in 2011. These acts occurred even within humanitarian health centers that have taken no side in the conflict.

Some groups claim that these events show the intentional targeting of civilian and humanitarian targets within the Syrian civil war. Others take this claim further, emphasizing that this military strategy is becoming standard practice globally despite being forbidden under international law. They point to the aerial bombing of a hospital run by Doctors

Without Borders in Afghanistan in October last year, which killed fourteen medical staff and twenty-four patients. The event shocked social media and generated scorn from different international communities, but little has occurred to stop these hostilities,

When Russian and Syrian forces were criticized for a number of hospital bombings, such as those on a Doctors Without Borders hospital on 9 February in southern Syria, their military officials were quick to deflect the accusation. They claimed that their air force neither targeted these facilities nor intentionally killed civilians, directing blame

instead on opposing rebel forces as the cause of these attacks. During other attacks, they justified their actions by claiming the presence of terrorists within the area. While US forces have criticized Russia and Syria for their conduct, their own military

personnel used similar justifications in their attacks. The initial report on the hospital bombing in Afghanistan, for example, claimed that insurgent fighters took cover in the compound.

As the military forces in Syria settle into the ceasefire, only time will tell if the peace will actually last. Military personnel from both sides reported a cautious optimism during the first few days of the accord, noting that their battlefields were uncharacteristically quiet. And while humanitarian workers are certainly taking advantage of this moment to recoup, many are still on guard for any potential attacks in their area, knowing that they are practically outside the bounds of the agreement.

“...there were 346 attacks on 246 medical facilities across Syria, resulting in 746 killed medical personnel.”

Coming to Terms with Five Terms: Presidential Elections in Uganda Marred by Procedural Irregularities and Opposition Suppression

- JUSTIN TOH
A COLUMN BY CLAIHR



The 18 February 2016 presidential and parliamentary elections in Uganda have been criticized for failing to uphold democratic standards set out in domestic and international law.

According to Uganda's Electoral Commission, incumbent candidate Yoweri Kaguta Museveni won the election with 60.62% of the vote. The runner-up candidate, retired colonel Dr. Warren Kizza Besigye Kifefe, came in second with 35.61%, followed by former Prime Minister Amama Mbabazi with 1.39%. The remaining four candidates each secured less than 1% of the vote.

Opposition figures and civil society observers have roundly criticized the election procedures as unfair and demanded the release of tallying records.

President Museveni's National Resistance Movement (NRM) rose to power in 1986 after overthrowing Milton Obote in a guerrilla bush war. He has remained President of Uganda in the thirty years since.

In 2005, the Constitution of the Republic of Uganda was amended to abolish a presidential two-term limit that would have required Museveni to step down. Although the amendment also removed limits on opposition parties to facilitate multiparty elections, the NRM remains functionally integrated into state institutions. Critics decry the lack of partisan independence within the Electoral Commission, citing repeated allegations of vote rigging.

Election Defects

Although polling stations were meant to open at 7am, delayed deliveries of voting materials forced voting to begin behind schedule. In some locations, polls opened six hours late. Many simply left after

several hours of waiting. Notably, many of these stations were located in opposition strongholds like Kampala, where 65.75% of voters supported Besigye.

Delays disproportionately affected women, who bear traditional domestic duties, and persons with inflexible work commitments. The Women's Situation Room, which monitors Ugandan women's voting rights, reported receiving nearly six hundred complaints after the polls closed.

In response to the delays, polling stations were supposed to be extended to 7pm. However, some stations still closed at the original 4pm deadline, and stations that remained open reportedly closed at inconsistent times.

According to independent news outlet The Daily Monitor, election tallies apparently excluded ballots from 1787 polling stations at the time results were declared. Those stations represent just over one million votes. Again, regions with strong opposition support were disproportionately affected. In Besigye's home district of Rukungiri, only three of 276 polling stations were reportedly counted, although the Electoral Commission now says its final results incorporate ballots from 274 Rukungiri stations.

Outright fraud has also been alleged, although in inconsistent forms. The NRM was accused of buying eighteen million farming hoes to secure votes in the north. Missing names in voter registries prevented some voters from casting ballots. Rumours of ballot stuffing abound.

Moreover, social media and mobile money transfers were temporarily shut down on voting days.

Foreign observers also criticized intensified police and military presence during elections, voicing concern that security forces intimidated and harassed voters and journalists.

Opposition Arrests

During the election, security forces apprehended presidential candidate Dr. Warren Kizza Besigye Kifefe. Besigye ostensibly confronted police while attempting to show journalists a vote-rigging operation in a suburban house.

Besigye is the founder and former leader of the opposition party Forum for Democratic Change (FDC). He contested and lost in Uganda's 2001, 2006, and 2011 elections.

Since his arrest, police have confined Besigye to his home. No charges have been laid. Besigye attempted to leave on the 22nd and 23rd of February, but was simply apprehended again.

Police justify Besigye's house arrest on the grounds that he is planning to demonstrate for the release of tallying forms without government permission. Per 2013's controversial Public Order Management Act (POMA), all demonstrations must be declared three to fifteen days in advance and approved by police in order to divert traffic and establish police security.

On 22 February 2016, police "evacuated" FDC members from their headquarters. FDC social media declares that at least thirteen party members have since been arrested.

Arrests of opposition members are common in Ugandan politics. Security forces routinely detain prominent critical political figures for short periods of time to disrupt campaign or protest efforts.

The UN Office of the High Commissioner for Human Rights additionally reported that other prominent politicians were arrested, including presidential candidates Amama Mbabazi and Abed Bwanika. However, news on circumstances and number of these arrests is incomplete and inconsistent, and police claim that Mbabazi's movements have not been restricted.

**"...election tallies
apparently excluded ballots
from 1787 polling stations at
the time results were
declared."**

A Constitutional Crisis:

Antonin Scalia's death highlights the enormous political divide in the US

- NADIA ABOUFARISS

United States Supreme Court Justice Antonin Scalia passed away suddenly in a hunting ranch in Texas on 13 February. Justice Scalia was a brilliant scholar and the leading originalist jurist in the United States, and by all accounts, a very personable guy. I didn't know him though, and I was never a fan of Justice Scalia's personal beliefs and his approach to constitutional interpretation. I remember being in constitutional law with Professor Lawrence when she explained the difference between originalism and the living tree approaches to interpretation. She told the class that Justice Scalia kept a copy of a late 18th century dictionary next to his desk to use when defining terms in the US Constitution. I found that hard to believe at the time, but now I know he apparently kept three. He famously said, "Words have meaning. And their meaning doesn't change." While I couldn't disagree more with that statement, I do admire Justice Scalia's tenacity and steadfastness: he had opinions, and his opinions didn't change.

That Justice Scalia was best known for his strict adherence to the text of the constitution makes Senate Majority Leader Mitch McConnell's comments—mere hours after his death—even more distasteful. McConnell stated, seconds after eulogizing Justice Scalia, that "The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new President." Leaving aside the fact that the American people did have a voice in the selection of their next Supreme Court Justice by way of the fact that an overwhelming majority voted for President Obama and the Senate that is currently in power, this comment completely ignores the text of Article II, which gives the sitting president the constitutional duty to nominate justices to the Supreme Court.

Sandra Day O'Connor, a retired Supreme Court Justice who, like Scalia, was also nominated by Ronald Reagan, publicly stated her disagreement with the Republicans, as did many other sane and rational people. However, since with every Donald Trump caucus win the Republican party seems to be slipping further and further away from reality, calls for decency and logic have been useless. On 24 February, Republicans on the Senate Judiciary Committee wrote an open letter stating that they will refuse to hold hearings (blatantly ignoring their own constitutional duty in Article II) on any nominee that President Obama offers up. This has never before happened in US history.

