

# The Surrealism of Men's Rights Discourses on Sexual Assault Allegations: A Feminist Reading of Kafka's *The Trial*

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**Abstract:** Being a feminist in the contemporary Canadian context, post-Ghameshi, can lead to existential crises. In this paper I investigate this relationship of feminist activism and reality, men's rights activism (MRA) and surrealism, and the Absurd via the work of surrealist novelist Franz Kafka. While Kafka's *The Trial* is popularly understood as an allegory for the alienation and pains of bureaucracy and modernity, I posit a new interpretation of the story as a men's rights perspective of sexual assault allegations. I use Shoshana Felman's theory of integrated literary and legal visions to read Kafka's *The Trial* against men's rights discourses regarding sexual assault allegations. I find this theory of evidence and repetitions across the disciplines of art (Kafka) and law (the Ghomeshi trial) useful as analytical sites for critically engaging with men's rights discourses about sexual assault allegations. I demonstrate how *The Trial* can be interpreted as a representation of the phenomenon of sexual assault allegations according to men's rights discourses, and demonstrate how these discourses are just as surreal as Kafka's story. Through the Ghomeshi verdict I will demonstrate how these surrealist fantasies impact real-world sexual assault accusations, trials, and court decisions.

**Keywords:** feminism; interdisciplinary law; Kafka; literature; sexual assault

*If men define situations as real,  
They are real in their consequences*

—W. I. Thomas (in Goffman 1974, 1)

## Introduction

Being a feminist in the contemporary Canadian context, after the sexual assault trial of the popular radio host Jian Ghomeshi, can lead to existential crises. To be a feminist has always necessitated an intimate connection to the Absurd; that is, engaging with patriarchal logics and justifications for oppression is to engage with bizarre understandings of the causes and realities of violence against women. In this paper, I investigate this relationship of feminist activism and reality, men's rights activism (MRA) and surrealism, and the Absurd via the work of the surrealist novelist Franz Kafka.

Kafka's work permeates Western literature and cultural memory to the point where even those who have not read Kafka are familiar with the themes and style of his writings. Franz Kafka's contribution to literature, discourse and theory, and popular culture is clearly demonstrated with the adjective *Kafkaïen* (Kafkaesque), which has permeated the cultural lexicon to take on meaning "the pejorative connotation of describing an absurd situation in general" (Bogaerts 2014, 70). Kafka's novel *The Trial* (1968) is a work of narrative fiction that documents the surrealist journey of Joseph K., a man accused of and charged with an unknown crime. Joseph K. (also written simply as "K.") must navigate a labyrinthine criminal justice system, and is eventually executed for whatever it is he may or may not have done. In Kafka's infamous style the temporality, context, and meaning of the plot is purposefully vague and has been widely interpreted since its original publication

in 1925 (with the first English translation appearing in 1937).

While the story is popularly understood as an allegory for the alienation and pains of bureaucracy and modernity, I posit a new interpretation of *The Trial* as a men's rights perspective of sexual assault allegations. There are few feminist or gendered readings of Kafka's stories, let alone of *The Trial* and "Before the Law." I argue that the discourse put forth by men's rights activists<sup>1</sup> regarding the reality of sexual assault allegations is not grounded in reality; it is a fantasy and also absurd. I utilize Shoshana Felman's theory of integrated literary and legal visions to read Kafka's *The Trial* against men's rights discourses regarding sexual assault allegations. I conclude with the court decision for the Ghomeshi trial to demonstrate the surrealism not only of the novel but also of the socio-legal status of sexual violence in the contemporary Canadian context.

On October 14, 2014, Jian Ghomeshi, the prominent host of the Canadian Broadcasting Corporation's (CBC) radio show on popular culture called *Q*, publicly announced he was taking a leave. Two days later the CBC terminated his employment. On October 27, Ghomeshi responded by filing a \$50 million wrongful dismissal lawsuit, claiming discrimination based on his private sexual practices and false allegations by an ex-partner (Coulling & Johnston 2017, 2). More public accusations by other women followed and Ghomeshi dropped his lawsuit against the CBC on November 25. On November 26, the police laid four charges of sexual assault and one count of overcoming resistance by choking (Coulling & Johnston 2017, 2). Later, police would lay three more charges of sexual assault; the Crown would drop two of those charges (Coulling & Johnston 2017, 2). Ghomeshi entered a plea of not guilty for all six charges. On March 24, 2016, Jian Ghomeshi was acquitted of all charges. In their research on public discourses surrounding the trial, Ryan Coulling and Mathew Johnston note that there were largely two camps of commentators on the

Ghomeshi trial: one believed the victims to be women who had survived sexual assault and the other believed the women were jilted lovers looking for revenge (Coulling & Johnston 2017, 3). Indeed, the Ghomeshi trial seemed to be particularly open to diverse readings, in part because there were a number of issues regarding lack of evidence and inconsistencies in testimony by the victims—all of which were given as reasons for the judge's finding in the case (Coulling & Johnston 2017, 3).

## Theory

This paper, borrowing from the work of Shoshana Felman on narrative and legal repetitions, reads narrative fiction through and across a legal court decision. Felman proposes a theory of legal repetition and "integrate[s] a literary vision with a legal vision, with the intention of confronting evidence in law and evidence in art" (2002, 54). Specifically, Felmen uses the O.J. Simpson trial and Tolstoy's novella *The Kreutzer Sonata*, read in conversation, as the site of this integrated literary and legal vision. She notes:

The dialogue between the disciplines of law and literature has so far been primarily thematic . . . when not borrowing the tools of literature to analyze (rhetorically) legal opinions, scholars in the field of law and literature most often deal with the explicit, thematized reflection (or 'representation') of the institutions of the law in works of the imagination, focusing on the analysis of fictional trials in a literary plot and on the psychology or sociology of literature characters whose fate or whose profession ties them to the law. (Felman 2002, 55)

Felman's approach breaks from this tradition by analyzing both real and comparable impacts and historical reception of the real court trial and the fictional trial, a juxtaposition she admits is quite bold (Felman 2002, 55). Felman proposes a theory of "the phenomenality of structural juridical repetitions as internal to the logic of specific legal cases, or as a legal

outcome of the (literary/psychoanalytic principle of the) traumatic narratives that constitute . . . at once the story and the actual criminal case” (Felman 2002, 56). Felman takes seriously both the narratives of the fictional and non-fictional trial while simultaneously examining the cultural impact of both texts without privileging law over literature or vice versa.

This theory of evidence and repetitions across the disciplines of art (Kafka) and law (the Ghomeshi trial) presents useful analytical sites for critically engaging with men’s rights discourses about sexual assault allegations. Through this theoretical framework, *The Trial* can be interpreted as a representation of the phenomenon of sexual assault allegations according to men’s rights discourses and demonstrate how these discourses are equally as surreal as Kafka’s story. Through the Ghomeshi verdict, I assert how these surrealist fantasies influence real-world sexual assault accusations, trials, and court decisions.

### **Truth and Narrative Fiction**

A significant contribution to the vast amount of writing about and analysis of Kafka’s stories can be attributed to what has been called the “universal appeal” of his work—the vagueness of the characters, context, and plot that allows readers to easily identify with and project their own self, feelings, or fantasies into/onto the story. However, there is something to be said of analyzing Kafka in context:

Kafka is more valuable when we look at him in his multiple ties and connections. I insist that if we truly want to consider Kafka a writer of a somewhat universal appeal, and not merely a provincial product of a certain time and place than we must look carefully at these ties and at these contexts. Parallels with other writers, movements, techniques do not diminish Kafka, on the contrary, they emphasize his value and his merits for a

significant diversity of readers in a significant diversity of manners. (Virgil 2005, 370)

Thus, while Kafka is a useful case study for examining the socio-political context of early twentieth century Prague, of the Jewish diaspora, or of the complexities of a Jew writing in German in Prague during the interwar period, the timeless feel of his stories manages to speak to readers across contexts. This text may speak to some readers of alienation and the pains of state bureaucracies, but it speaks to me as a narrative about sexual assault, of a cultural misunderstanding of who constitutes the “victim” of sexual violence and any resulting interactions with the criminal justice system, especially the victimhood narratives of men’s rights activism.

### **Men’s Rights Discourses: Surrealism & Reality**

Men’s gendered activism originally rose out of the feminist movement in the 1960s, but eventually succumbed to internal tensions and split into two separate branches over internal tensions in the 1970s. The first branch, men’s liberation<sup>2</sup> discourses, “acknowledged that sexism had been a problem for women and that feminism was a necessary social movement to address gender inequalities,” and stressed how patriarchy also harmed men’s emotional lives, health, and relationships (Messener 1998, 256). The other branch was an overtly anti-feminist men’s rights movement. This second kind of movement, which includes “men’s rights activists” (MRAs),<sup>3</sup> focuses on hegemonic understandings of masculinity and disputed or denied feminist claims that patriarchy privileged men via the systemic oppression of women (Messener 1998, 256). In this paper, my historical context is limited to this second branch of men’s gendered activism as it is central to MRA discourses of sexual assault allegations as represented both in Kafka and the Ghomeshi trial.