McConnell's call for a Senate obstruction is also short-sighted for his own party's interests. President Obama, who was well aware of what the Senate republicans thought of him before this mess, will be certain to nominate a judge with an excellent record who is extremely moderate. Even if it wasn't an election year, he would be concerned about getting his pick confirmed. But what happens if the Senate listens to McConnell, successfully votes against the one or two moderates that Obama selects, and a Democratic candidate wins the Presidential election? Be it Clinton or Sanders, they



► Photo by Haraz N. Ghanbari/AP

"...I do admire Justice Scalia's tenacity and steadfastness: he had opinions, and his opinions didn't change."

are likely to nominate a judge who is at best (for the Republicans), just as moderate as one of the Obama choices, or worse (for the Republicans), someone significantly more liberal. Will they continue to obstruct judges until a Republican comes into power? Until the Democrat is forced to choose a conservative judge? Do the Republicans seriously believe that Trump would offer up a better candidate? This ridiculous obstructionist behaviour by the Republicans seriously undermines the constitution and the rule of law in the United States.

Republicans seem to be using two "facts" in order to support their view that the President should not nominate the next Supreme Court justice.

The first, which gets worded a number of different ways, basically states that no president has successfully put forward a new Supreme Court Justice in an election year in the past eighty years. Weird that they would conveniently forget everyone's favourite modern Republican President Ronald Reagan, whose nomination of Justice Kennedy was confirmed in 1988, the last year of his two-term presidency. There is nothing in the history of the US to support the idea that presidents should not be given a chance to fulfill their constitutional duties in their final year. It is also worth noting that all six Supreme Court vacancies during an election year in the past 116 years have been filled, although five out of six of these (Reagan as the exception) were made by presidents who were up for re-election. Three presidents were re-elected, two were not.

The second piece of misinformation the Republicans are throwing to the public like scraps of rotten meat is something known as the Thurmond rule, named after former Senator Strom Thurmond.

Thurmond is best known for conducting the longest filibuster in US history in opposition to the 1957 Civil Rights Act. The rule is not law, and therefore not binding, but rather a general principle that supposedly originated with Thurmond which states that judicial nominees should not be confirmed in the last "six or so" months of a presidency. Democrats and Republicans have both invoked the rule, when it works in their favour, and called it invalid when it doesn't, so I wouldn't exactly say that the Thurmond rule is a solid piece of historic precedent to base an opinion on. At any rate, invoking it now isn't even a correct application of the principle, as President Obama was faced with this vacancy with approximately eleven months left in his presidency.

Most pundits believe that President Obama is likely to pick a moderate Democrat who has had the support of most Republican senators in the past, such as Judge Sri Srinivasan, who in 2013 was confirmed unanimously by the Republican-led Senate to his role on the Court of Appeals for Washington DC. There have even been recent reports that centrist Republican Governor Brian Sandoval may be a potential nominee (Sandoval was the first Hispanic judge and governor of the state of Nevada). I am confident that whoever President Obama selects will be a well-rounded, intelligent, and extremely qualified individual, although I am significantly less confident about the fate of my broken nation.

thumbs down



Ontario budget dedicates \$12 BIL in debt interest payments

Grim Lessons from the Trial of Jian Ghomeshi: Yes means yes and ask again anyway.

- IAN MASON

As awkward a subject as it may be, I want to discuss the Jian Ghomeshi trial. Since I'm about as subtle as a cinder block thrown through a plate glass window, I guess I'll start with something that's been particularly contentious: Marie Henein's impassioned defence of Mr. Ghomeshi, and her often brutal approach to examining the complainants. I know a number of people were appalled by her methods, and it's hard—if not damned near impossible—to blame them. A lot of her questions seemed unnecessarily harsh considering the nature of the alleged crimes in question, and a lawyer as experienced as she is could be much more sympathetic to the frailties of human memory. Long before I even considered getting into law, my mother (Osgoode Class of 2003) explained to me at length why eyewitness testimony isn't as reliable as the layman generally assumes. Between that, the passage of time, prosecutorial laziness and/or incompetence, and Henein's tenacity, it's not surprising that the complainants struggled so mightily on the stand.

Unfortunately, Marie Henein was mostly just doing her job. Yes, she was a bit too aggressive, and sweet merciless Poseidon, YES, if she grilled an alleged sexual assault victim like that outside of a courtroom, scorning her would have been completely appropriate. That said, criminal defence lawyers have a professional obligation to find holes in a complainant's testimony, and—though she could have dialled it back—that's what she did. To me, the most tasteless thing she did was invoke Justice L'Heureux-Dubé: she did so in reference to the importance of truth in judicial proceedings (a fair enough point), but she could have invoked someone other than a Canadian feminist icon who was publicly attacked by Justice McClung for being rightly sympathetic to a sexual assault victim. That was the wrong person to invoke, given the context. Still, she fought for her client like a badger on meth, and (aside from the meth bit) that's kind of what you're supposed to do. I'm not going to sing her praises, but I'm also not going to be the dachshund chasing her into her burrow, barking and gnashing my teeth until someone digs down and shoots her.

Still, I wouldn't be surprised if Jian Ghomeshi gets convicted. The prosecution screwed up royally and the complainants flailed on the stand, but the judge might still deliver a guilty verdict. I've spoken about how our society (if not every society) struggles to handle sex crimes, and there's a good chance the women Mr. Ghomeshi is accused of assaulting may not have realized they'd been assaulted until years after the events in question. On the surface, it may seem nonsensical that a woman would continue a relationship with someone who slapped and choked her, but sadly, it's not uncommon. More importantly—and damning to the defence's case—it would have no bearing on whether or not the complainants were assaulted. If Mr. Ghomeshi choked a woman without her consent and she presses charges against him, his guilt isn't negated if they cuddled on a park bench the next day. It's much too likely that the judge will find him not guilty on faulty premises, but it's far from a given, and let's offer the benefit of the doubt until a verdict is delivered. In the meantime (if not for some time after the conclusion of this ugly affair) blame the prosecution for assuming this case was a slam dunk.



► Photo by Haraz N. Ghanbari/AP

Regardless of the trial's outcome, there are a couple of things we can take away from this. First and foremost, we have to accept and acknowledge that sexual assault victims are almost never going to immediately press charges. Lucy DeCoutere being one of the complainants speaks volumes in that regard. She's best known for her role in the (awesome) cult TV show *Trailer Park Boys*; she's less known as a Captain and Training Development Officer in the Royal Canadian Air Force. In other words, she's quite the badass. If it was a decade before someone like her pressed charges, one can hardly blame the other complainants for the delay. There are a number of reasons why statutory limitations are functionally inapplicable when it comes to pressing charges or filing claims related to sexual assault or harassment. The fact that an RCAF Captain took so long to press charges reflects why we make such exceptions.

Second, we really have to educate people on the nuances of informed consent, especially in an age where kink is so common it's almost weird not to be into something unorthodox. Everyone's aware that "no means no," but a better way to summarize informed consent in three words is "yes means yes." Even then, as much as that adheres to the legal necessity for constantly affirmed consent, fetishes can be surprisingly complex. Some people are genuinely into being choked, but simply saying "don't do it until he/she/however they self-identify tells you to" simply doesn't cut it, considering you can't always utter a safe word in such a situation. I'm not suggesting that willing participants in hardcore BDSM should have a lawyer draft a contract before doing their thing (talk about a mood-killer), but at least work out the details before you start tightening that belt. If you have to firmly establish informed consent with vanilla sex, you especially have to do it when your kinks have an element of danger. At the very least, it seems that Jian Ghomeshi failed at the second one, and

look where that landed him. Come to think of it, maybe signing a contract isn't such a bad idea...

Anyway, my overarching point is that everyone can benefit from an advanced understanding of sexual consent. The Ghomeshi trial at least partly reflects what can happen when boundaries aren't clearly established, but—more importantly—it also shows that even people who didn't

"...she fought for her client like a badger on meth..."

consent to an activity might spend years convincing themselves that they did. In a world where drunken hook-ups are common and being unable to say a poly-

syllabic safe word through a ball gag is a potential albeit unusual issue, reducing consent to something that can be summarized in a catch phrase is actually dangerous. Assuming Mr. Ghomeshi did assault the complainants, his guilt will not be negated by his failure to establish consent; but whatever the outcome, I hope that the judgment does something to crystallize rules of consent where kinks are concerned, and if it doesn't, I hope those few of us who inevitably become judges keep such things in mind. The real world is a bizarre, often disturbing place, and we're the poor fools stuck trying to bring sense and justice to it. The least we can do is stay informed, if not fiercely vigilant.

As for Marie Henein, a day will come when we will all have to deal with an objectionable client. I don't expect anyone to agree with her methodology, but at least try to be sympathetic. Most of us will have to walk a mile in her shoes. I imagine it's like trying to walk on concrete in hockey skates two sizes too small. I'd be mean too.

thumbs down



Ontario budget dedicates \$12 BIL in debt interest payments

Adding Injury to Injury

» continued from front page

- ESTHER MENDELSON

The Sunshine List (the list of public employees earning in excess of \$100,000) is peppered with the names of TCHC officers. For example, TCHC's CEO, Greg Spearn, earned \$267,445 in 2015 -- up from \$189,322 in 2014 after he took the reins from the ousted CEO and Rob Ford crony Gene Jones. To hold them accountable for these deaths and fine them personally would not only be just, it would also be far more practical than fining the corporation. Even as individuals, TCHC executives will be able to bear the brunt of the fine with greater ease than the corporation itself. One less latte, one less tropical vacation, perhaps.

The TCHC is already hemorrhaging money—mostly due to excessive executive salaries. To fine the corporation would in essence be taking from the poor to give to the rich. As it stands now, TCHC is scarcely able to meet the demand for affordable housing. The buildings and units are small, the appliances often not in working order, there is little if any security, heating is always an issue in winter, there is often no air conditioning, and infestations are commonplace. To take more money out of TCHC would only exacerbate these problems. If the corporation is forced to pay this fine, the residents will pay the price—and they cannot afford it.

The TCHC claims that the combustible materials were chairs which were placed in the hallway after residents requested a lounge. Deputy Fire Chief Jim Jessop said that having more sprinklers in the building would have prevented this tragedy. TCHC CEO Greg Spearn said that further safety measures would be too expensive.

Though the building is not officially a seniors' residence, the residents are overwhelmingly senior citizens. The fact that it is not officially considered a seniors' residence means that certain reforms to the Fire Code meant to protect vulnerable residents do not apply. This is troubling, as is the fact that social housing residents are not considered "vulnerable" under these policies.

TCHC buildings are notoriously squalid, and the superintendents and managers are usually nowhere to be found. They often do not repair things properly, and sometimes do not make repairs at all. Languishing in these sub-standard conditions, TCHC residents often have no one to turn to, because they are considered burdens on the system and are made to feel as though they should be grateful to have any sort of roof over their heads. So long as housing is considered a luxury, not a right, TCHC residents will continue to be treated as burdens on the system. That the deaths of the seniors killed in this fire are not causing more of an outcry is indicative of how we feel about the most vulnerable in our community.

TCHC is not the only not-for-profit organization serving the poor that has been in the media for its mismanagement. Goodwill recently closed the doors of several of its locations, leaving hundreds of people out of a job and communities without a place to buy affordable goods. The agencies that serve the most vulnerable must be held to account to ensure that they are actually fulfilling their mandate.

If the moral arguments do not move you, perhaps the fiscal one will. Fiscal conservatives balk at dipping into public coffers, and in this case, if the corporation is forced to pay the fine, it will be paid mostly out of the public purse, as TCHC is a public body, funded by taxpayer dollars. Paying fines for harm resulting from violations and mistakes which should not have been made in the first place hardly seems like an effective use of public money.

Under section 3.7 of the Office of the Fire Marshal Guidelines for enforcing the Fire Code, individuals who are not the owners of the property in question can be charged for violations, and under the Fire Protection and Prevention Act, officers of a corporation can be held liable if they knew that the corporation violated the Fire Code. In *Crawford v City of London*, directors of a condo corporation and its property managers were brought in as third party defendants in a Fire Code violation case. If it can be proven that the TCHC officers knew about the violations, they should be held personally accountable.



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This year, Osgoode will be participating in the Law School Survey on Student Engagement (LSSSE). The LSSSE is a North American study on legal education. It helps us understand how the educational experience at Osgoode compares with other law schools and informs decisions that will benefit Osgoode students. It will also provide crucial data to be used in our ongoing strategic planning process.

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Lessons from a refugee lawyer in Cairo: Creating the path to an international career

- SOPHIE CHIASSON

Throughout the school year, Canadian Lawyers for International Human Rights (Osgoode Chapter) has been working to highlight career possibilities for those interested in pursuing international human rights work. In this article, we interview Katie Flannery, the Team Leader for Refugee Status Determination and Durable Solutions at the Egyptian Foundation for Refugee Rights (EFRR) in Cairo, Egypt. In this interview, Katie draws on her own experiences and is answering in her personal capacity.

Sophie Chiasson: What is a typical day in the life of a refugee legal aid lawyer?

Katie Flannery: EFRR is an Egyptian-registered NGO that offers a variety of services to asylum seekers and refugees, and I run two teams focused on helping applicants get through certain types of processes. One is refugee status determination (RSD), the individual application process required to be recognized as a refugee and receive the protection of the UN Refugee Agency and Egyptian government. The other, durable solutions, focuses on identifying acutely vulnerable refugees who are in need of resettlement and referring those cases to UNHCR for consideration. There is no normal day in the office, but I do a combination of things every day: meeting with or liaising with UNHCR, meeting with clients, training staff, editing my officers' work, and making decisions about cases.

SC: How did you start working in your previous role as a refugee legal aid lawyer with Asylum Access in Tanzania?

KF: In law school and my first job afterwards, I thought I wanted to focus on policy work and research. I had a little bit of exposure to direct client work, and I found it much more rewarding than the advocacy part of that first job, so I decided I needed to dive into something that would be all client work, all the time. Trial by fire, if you will: I wanted to find out if I was any good at it, and if I really wanted to do it full-time. I also realized that, as an American especially (and probably also as a Canadian), you need to spend a significant chunk of time living in the developing world to be taken seriously in the human rights legal field. This isn't a hard and fast rule, but many jobs have "significant time spent living in the developing world" as a desirable job qualification, at the very least. Unfortunately, very few organizations actually offer young lawyers field placements, so Asylum Access is unique in that regard. It was a pretty perfect fit for what I was looking for.

SC: What do you enjoy most about your current role with EFRR?