By the 1980s, MRA discourse had become increasingly and overtly angry and anti-feminist. Feminism came to be viewed as “women’s plot to

cover up the reality that it is actually women who have the power and men who are most oppressed by current gender arrangements,” as was exemplified by men’s lower life span, health problems, military conscription, divorce and custody laws (Messener 1998, 266). This decade of men’s rights activism was marked by claims that “men are the true victims of prostitution, pornography, dating rituals, sexist media conventions, divorce settlements, false rape accusations, sexual harassment, and even domestic violence” (Messener 1998, 266). MRA discourse occupies a fantasy space of victimhood for men; women are systemically privileged at the expense of men—claims that are not reflected in research. MRA discourse is often criticized for displaying a blatant disregard for widely accepted and supported sociological, economic, and psychological studies that dispute its claims (Gotell & Dutton 2016, 66). Instead of relying on data to support its claims, MRA discourse is built largely upon anecdotal stories—or personal narratives—as well as with scientifically flawed studies (Messener 1998; Allan 2015).

In addition to personal narratives, men’s rights activists sometimes invoke colourful metaphors to support their claims. For example, MRA leader Rich Doyle said:

Divorce courts are frequently like slaughterhouses, with about as much compassion and talent. They function as collection agencies for lawyer fees, however outrageous, stealing children and extorting money from men in ways blatantly unconstitutional. . . . Men are regarded as mere guests in their own homes, evictable any time at the whims of wives and judges. Men are driven from home and children against their wills; then when unable to stretch paychecks far enough to support two households are termed ‘runaway fathers.’ Contrary to all principles of justice, men are thrown in prison for inability to pay alimony

and support, however unreasonable or unfair the ‘Obligation.’ (in Messener 1998, 267-268).

This narrative is Kafkaesque in its use of exaggerated imagery that seeks to affect the reader and garner emotional support for men’s rights activists; it is more metaphorical than reflective of reality.

## **Men’s Right’s Discourses on Sexual Assault & Sexual Assault Allegations**

I focus here on MRA discourses of sexual assault and sexual assault allegations partially due to the political climate proceeding the Ghomeshi court decision (i.e., before 2016), the lack-lustre mandated sexual assault policies that Ontario universities adopted in January 2017 (Wronko 2016), and my own experiences with sexual assault, popular discourses of assault, and men’s rights activists.

Indeed, other feminist scholars have noted that the issue of sexual assault has re-emerged (if it ever really went away) with public allegations against well-known media personalities such as Ghomeshi and with publicized sexual assault scandals at several universities,<sup>4</sup> such as Dalhousie, the University of Ottawa, York University, Queen’s University, and the University of British Columbia to name only a few within the Canadian context (Gotell & Dutton 2016, 66).

Despite the prominence of MRA discourse and activism, there is scarce literature available on the subject, particularly regarding sexual violence. In their study using discourse analysis of popular MRA websites, Lise Gotell and Emily Dutton state:

The only explorations of MRA activism surrounding sexual violence, to date, have been journalistic accounts. Here we examine popular MRA websites to reveal a set of interrelated claims about sexual violence, including: that sexual violence, like domestic violence, is a

gender-neutral problem; that feminists are responsible for erasing men's experiences of sexual assault; that false allegations of sexual assault against men are widespread; and that rape culture is a feminist-produced moral panic. (2016, 66)

Gotell and Dutton also rightly assess that this kind of research is challenging for feminist scholars and activists due to the misogynist content and need for self-care (2016, 66), and risk to personal safety (see Matak 2014). While it is important to conduct research on MRA discourses and activism, it seems unjust that this should predominately fall to feminist and gender scholars, whose political positions will likely be seen as biasing the research, and that feminists not only have to prove their own theories but be responsible for disproving counter-claims that often have no methodological rigor themselves.

MRA discourses try to reduce feminist critiques of rape culture to so-called political correctness. This discourse understands anti-rape feminism as attempting to conflate bad sex as rape and inciting a moral panic, as Gotell and Dutton write:

They criticized a sexually correct form of feminism that they saw as convincing women to redefine bad sex as rape, in the process manufacturing a crisis. These polemical claims took the form of an ideological battle waged through the media and were eagerly taken up in a cultural context by those anxious to put to rest the troubling claims of anti-rape feminists. (Gotell & Dutton 2016, 68)

To reiterate these authors' last point, cultural hegemony needs to *believe* that rape is not a regular occurrence for a significant portion of women in Canada, however, a woman in Canada is likely to be sexually assaulted at least once in their life. There is a wilful cultural ignorance to sexual violence in Canada and has become clear following the Ghomeshi trial.