KF: I think the best part of this type of work is the human element. It's not unique to refugee law, but I think it's special about public interest and direct services work. Your clients are people, not companies, and they relate to you as human beings. That can be a real challenge, but it's also incredibly rewarding. People come to you when they are at their most vulnerable, and sometimes (more often than I'd like) there's nothing you can do. But

the clients are almost always grateful just to have a safe space and someone to listen to them, someone to explain what's happening to them and take time so that they really understand. I love being in the position to give a tiny bit of power back to my clients, even if there's nothing else I can do. I can make sure that they feel less helpless than they did before they walked into my office. The resilience and vulnerability clients show is also a really excellent reminder of why it's important to show up and do my best every day.

SC: What do you think are the most important skills needed for doing the type of work you do?

KF: Basically, you have to be comfortable talking to people. I realized recently how important it is to understand your own sense of authority to be a refugee lawyer. We have to ask people questions about the most intimate and terrible details of their lives -- questions that we would never ask our friends, families, or coworkers -- and we have to demand complete honesty from people who are, essentially, strangers. To do this well, you have to really understand your role as a lawyer, and believe that you are entitled to this information. Not gratuitously, and never to fulfill your own curiosity, but to do your job on behalf of the client. If you don't ask invasive questions, you aren't doing your job -- and that's an uncomfortable reality for some people, especially young lawyers who are just starting to settle into this role.

SC: Do you experience challenges working in a different cultural context? Also, because you work with individuals in vulnerable situations, is vicarious trauma a concern you think about?

KF: There is no easy or short answer for this. Every part of it is hard. For cross-cultural considerations, it helps if you also find those things fun. You inevitably end up turned around and feeling off-step, but if you can enjoy parts of it, it makes the really aggravating things easier to manage.

In terms of dealing with vicarious trauma and vulnerabilities, there is no silver bullet. You have to put up an emotional wall to protect yourself from the things you hear, and you have to make sure it isn't too close to your heart (which lets too much trauma in), or too far away (which keeps you cold and unaffected). It's a really hard balance to find, and it will depend on your personality how much adjusting you need to do. I worked really hard to bring my wall in closer -- I started out much too cold and distant. I went too far at first, and I did end up pretty badly traumatized from one particularly tough case I handled in Tanzania, which was a major wake-up call.

SC: Do you think a lawyer can play a role in sharing in a client's moral outrage of situation? What are the appropriate boundaries?

KF: If you're doing human rights work and you aren't outraged, you need to think about why on earth not. That said, you do need to be careful about how much of that outrage you show to the client. It's important that the client knows you're on her side, but you also need to maintain your professionalism.



I think it's perfectly acceptable to express sympathy for the client's feelings (anger, frustration), but you need to be careful about visibly sharing them during the client meeting. Rage all you want when the client is out of sight, but if the client sees that you're also furious or upset, it's likely to amplify their own feelings and may set off a spiral reaction that runs out of control. On the other hand, staying calm (but not tone deaf) can calm an angry client down.

In my line of work, I often encounter clients who are very aggravated with UNHCR -- my organization's most important partner, and an essential player in the refugee status determination field in Egypt. Although I also feel aggravated by UNHCR's actions sometimes, if I let the client know that, the client may write UNHCR off entirely. In client meetings, I often defend UNHCR more than I may personally want to, because absolutely no good can come of alienating a client from the agency that is ultimately going to help them.

At the same time, if you let yourself get too emotionally invested in a client's case, you lose your ability to make objective decisions -- and that hurts the client too. This is a very fine line to walk, and no one gets it right every time.

SC: More generally, what advice do you have for young lawyers who are trying to decide on what type of career to pursue?

KF: I started making my best decisions when I abandoned a long-term plan. I thought I knew what I was going to do, and when I started wanting to do different things, I felt like I was making bad choices. When I finally freed myself from the pressure of meeting some long-term goal, the decisions came much more easily and clearly. What worked well for me was identifying a comprehensive set of skills I wanted to develop, and thinking of each career move in terms of the skills I would get from it: field work, interviewing experience, language development, leadership, etc. Think of your career path as an onion: figure out which layer you want to unpeel first, and then reevaluate which layer to unpeel next. Eventually, you'll have to come up with a long-term plan, but there's no need to put that kind of pressure on yourself in the beginning. (Really. I promise.)

SC: Any last comments?

KF: Don't try to be a lawyer you've seen someone else be. It's important to learn from others, but you'll be your kind of lawyer, and you'll do things your way, and it'll be great.

Thanks so much for all of these insights, Katie!

A Concert Review: Yukon Blonde

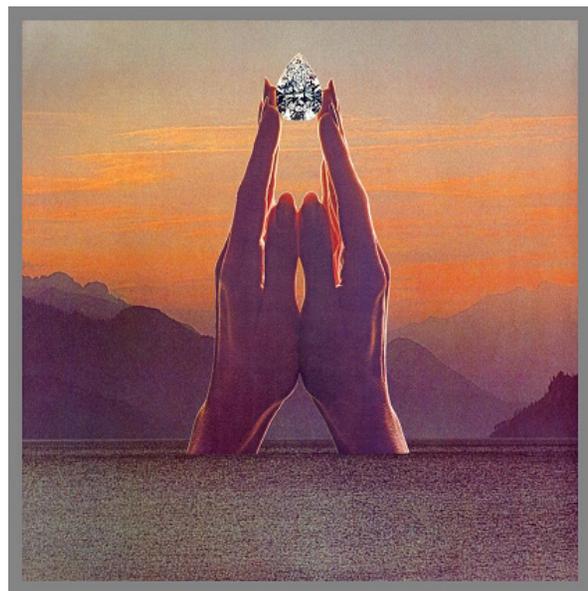
Live at Lee's Palace, 26 February 2016

- JUSTIN PHILPOTT

Nearing the end of their lengthy cross-country tour, Yukon Blonde stopped at Lee's Palace in Toronto to play two sold out shows. I was lucky enough to be in attendance for round two. Now, I must acknowledge from the onset that I am not an objective reviewer. Yukon Blonde has been one of my favourite bands since the release of their first, self-titled album in 2010. Yukon Blonde's distinguishing trademark is their fantastic, full band harmonies that remind me of the Beach Boys and Fleet Foxes. Every member of the band sings, not just the lead singer—this is where the band shines.

The five-piece, Vancouver-based, indie rock band is touring in support of their latest album *On Blonde*, which was released on 16 June 2015 on Dine Alone Records. The album name is clever nod to Bob Dylan's classic 1966 release *Blonde on Blonde*. When the band name and album title are read together, you get Yukon Blonde - On Blonde. *On Blonde* represents a step in the right direction for a band that appears motivated to reach a larger audience. The first single off the album, "Saturday Night," reached number one on CBC Radio 2 in May 2015. Before recording *On Blonde*, founding members Jeff Innes (Vocal/Guitar), Brandon Scott (Lead Guitar) and Graham Jones (Drums) added James Younger (Bass) and Rebecca Gray (Keys/Synth) to the mix. The new album represents a significant shift into a more "synth-based" electronic sound. However, the band still brings the same energetic vibes, catchy lyrics and harmonized choruses, found on their previous releases, to the table.

Welcomed by a rousing ovation, the band hit the stage and began their set with "My Girl" from their 2012 release *Tiger Talk*. It was immediately apparent from the energy in the first ten seconds that this was going to be one heck of a concert.