## Realities of Sexual Assault

In Canada, largely due to feminist law reform and litigation, there is an affirmative consent standard: "There is no implied consent in Canadian law; silence and ambiguity cannot be taken as indicating agreement to engage in sex; and consent must be active through the sexual encounter" (Gotell & Dutton 2016, 66). Thus, the legal definition of sexual assault is any sexual contact in which someone is not freely agreeing to engage in the activity. On the other hand, false accusations of sexual assault are very rare (Ferguson & Malouff 2016). There are high prevalence rates of sexual assault, high rates of under-reporting, high rates of police un-founding accusations, and low conviction rates of those that do end up going to trial, resulting in what is known as the "justice gap" (Gotell & Dutton 2016, 67). Those who experience sexual assault are unlikely to come forward precisely because they will be accused of making false allegations, not being believed, stigmatized and vilified.

Official government statistics and social science data demonstrate the "pervasiveness of sexual violence, as well as the gendered character of the crimes of rape and sexual assault" (Gotell & Dutton 2016, 73). However, MRAs tend to "cherry-pick findings" out of research in order to depoliticize and portray sexual violence as a gender-neutral issue (Gotell & Dutton 2016, 73). What is perhaps most frightening about MRA discourses on sexual assault is how it attempts to minimize and deny the pervasiveness and gendered realities of sexual violence; their justifications for why assault happens are similar to the denials and justifications deployed by abusive men (Gotell & Dutton 2016, 73). Just as Joseph K. rationalizes his behaviour and deflects any accountability in his arrest, MRA discourses resist pro-active approaches to end sexual violence in favour of reactive and defensive politics (Allan 2015, 25).

## Analysis of *The Trial*

### *Franz Kafka*

Literary scholars have noted that Kafka was not primarily an author of the absurd and bizarre but of writing about the fear of the absurd and bizarre (Nasir 2012; Virgil 2005, 364). Because of outspoken philosophical interest in Kafka, many scholars have misappropriated and interpreted his work as “a universal expression of the ‘human condition’” (Bogaerts 2014, 71). Similarly, MRAs are popularly interpreted as marginalized men who feel that they have not or cannot obtain the power and prestige associated with hegemonic understandings of masculinity. In his biographical information about Kafka, Malcolm Warner notes that Kafka had been the victim of “‘Angst’ for many years, as well as ‘stress’ and even ‘pain’” (2007, 1020). It is not a leap to assume that Kafka would have probably felt alienated as a German-speaking Jew living in interwar Prague (Steiner 1968, x). In the introduction to the 1968 edition of the novel, George Steiner describes Kafka: “In respect, both of Jewish ideals and of his father’s brutally voiced expectations, Kafka pronounced himself an abject failure, a deserter. . . . Franz existed shadowlike. His vehemently gnarled relationships with women—the lengthy engagement to Felicie Bauer, his love for Milena—aborted (1968, x).”

Thus, we can see how Kafka himself can be read as a man failing to meet the impossible expectations of the patriarchal ideals of masculinity. Of particular interest to my analysis are his two notable failed relationships with women; his engagement, while lengthy, never culminated in marriage and his love for Milena is described with the heavy adjective “aborted.” While I am not claiming that Kafka would be an MRA if he were living in the contemporary context, I am suggesting that his biography can be read as similarly and sympathetically to those who are involved in anti-feminist activism.

Kafka’s *The Trial* (1925) has been popularly

interpreted as an allegory for modern state power and alienation (Potter 2000, 253). The interpretation of *The Trial* that I find most compelling and useful is that of Jacques Derrida. As Potter notes:

Derrida, like the prison chaplain in *The Trial*, argues that the way we stand before the Law is similar to the way we stand before a text. Both demand to be interpreted, but both actually do not refer to anything beyond themselves. Rather than mediating a relationship to some prior moral or ethical code, our singular relationship to the structure or idiom of the Law is that ethical code. (2000, 254)

Scholars of various fields stand before *The Trial* and with whatever background and baggage they bring with them, they try to assemble a great truth or meaning. Certainly, Kafka never intended to tell a satirical story of men’s rights activism (nor could he have probably imagined the second wave feminism which would pre-empt it). However, I take Potter’s reading of Derrida as permission to use this text to tell a story that serves my purposes. Potter suggests that rather than seeing the confrontation within the story as containing “the conditions of ethical knowledge, then, this encounter might more importantly be about a struggle for recognition, in which the law is not something to be discovered, but might also be that which needs to be changed” (2000, 254). Subsequently, I contend that not only does *The Trial* reveal the surrealism of MRA discourses, but also the need for cultural recognition of the epidemic of gendered sexual violence.