On Blonde by Yukon Blonde (Dine Alone Records)

Yukon Blonde is a heavy touring band, the effects of which are clearly apparent from the band's strong chemistry on stage. Although slightly weighted to songs on the new album, the set comprised of a collection of songs across the band's discography. I was overjoyed when the band played a rocked out rendition of the folky "Fire" from their *Fire//Water* EP released in 2011. The band also played my favourite song from their self-titled album, "Wind Blows."



This song was my introduction to the band back in 2010; I had to wait almost six years to see it played live. Lead singer Jeff Innes let the sold out crowd of Lee's Palace take over singing duties for the last chorus of the song.

It was clear from the crowd's energy level that they were more familiar with Yukon Blonde's newer songs. When "Saturday Night" was played about half way through the set, the crowd went into a frenzy. This was followed by my favourite Yukon Blonde song from *On Blonde*, "I Wanna Be Your Man." The song features a heavy, grungy-sounding guitar riff that explodes immediately after the band finishes singing "You mean a lot to me / I wanna be your man." Another crowd-pleaser from the new album was "Favourite People," a song with a rolling vibe built for live shows. The song contains a funny reference to Rihanna's song "Diamonds" where Innes recites "Rihanna sings of diamonds and how brightly they shine / All I see is pressured carbon that knows the price of time / Call me a diamond but don't tell me to shine."

"Confused," the opening track off *On Blonde* would fit right in on a soundtrack designed by the stressed-out law student. As the title might suggest, the song is about being confused with where to fit in and how to be useful. One of the songs many great lyrics include "When I get home / well I just lay in my bed / nobody seems to want me / I got no motives in my head / I'm confused." The song is infectious; I could not stop myself from singing "I'm confused" over and over again on the subway ride home.

This was my first time attending a concert at Lee's Palace. The venue was featured in the 2011 film *Scott Pilgrim vs. the World* starring Michael Cera. It is immediately clear that Lee's Palace was not a "Palace" by any stretch of the imagination. It is a dark, grungy, bar-style venue with zero bells and whistles. This is not Massey Hall

or the Danforth Music Hall. However, it was perfect for Yukon Blonde who sold out the 600-person capacity venue on consecutive nights. Lee Palace's small size provided for a very intimate and energy-packed concert. I was also pleasantly surprised by the great sound quality; every melody, every riff, every lyric came through crystal clear.

At the end of the show, Yukon Blonde appeared stunned by the response of the crowd and were extremely grateful for their support. This amount of graciousness showed by the band gave me the impression that they were entering uncharted territory and were genuinely unsure of how to handle their growing popularity. It was charming. Yukon Blonde is a great Canadian band, plain and simple. They are deserving of a much larger audience. Before walking off the stage under thunderous applause, lead singer Jeff Innes stated, "we'll be back." I cannot wait until they do and I have a feeling it will be at a much larger venue.

thumbs UP



Toronto Raptors beat Cleveland Cavaliers to win season series

thumbs down



Trump wins big on Super Tuesday

Coming to Terms with Five Terms: Presidential Elections in Uganda Marred by Procedural Irregularities and Opposition Suppression

- JUSTIN TOH WITH EDITS AND TITLE BY SOPHIE CHIASSON A COLUMN BY CLAIHR

» continued from page 5

Ugandan Constitutional Law

The Constitution of the Republic of Uganda states that all political and civil organizations must conform to democratic principles. Those principles explicitly include equal access to leadership positions of all levels, and representation of social diversity in government. Chapter Four of Uganda's Constitution enumerates fundamental human rights. Relevant rights include the right to assembly (explicitly including peaceful demonstration; article 29(a)), freedom of expression (article 29(1)(a)), and freedom of conscience and religion (article 29(1)(b)).

Many of these rights are echoed in Uganda's international agreements, including the United Nations International Covenant on Civil and Political Rights and the African Union's African Charter on Human and People's Rights.

Challenging the Election Results

Under article 104 of the Constitution, "any candidate dissatisfied with the election may take the matter to the Supreme Court within ten days after the declaration of the results." Section 59 of the Presidential Elections Act elaborates further. The Supreme Court of Uganda must rule on any challenge within thirty days, at which time it can dismiss the petition, declare a different result, or annul the elections. Annulment can only result if a candidacy was invalid, if a candidate committed certain offences, or if electoral irregularities substantially affected the results. The Supreme Court may also order a recount while investigating the case.

Besigye previously filed petitions following the 2001 and 2006 elections. Both times, the Supreme Court found that irregularities occurred, but they did not substantially affect the results.

Besigye, Mbabazi, and Bwanika have all expressed plans to file a petition. However, it remains to be seen whether one was properly filed by the 1 March 2016 deadline.

Chief Justice Bart Katureebe of Uganda's Supreme Court affirmed that he was prepared to hear the matter. Should a petition be filed, Katureebe will choose five to seven of the country's nine Supreme Court Justices to hear the case.

Police Response to Criticisms

Inspector General of Police Kale Kayihura released a statement denouncing speculation and misinformation in election media coverage. Kayihura asserted that Besigye's situation is not a house arrest, saying that Besigye can access his lawyers and political affiliates (despite reports of selective and limited access). He denied that any police action was taken against the FDC and promised that Besigye would be free to legally challenge the results.

Kayihura further asserted opposition agents monitored all voting and tallying, and that the FDC could have received a copy of the results when they were declared.

The statement also blames Besigye's supporters for persistent violence against police and NRM supporters over multiple illegal protests, and accuses the FDC of plotting to illegally declare results before polling ended. Kayihura noted that article 43 of the Constitution limits rights insofar as they contradict the public interest.

Article 43(1) of the Constitution does set out limits on rights, although article 43(2) states that "public interest" shall not include "political persecution" or "detention without trial."

International Response

The UN Office of the High Commissioner for Human Rights released a statement criticizing excessive force and unfair arrests by security forces. The thirteen-nation Commonwealth Observer Group, for its part, reiterated concerns about Kampala polling station delays, attributing deficiencies to corruption and low credibility by the Electoral Commission.

The European Union Election Observer Mission, consisting of ten analysts and thirty observers, also condemned opposition arrests and called for the Electoral Commission to release scanned copies of the result declaration forms online. US Department of State deputy spokesman Mark Toner congratulated Ugandans for voting peacefully. Nonetheless, Toner's statement cites various defects in the election process and urges the NRM to take corrective action. US Secretary of State John Kerry reportedly telephoned President Museveni to voice these concerns personally. Both EU and US delegates were permitted to visit Besigye's residence on February 27 despite access denials to local politicians.

However, Russia's Foreign Affairs Ministry has taken a much less critical tone. The Ministry congratulated Ugandans on the elections, stating that African observers indicated a calm, open election free of significant violations. For his part, President Museveni has dismissed criticism, saying, "I told those Europeans... I don't need lectures from anybody."

This article was published as part of the Osgoode chapter of Canadian Lawyers for International Human Rights (CLAHR) media series, which aims to promote an awareness of international human rights issues.

Cartoon Submitted by Osgoode student Rod Grierson

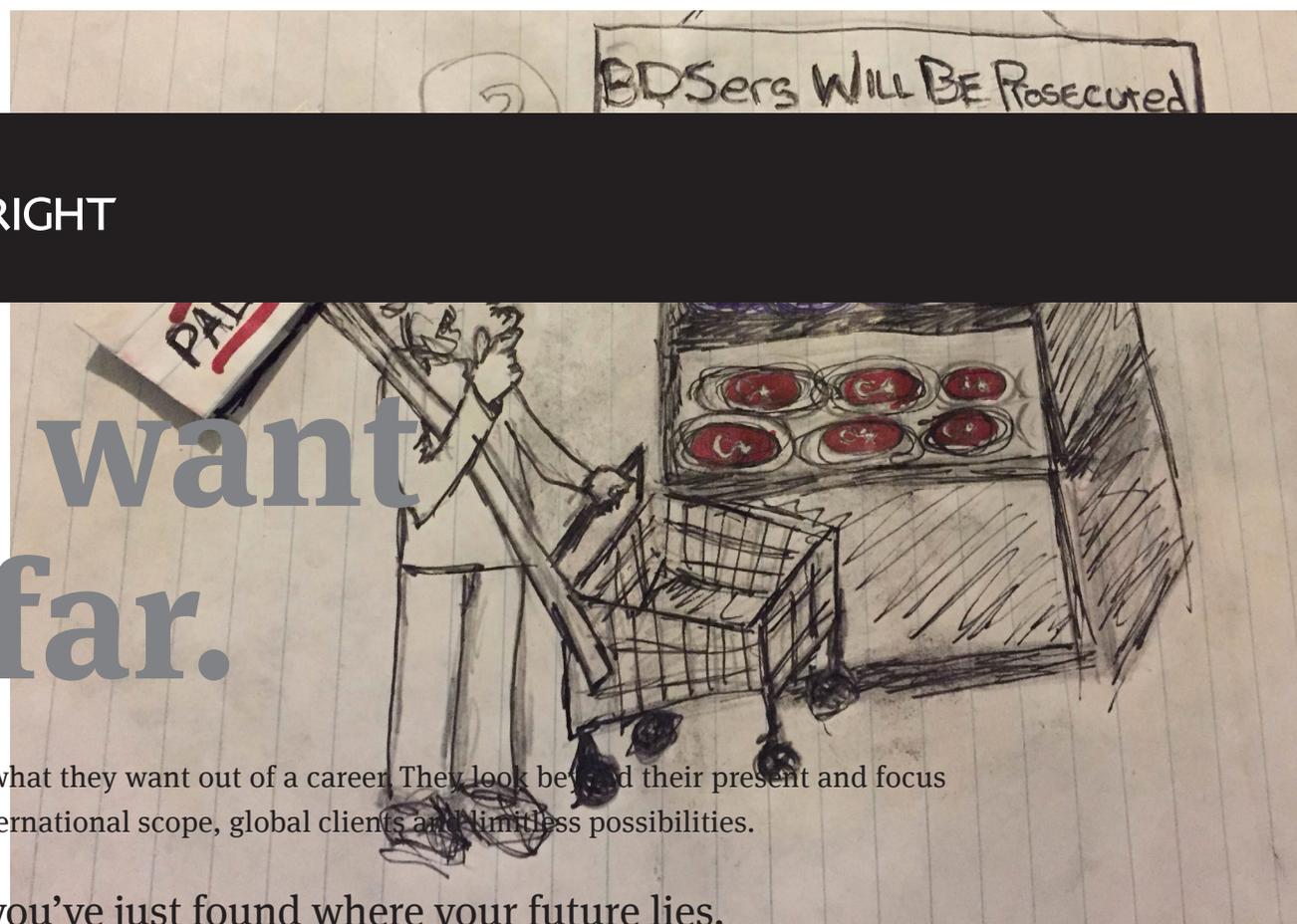
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All Star Game in the North

- KAREEM WEBSTER

This past February, the National Basketball Association held its first All-Star Game in Toronto, the first time the event has been held outside of the United States. This was a historic moment for all fans north of the border.

“All-Star Toronto 2016,” the banner read two years ago at the press conference.

Rising Stars

I was able to grab some tickets to the Rising Stars Challenge, the first (worthwhile) event of the weekend. Basketball fans packed the Air Canada Centre on Friday. The atmosphere was different. First, there were a lot more American spectators than usual. I could hear their accents. Second, there were a lot of tall individuals in the arena. I cannot remember ever seeing as many six-foot-eight persons traverse the ACC.

This year, much to my chagrin, was the “USA versus the World” theme for the Rising Stars Challenge. Rising Stars is an exhibition game between players who are in their first two years in the NBA. This game used to be known as the “Rookie-Sophomore Challenge,” where first-year players were pitted against those in their second campaign. Personally, I wish that the NBA had brought back the Charles Barkley-Shaquille O’Neal draft. A few years ago, the NBA switched from the Rookie-Sophomore Challenge (after many lopsided affairs in favour of the sophomores) to the Barkley-Shaq draft which resulted in more evenly matched teams and a better display of talent on both sides. This year’s theme had those born in the US face off against the players who were born anywhere else.

I have always enjoyed this event. Although the defence is lackadaisical, think of it like a poor man’s All-Star Game. Your favourite rookies and sophomores are being showcased while not being obligated to run team plays. You will see more crossovers, dunks, alley-oops, and athleticism than a regular season game.

Cheering for Team World, I saw the game live, in decent seats. Andre Roberson, a forward from Oklahoma City Thunder, sat a row away from us, draped in a grey hoodie. On my way to the washroom, I passed Shareef O’Neal, Shaq’s son, who towered over me at six-foot-nine.

The game was interesting. For Team USA, Jordan Clarkson, Zach LaVine, and Karl-Anthony Towns put on quite the show for the audience, with a barrage of three-pointers and dunks. For Team World, Emmanuel Mudiay, Mario Hezonja, and Andrew Wiggins exhibited some impressive cutting, slashing, and shooting. The game went down to the final seconds, with LaVine capturing the most valuable player award.

Kevin Durant, Carmelo Anthony, James Harden, Victor Oladipo, Aaron Gordon (more on him later), Morris Peterson, and Isaiah Thomas were all in attendance. It was great to see Harden sign an All-Star program for a young fan.

Rating: 7/10

Inside the Studio

Afterwards, I attended the TNT Inside the Studio set, but was not able to walk on, unfortunately. I saw Shaq, Ernie Johnson, Kenny Smith, and Von Miller (yes, that Von Miller) discuss the All-Star Weekend festivities and Miller’s Super Bowl MVP.

Shaq is quite the large man. It is not until you see him walk around in person that you realize how gargantuan he really is. In his typical jovial fashion, he tossed some soft-boiled eggs into the crowd.

It had been a great night in Toronto thus far.

All-Star Saturday Night

Skills Competition:

Notwithstanding the fact that the skills competition was an exciting showdown between Karl-Anthony Towns and Isaiah Thomas, everyone tuned in for the three-point and dunk competition.

It was an exciting race between a big man and a small guard. I hope that the NBA continues this next year.

Rating: 7/10

Threes

Boy, oh boy. Toronto was in for quite the delight. Klay Thompson, Steph Curry, JJ Redick, and Devin Booker. Loaded.

I had my money on Redick, merely because he was a sleeper (in a competition with Curry and Thompson, he is a sleeper) and he is having a fantastic season this year. It came down to the Splash Brothers in the final round, where Thompson outscored Curry in an exciting fashion. This was the first time that team members had won the competition in back-to-back years (Curry won in 2015).

What a disappointment Devin Booker was in this competition. I expected him to go further.

Rating: 8/10

The Dunk-Off

Andre Drummond and Will Barton: please do not ever agree to participate in the slam dunk competition again. Those two were horrible.

With that said, the showdown between Zach LaVine and Aaron Gordon was insane.

The dunk off is largely hit-or-miss. Personally, I found the whole “let’s give Nate Robinson three dunk-off championships” to be rather annoying.