Rachel Potter notes that this parable can also “be seen as the starting point for other kinds of reflections, about the different kinds of law and reason which seem to be referred to in the story, and about the relationship between modernist writing and the Law” (2000, 254). I agree with Potter on this suggestion and indeed see *The Trial* as about sexual assault/rape law and as an allegory of the complex discourses which inform one’s position on sexual assault as a social issue.

*Joseph K.*

Whether a reader embraces Joseph K. as the protagonist or antagonist of *The Trial* depends on whether one believes him to be innocent or guilty. Indeed, as Goodhart and Ward note, what is most unclear is the degree to which Joseph K. is a victim. This is because “In the case of *The Trial*, what is most unclear is precisely the degree to which Joseph K. is really a victim. The fundamental ambiguity of this novel pervaded by ambiguity has to do with the innocence of the protagonist” (Goodhart & Ward 2004, 65). In a book where nearly everything is unclear or ambiguous, the greatest mystery of all is not *what* he might have done, but *whether or not he really did it*, as this profoundly changes the affect and interpretation of the novel.

One clue to the innocence or guilt of Joseph K. is in the translation of *The Trial* from its original German into English. Goodhart and Ward note that, “those able to read the original German text would notice that the word ‘*musste*’ . . . more probably indicates that this is the speculation [as to his innocence] of the character rather than the narrator, and therefore possibly self-serving” (Goodhart and Ward 2004, 66). Indeed, many literary critics have argued that it would be naïve of the reader to agree with K. that he is in fact innocent (Goodhart & Ward 2004, 66). Would *The Trial* be sufficiently Kafkaesque if the narrator was indeed reliable? Or is it a question of authenticity wherein Joseph K. believes himself to be innocent regardless of whether he truly is? Is Kafka trying to con the reader with a con-artist protagonist? If K. is guilty, as I suggest, there exists a possible reading where he is in fact guilty of sexual assault. The basis of this literary accusation draws on Joseph K.’s interactions with female characters in the story, and particularly with Fräulein Bürstner.

What is striking about all of the female characters in *The Trial* is that they are in love with or at least extraordinarily endeared to Joseph K. Young or old married or single, all women adore K. and will do anything for him. The one possible exception to this is Fräulein Bürstner,<sup>5</sup> a young neighbouring tenant

in the boarding house where Joseph K. resides. Fräulein Bürstner only appears at the beginning and (potentially) at the very end of the novel. Like K. himself, Fräulein Bürstner is a character about which little is known. For example in this passage, K. claims to both intimately know the inside of her bedroom and yet barely know the woman: “This room, as K. knew quite well, had recently been taken by a Fräulein Bürstner, a typist, who went very early to work, came home late, and with whom he had exchanged little more than a few words in passing” (Kafka 1968, 10). While this could be potentially attribute to K.’s knowledge of the room via a previous tenant or its presumed similarity to his own, it is odd that in a single sentence he claims to be intimately familiar with a room belonging to a woman, but not the woman herself.

Joseph K. asks their landlady whether Fräulein Bürstner is home under the premise he wants to apologize that the police-like people who came to inform him of his arrest did so in her room (for an unknown reason). His reaction to the landlady’s response—that Fräulein Bürstner is in fact out at the theatre—is also peculiar: “‘It’s of no consequence,’ said K., turning to the door, his head sunk on his breast. ‘I only wanted to apologize to her for having borrowed her room today’” (Kafka 1968, 20-21). The description of Joseph K. dropping his head to his breast suggests significant disappointment at Fräulein Bürstner being out. If he barely knows this woman and only wants to apologize for an inconvenience she knows nothing about, why would he be so disappointed? I argue that this is additional evidence that suggests K. is not honest with the reader about his relationship to/with Fräulein Bürstner or his intentions with her. Additionally, when the landlady raises concerns about the respectability of Fräulein Bürstner regarding her late hours and outings with multiple men, K. defends her honour with an intensity that would be unusual for a near-stranger:

‘I have no wish to speak ill of Fräulein Bürstner, she is a dear, good girl, kind, decent, punctual,

industrious, I admire all these qualities in her, but one thing is undeniable, she should have more pride, should keep more to herself. This month I have met her twice already on outlying streets, and each time with a different gentleman.' . . . 'You're quite on the wrong track, said K., with a sudden fury which he was scarcely able to hide. . . . I know Fräulein Bürstner very well, there isn't a word of truth in what you say.' (Kafka 1968, 21-22)

I argue that this passage demonstrates that Joseph K. is more attached or invested in Fräulein Bürstner than he has given the reader any reason to believe. Indeed, he spends the next two hours staying awake just waiting for her to come home so he can approach her and talk to her and even then he is not honest about this with the reader:

Until about eleven he lay quietly on the sofa smoking a cigar. But then he could not endure lying there any longer and took a step or two into the entrance hall, as if that would make Fräulein Bürstner come all the sooner. *He felt no special desire to see her, he could not even remember exactly how she looked but he wanted to talk to her now*, and he was exasperated that her being so late should further disturb and derange the end of such a day. *She was to blame, too, for the fact that he had not eaten any supper and that he had put off the visit to Elsa he had proposed making that evening.* (Kafka 1968, 22-23; emphasis added)

It may strike the reader as strange that K. claims no special desire to see Fräulein Bürstner and yet has reorganized his evening around the possibility of it occurring. It is unsettling that he goes so far as to blame her for his not eating and putting off what can be presumed to be a sexual rendezvous with Elsa,<sup>6</sup> as if she unknowingly has immense influence over his actions and decisions.

When Fräulein Bürstner eventually returns home, she makes up excuses to not have to talk to Joseph

K., but eventually gives into his persistence and lets him into her apartment (Kafka 1968, 24). After listening to his retelling of the events from that morning and asking whether she believes he is guilty or not she says to K. that she does not know if he is innocent and, further, that she does not really know him (Kafka 1968, 25). While the text provides several suggestions that Joseph K. is perhaps an unreliable narrator, there is no indication to the reader about Fräulein Bürstner, and thus we can safely deduce that she and Joseph K. barely know each other.

While Joseph K. is in Fräulein Bürstner's apartment it appears that K. is comfortable and that Fräulein Bürstner is uncomfortable, and despite it being her apartment, K. is in a position of power or control over the situation. This particular passage demonstrates this tension: "He wanted to move about and yet he did not want to leave. 'I'm tired,' said Fräulein Bürstner. 'You come home so late,' said K. 'So you've gone the length of reproaching me, and I deserve it, too, for I should never have let you in. And there was no need for it, either, that's evident'" (Kafka 1968, 26).

Instead of perceiving that perhaps he should retire to his own room at such a late hour when a lady is tired (and perhaps that he gained entry under misleading pretenses) he forces himself on her:

"I'm coming," K. said, rushed out, seized her, and kissed her first on the lips, then all over the face, like some thirsty animal lapping greedily at the spring of long-sought fresh water. Finally, he kissed her on the neck, right on the throat, and kept his lips there for a long time. . . . He wanted to call Fräulein Bürstner by her first name, but he did not know what it was. (Kafka 1968, 29)

Not only is the description of his scene wholly unromantic, but also wholly nonconsensual. Not only is her reaction not described, as though it was inconsequential, the animalistic quality of the attack is frightening. The detail that K. wanted to call

Fräulein Bürstner by her first name, but he did not know what it was, again speaks to the unfamiliarity of their relationship and Joseph K.'s for intimacy with Fräulein Bürstner that clearly is not there. A majority of sexual assaults are not committed by strangers prowling in the bushes but, as in my reading of *The Trial*, are actually committed by people known to the victim (McDaniel & Rodriguez 2017; Pazzani 2007). If we are to address sexual violence, then we must take seriously the complexities of assault that include misunderstandings of how is granted consent and what constitutes consent (Decker & Baroni 2011).

Men's rights activist discourses claim that most men understand rape to be a horrible crime. However, as Gotell and Dutton note, "the issue underlying this emphasis on rape as a widely condemned crime is not really whether people view rape as right or wrong. Instead, it is that rape is not seen as rape" (2016, 75). Without reinforcing a hierarchy of sexual violence, I want to be clear that I am not alleging K.'s described behaviour as rape but as sexual assault (or given the context in which the book was written, if not assault, something that was inappropriate). Further, Joseph K. does not seem to understand his actions as such. This MRA discourse has the effect of narrowing the category of "real rape" (or real sexual assault) to violent stranger rape; despite knowing that acquaintance sexual violence is significantly more common: "The effect is to draw a clear line between rapists and ordinary men and between everyday heterosexuality and rape" (Gotell & Dutton 2016, 75). When K. talks his way into Fräulein Bürstner's apartment, ignores her suggestions that he return to his own room and let her sleep, and then forces himself upon her, K. is committing sexual assault.

After K. assaults Fräulein Bürstner and returns to his own room, he reflects on what he has just done, but does not have regrets about his conduct. Rather, he is pleased with himself: "Shortly afterwards K. was in his bed. He fell asleep almost at once, but before doing so he thought a little about his behaviors, he

was pleased with it, yet surprised that he was not still more pleased; he was seriously concerned for Fräulein Bürstner because of the Captain (Kafka 1968, 30)." The only concern K. has for Fräulein Bürstner is that if the Captain in the adjoining room had heard a man in her room, he would inform the landlady, which could potentially lead to her eviction based on the immorality of an unmarried woman with a man in her room. He has no concern for how Fräulein Bürstner may have felt about being sexually assaulted or may be feeling after the fact.

As K. is being lead to the place where he is to be executed for his (unknown) crime he thinks that he sees Fräulein Bürstner in the distance:

And then before them Fräulein Bürstner appeared, mounting a small flight of steps leading into the square from a low-lying side-street. It was not quite certain that it was she, but the resemblance was close enough. Whether it were really Fräulein Bürstner or not, however, did not matter to K.; the important thing as that he suddenly realized the futility of his resistance. (Kafka 1968, 225)

It is striking that it is this sudden reappearance of Fräulein Bürstner that makes Joseph K. suddenly realize that his struggle against the Law and his executioners is futile. I suggest that Fräulein Bürstner returns as the specter of Joseph K.'s guilt and that perhaps this guilt is rooted in his sexual assaults against women.<sup>7</sup>

## **The Trial and the Ghomeshi Verdict**

The non-guilty verdict of the Ghomeshi trial and the resulting dismissal of charges may have felt very Kafkaesque for many feminists, anti-sexual violence activists, and women across Canada. Despite the seriousness and number of the allegations (four counts of sexual assault and one count of choking to overcome resistance) that were against the former CBC radio host, many commentators have been steadfast in their assertions that "the case does not

indicate that anything is 'broken' in our criminal justice system. Instead, they say, it's a great system—possibly the best in the world. It just doesn't work that well for sexual assault, they acknowledge" (Crew et al. 2016, 1). If the criminal justice system does not work well for dealing with serious violent crimes that affect 39% of women at least once in their lifetime (Crew et al. 2016, 1), how can it be said to be anything but broken?

MRA discourses about sexual assault, as discussed above, are largely rooted in the argument that sexual assault is rare, false allegations are common, that women should be more pro-active in avoiding being assaulted, or in some combination of these positions. Indeed, if "we know that 997 of 1,000 men who commit this crime can expect to be unsanctioned what do we tell men? Surely not 'don't rape'" (Crew et al. 2016, 1). In *The Trial*, if the reader is of the perspective I am suggesting, and Joseph K. has been unknowingly accused of sexually assaulting a woman and blindly convicted based on the allegation, the opposite is true in reality, where women can formally charge and face her perpetrator in court and he still may not be found guilty. The court is interested in decisions and not justice: just because someone is not found guilty in a court of law does not mean a sexual assault did not take place. A court decision is based upon the rules of the game of law and who can construct (or deconstruct as was the case with the women's testimonies against Ghomeshi) a narrative.

The Ghomeshi judgment does not cite any case law on the meaning of consent or how to assess credibility of consent (Crew et al. 2016, 1). Justice William Horikin's reasoning has been critiqued as "heavy on an assessment of the three complainants behavior after the fact, 'but light on the law'" (Crew et al. 2016, 2). There are a number of concerning and surreal aspects to Justice Horikin's decision on the Ghomeshi case, which I argue are both analogous to MRA discourses and surrealist in their seeming removal from reality.

The first page of the Ghomeshi decision includes a bold warning. Although a content warning may have been appropriate, the warning pertains to a publication ban regarding the identities of the victims of sexual assault (R. v. Ghomeshi 2016, 1). That the publication ban would somehow protect the victims seems misguided. Given the sheer intensity of the media attention on this case and the fact that the victims who came forward were open about their identities with the media before going to the police, the media and the public knew their identities already.

Justice Horikin's focus on the so-called celebrity status of Ghomeshi (R. v. Ghomeshi 2016, 2-3) is both reminiscent of MRA discourses about how women seek out influential men both for sexual partners and for victims to extort and blackmail. Justice Horikin's comments imply a reverse onus: that women would somehow be in a position of power to exploit men's vulnerability as a celebrity for her own gain, as opposed to a celebrity being able to use their influence and public image to potentially increase the difficulty of levying accusations against them. Similarly, the Justice's reference to "flirtatious emails" (R. v. Ghomeshi 2016, 7-8) implies that this was somehow uncommon despite Ghomeshi's celebrity status and carries an innuendo that suggests the victims invited both sexual attention and potential violence.