Gordon should have won. I mean, the under-the-legs-over-the-mascot plus the 360-degree one-handed-dunk-with-the-assist-from-the-mascot-on-the-spinning-hoverboard plus the 180-degree-through-the-legs-up-and-under coupled with the fact that he jumped over the mascot should have sealed the victory.

LaVine was no slouch, however. He just did not have the creativity that Gordon did. Where Gordon had a repertoire of inconceivable dunks, LaVine would slightly modify his previous dunk. Where Gordon had pizazz, LaVine had airtime.



► Source: nydailynews.com

I took exception to the fact that they could not, at the very least, award both dunkers with the trophy in a tie. Aaron Gordon should participate in the contest again.

The showdown between these two was one for the ages. There was no real loser.

Rating: 10/10

The Game

It was the final All-Star Game for Kobe Bean Bryant, starting with Steph Curry and Russell Westbrook in the backcourt. Kawhi Leonard was voted in as a starter. Paul George, two years removed from a gruesome injury, was voted as a starter. Great storylines for a game that many do not watch intensely, but still tune in to.

I usually love the All-Star Game. Sure, there isn’t a lot of emphasis on defence, but you have to realize that you will not see these players on the same team ever. Ever. It’s enjoyable enough watching them pass the ball to one another for one night. Plus, the fourth quarter is usually when everyone buckles down and locks onto their man. Not to mention the fact that sustaining an injury in a meaningless game is not smart financially for the players, nor is it wise for their team.

This year, however, was a joke. The lack of defence was at an all-time low. I was very disappointed and found myself watching it for three reasons: the last All-Star game for Kobe, the fantastic play of Westbrook, and hoping that George would break the record for most points scored on the Eastern Conference team (he ended up being one point shy). Players were almost ushering the opposing team to the basket. It is no wonder why this year’s game was the highest scoring ever. Ever.

Kobe was honoured in fantastic fashion and I appreciate the fact that all of the arenas are giving him the farewell tour he deserves.

The NBA needs to implement some sort of incentive for the Conference team or a player to win the game. I usually enjoy the exhibition but this year was despicable. Sorry, Toronto, the main event on Sunday did not live up to the hype. Fortunately, the preceding days compensated for the lack of effort by the players.

Rating: 5/10

Next up: Charlotte in 2017!

thumbs down



Toronto Police officer charged with sexual assault in cruiser

Blue Chippers or Volatile Goods?

How Valuable is the First Overall Selection in the NHL Entry Draft?

- KENNETH CHEAK KWAN LAM

D-Date:

With the Toronto Maple Leafs firmly entrenched in last place (as of 17 February 2016) in the National Hockey League (NHL) standings, Leafs Nation has already circled 29 February as D-Date, because a closer look at the NHL calendar would reveal that it is the trade deadline for this season. Following the Leafs somewhat surprising trade of long-time captain Dion Phaneuf to their Ontario rival (none other than the Ottawa Senators) in a stunning nine-player blockbuster deal on 10 February, the exodus of Leafs players from the roster has hit full stride through the deadline. Most of the attention was on the seven pending unrestricted free agents (Brad Boyes, Michael Grabner, Shawn Matthias, P.A. Parenteau, Roman Polak, James Reimer, and Nick Spaling) which the team sold off for much-needed draft picks as Toronto's "complete rebuild" continues under

the guidance of Brendan Shanahan, Lou Lamoriello, Kyle Dubas, Mark Hunter, and Mike Babcock. While the return could be modest for some (if not all) of these players, given that most of them (perhaps with the exception of Optimus Reim) are depth players and not exactly difference makers, they have drawn interest from teams because they can offer Stanley Cup contenders depth during a post-season run, not to mention that virtually all of them are very cap-friendly as they have cheap and expiring contracts. The Maple Leafs will now basically dress a skeleton lineup littered with American Hockey League and East Coast Hockey League-calibre players on a nightly basis beginning 1 March. The end result is that no matter how hard and structured the hockey club plays under the guidance of Coach Babcock, losing will be a common theme, meaning that the Leafs should finish very close to the bottom of the NHL standing at the end of the regular season, if not dead last!

All the "pain" that Coach Babcock has referred comes with the potential for a big payoff later. If Toronto were to finish in 30th place at the conclusion of regular season, the Maple Leafs will have a 20% chance of winning the draft lottery scheduled on 16 April (and in fact will be guaranteed to select no later than fourth overall in the first round). Some Leafs fans are still lamenting the fact that the team did not earn the right to draft expected generational talent Connor McDavid last year. However, they can look forward to seeing Toronto announce the selection of Auston Matthews on 24 June at the 2016 NHL Entry Draft in Buffalo, New York, if the ping pong balls bounce the Maple Leafs' way. Yet how many first overall picks actually pan out and achieve their full potential? For every legend such as Mario Lemieux, there is a bust, such as Alexandre Daigle. Let us take a closer look at whether having the first overall selection of an annual entry draft is analogous to having a golden ticket to employing a future-Hall-of-Famer, or if it's

closer to taking on an unsure commodity that is no more than mere hype.

Calder Memorial Trophy Winners:

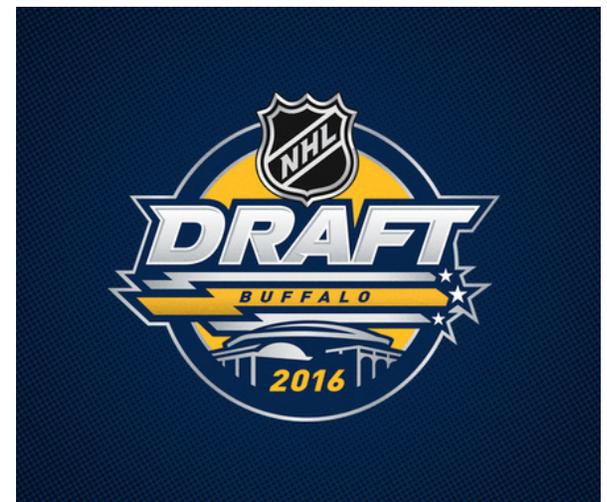
Since the inception of the NHL Entry Draft in 1963, there have been a total of fifty-three first overall selections. To this date, this short list has produced ten Calder Memorial Trophy winners: (1) Gilbert Perreault, drafted by the Buffalo Sabres in 1970; (2) Denis Potvin, chosen by the New York Islanders in 1973; (3) Bobby Smith, selected by the Minnesota North Stars in 1978; (4) Dale Hawerchuk, picked by the Winnipeg Jets in 1981; (5) Mario Lemieux, drafted by the Pittsburgh Penguins in 1984; (6) Bryan Berard, chosen by the Ottawa Senators in 1995; (7) Alexander Ovechkin,

selected by the Washington Capitals in 2004; (8) Patrick Kane, picked by the Chicago Blackhawks in 2007; (9) Nathan MacKinnon, drafted by the Colorado Avalanche in 2013; and (10) Aaron Ekblad, chosen by the Florida Panthers in 2014.

Based on this data, this means that the probability of landing a newly-minted NHL player who would go on to become the Rookie of Year after his first campaign is only 18.87%. Of course, it should be noted that Sidney Crosby would in all likelihood have won the Calder Memorial Trophy in 2006 if Ovechkin did not have to delay his NHL debut by a year due to the 2004-2005 NHL lockout, which led to the cancellation of the season. We should also be mindful that the 2016 Calder Memorial Trophy winner has yet to be announced, seeing that we are only about two-thirds of the way through this season.

Members of the Hockey Hall of Fame:

As much as the chances of unearthing a future Rookie of the Year seems low, the odds of recruiting a future Hall-of-Famer is even bleaker, at least on the surface. Among the fifty-three first overall picks, there are only seven players who have been ultimately immortalized and inducted into the Hockey Hall of Fame: (1) Perreault; (2) Guy Lafleur, selected by the Montreal Canadiens in 1971; (3) Potvin; (4) Hawerchuk; (5) Lemieux; (6) Mike Modano, picked by the Minnesota North Stars in 1988; and (7) Mats Sundin, drafted by the Quebec Nordiques in 1989. Therefore, statistically speaking, the chance of being able to get the NHL rights of a future Hall-of-Famer via the first overall selection is a mere 13.21% (7/53). However, I surmise that adjustments should be made because factoring first overall picks who are still active players into the calculations would bias the results.



If we were to exclude the seventeen players who are still playing in the NHL from the equation -- (1) Chris Phillips, chosen by the Ottawa Senators in 1996; (2) Joe Thornton, selected by the Boston Bruins in 1997; (3) Vincent Lecavalier, picked by the Tampa Bay Lightning in 1998; (4) Rick Nash, drafted by the Columbus Blue Jackets in 2002; (5) Marc-Andre Fleury, chosen by the Pittsburgh Penguins in 2003; (6) Ovechkin; (7) Crosby, selected by the Pittsburgh Penguins in 2005; (8) Erik Johnson, picked by the St. Louis Blues in 2006; (9) Patrick Kane, drafted by the Chicago Blackhawks in 2007; (10) Steven Stamkos, chosen by the Tampa Bay Lightning in 2008; (11) John Tavares, selected by the New York Islanders in 2009; (12) Taylor Hall, picked by the Edmonton Oilers in 2010; (13) Ryan Nugent-Hopkins, drafted by the Edmonton Oilers in 2011; (14) Nail Yakupov, chosen by the Edmonton Oilers in 2012; (15) Nathan MacKinnon, selected by the Colorado Avalanche in 2013; (16) Aaron Ekblad, picked by the Florida Panthers in 2014; and (17) McDavid, drafted by the Edmonton Oilers in 2015; -- then the probability of being able to secure a future Hall-of-Famer using the first overall selection would improve to a marginally better 19.44%.

Final Words:

As we have seen from the above analysis, the chances of successfully choosing a Calder Memorial Trophy winner is only 18.87%, and the probability of successfully selecting a Hall-of-Famer is a remote 13.21% prior to adjustments and an unlikely 19.44% after adjustments are made. On the other hand, only three players who were taken first overall failed to appear in a single NHL game--(1) Claude Gauthier, chosen by the Detroit Red Wings in 1964; (2) Andre Veilleux, selected by the New York Rangers in 1965; and (3) Rick Pagnutti, picked by the Los Angeles Kings in 1967--all from the era before the 1967 NHL expansion. So even though the likelihood of picking a player who fails to have at least a cup of coffee in the NHL is quite low at 5.33% (3/53), the truth of the matter is that the odds of being able to find that "can't be missed" diamond in the rough seems to be an inexact science no matter how we dissect the fifty-three first overall selections.

PR WAR

A few thoughts on the very public negotiation between the Blue Jays and Jose Bautista

- MICHAEL SILVER

I am normally opposed to opinions that professional athletes are paid too much. Professional sports are highly profitable and athletes are generally paid what the market will bear—within a reasonable range of what they are worth to their teams. But recently, rumours relating to Jose Bautista's contract demands have given me pause.

For the last six years, Bautista has been among the best players in the sport. But he signed a contract at the start of this period to stay with the Blue Jays. Signed following his breakout season, the contract was for five years and 65 million dollars. At the time, it was considered a serious risk for the team given that there was no assurance that Bautista would be able to replicate the success that he had enjoyed for the first time in the previous season. But during the life of the contract, Bautista has continued to perform at an extremely high level and has been one of the best players in the league. The contract proved to be a steal.

Clearly, Bautista is unhappy about having been "stolen." The contract finally expires after this coming season and Bautista has indicated that he has no intention of offering the Blue Jays more favorable terms than he would offer any other teams, a so-called home town discount. A recent rumor surfaced that Bautista is demanding a five-year, 150 million dollar contract. Bautista was quick to reject the rumor as false. The next rumor was that the previous rumor was false as an understatement of Bautista's demand and the actual demand might be as high as six years and 210 million dollars.

Bautista's level of performance in the last six years may be worth a contract in this range but it is highly unlikely that his performance will continue at such a high level for the next six years. Bautista will be thirty-six years old at the start of his next contract.

Performance of all athletes in all sports declines significantly at that age range. Bautista remains an elite hitter but his defence has already begun to show signs of decline. There is a chance that during his next contract he will have to be moved to first base or designated hitter, reducing the potential value that he could provide to a team.

Baseball player value is more easily measured than value for other professional athletes. Much of what a baseball player does is measured statistically, especially offensively. Defensive value is measured in much less exact ways but at least the value of various positions and the relative quality of various players at particular positions is relatively well understood.

One convenient measure of baseball player value is wins above replacement, or WAR. It compares the performance of a particular player to a hypothetical replacement level player, a hypothetical player who is readily available, not particularly skilled, and serves as a baseline for acceptability. Players are compared to this hypothetical replacement level player and their performance is evaluated based on the number of additional wins that they are worth to their team as compared to such a replacement level player. In

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► Source: nydailynews.com

the last six years, Bautista has been worth a total of thirty-four WAR according to one popular system, and thirty-three WAR according to the other. This ranks him as among the best players in the league. But players over thirty-five years almost exclusively show gradual declines in their production and the WAR value that they generate. If it is assumed that the first year of the contract Bautista produces his average WAR of the past six years and declines one

WAR a year from there, over a six-year contract he could be expected to produce a total of approximately eighteen WAR over the duration of the contract. One use of WAR is that on the free agent market, players on aver-

age are said to be worth 7.5 million dollars per WAR. At this assumed WAR, Bautista would be worth only 135 million dollars. Even that may be overly generous because if Bautista is forced to change position, his decline in WAR value will be even steeper.

There is a certain sentimental value attached to Bautista. He has been the best player on the team for most of his period here and fans feel a strong affinity for him. He was instrumental in the success of the team last season and provided some of the most memorable moments to fans in recent memory. But fans should value success above all. If the team were to overpay Bautista significantly, it would hinder their ability to sign other players. The biggest mistake that a sports team can make is to overpay a player on the basis of emotion and as a reward for past performance that is unlikely to be repeated.

The majority of sports contracts are dictated by the forces of the free market and large businesses bidding on significant assets. But teams must remain

objective, or risk making foolish decisions and paying players more than they are worth. Worth is a function of a combination of the likely performance of the player and what competing teams are willing to pay for that likely level of performance. A combination of these factors clearly shows that Bautista is unlikely to be worth his contract demands and the Blue Jays would be advised to not sign him. It would take truly exceptional circumstances to depart from such an approach to valuation of players, such as the revenue structure of the team changing drastically or the team perceiving that a player is of a markedly different worth than other teams perceive the player to be. Such a situation does not exist with Bautista; at this point, he is a known commodity and headed towards the tail end of his career.

Fans should enjoy this last year with Bautista. He has significant incentive to perform at a high level, earn his desired free agent contract, and begin the process of attempting to prove the doubters wrong.

thumbs UP



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thumbs down



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