Perhaps the most Kafkaesque element of the Ghomeshi decision is the Justice's condemnation and articulation of the female accusers as a "team" and of their "possible collusion" (R. v. Ghomeshi 2016, 15, 18). Just as Joseph K. demonstrates severe paranoia that everyone is somehow involved in his case and/or out to condemn him, and as MRAs believe women to be orchestrating a conspiracy against men via feminist ideologies, Justice Horikin's articulation of solidarity between female survivors of the same violent perpetrator suggests neither a team-building exercise nor collusion. If someone does not understand their behaviour as sexual assault, violent, or problematic then how can they be expected to stop or change their

pattern of behaviours? Following this logic, should it not be surprising that multiple victims came forward with similar allegations?

Finally, in his conclusion of the Ghomeshi verdict, Justice Horkin reiterates MRA discourse that the courts must be “very cautious in assessing the evidence of complainants in sexual assault and abuse cases” (R. v. Ghomeshi 2016, 23), even though the evidence required to move a complaint from the police report to the trial was not already required to be more significant than is available for most accusations of sexual assault. This rhetoric suggests that perhaps false allegations are commonplace, or at least common enough to be an issue that judges must be actively conscious of when making their decisions. Justice Horkin summarizes: “Courts must guard against applying false stereotypes concerning the expected conduct of complainants. I have a firm understanding that the reasonableness of reactive human behavior in the dynamics of a relationship can be variable and unpredictable. However, the twists and turns of the complainant’s evidence in this trial, illustrate the need to be vigilant in avoiding the equally dangerous false assumption that sexual assault complainants are always truthful” (R. v. Ghomeshi 2016, 23-24).

Perhaps Justice Horkin is unknowingly engaging in “double-think”:<sup>8</sup> despite his assertion that courts must not apply false stereotypes of victims expected behaviours, he does just that throughout his decision. In a culture where victims of sexual assault are rarely believed at any level (from the public to the police to judges), does anyone need to be vigilant against assuming complainants are always truthful? Or rather, do we need to be vigilant against understanding real complaints as false accusations?

## Conclusion

Felman sought to inspire a new model to perceive legal events and an analytical tool that that serves “not just to rethink the meaning of a legal case but to displace the very terms and the very questions

through which we interpret cases, both in fiction and in the reality of legal life” (2002, 56). She did this by demonstrating the traumatic repetition in between and across Tolstoy’s *The Kreutzer Sonata* and the O. J. Simpson trial. In this paper, I have adapted her work to read a new interpretation of Kafka’s *The Trial* via men’s right activist discourses on sexual assault allegations and the Ghomeshi verdict. I have demonstrated the usefulness of Felman’s approach and continued efforts to the “destabilization of the boundaries that epistemologically define and separate the territory of the Law from that of Literature” (Felman 2002, 56). While law and literature do not aim for the same conclusion nor effect, both are premised on the search for meaning and symbolic understanding as a useful tool for imagining different (and hopefully better) futures (Felman 2002, 54-55). If Canada is going to adequately address its contemporary context of sexual violence and realise its substantive equality, then the surrealism of MRA discourses of sexual assault and assault allegations need to be deconstructed and revealed as the fantasies they are.

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## Endnotes

1. To recognise both feminism men’s rights as complex and diverse social movements, and to preempt criticism from MRAs, the discourses examined in this paper predominantly came from the Canadian Association for Equality (CAFE), Coalition of Free Men, and the National Congress for Men, and span from the 1960s to present day.
2. Men’s liberation remains a pro-feminist or anti-sexist men’s movement that emphasizes, as it did then, the importance of joining women to address

institutionalized privileges and patriarchy (Messener 1998, 256).

3. Within the MRA movement, Herb Goldberg figures prominently and directly asserts that not only is male privilege a myth, men are actually the systemically oppressed gender “because the male role is far more rigid than the female role, and women have created a movement through which they can now transcend the limits of culturally imposed femininity” (Messener 1998, 265).

4. Gotell and Dutton further note that “Efforts to respond to sexual violence on university campuses have been condemned as abuses of due process that stigmatize innocent young men” (Gotell & Dutton 2016, 69).

5. While I acknowledge “Fräulein” is a title or courtesy, it is at least curious that her only known initials would then be F.B., which would be the same as Kafka’s long-term fiancée Felicie Bauer.

6. Elsa is described in the following sentence, “And once a week K. visited a girl called Elsa, who was on duty all night till early morning as a waitress in a cabaret and during the day received her visitors in bed” (Kafka 1968, 17).

7. Goodhart and Ward note that feminist criticism of K. tends to focus on his commitment to a bachelorhood that tends to exploit women for his own gratification: “in this regard, again, his habitual attitude towards women mimics the behavior of the Court officials” (2004, 66).

8. “Double-think” is a term coined by George Orwell in his book 1984 (1949), which means to simultaneously think *what you are told to think* and *what you know to be true*.

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