



Ontario Coalition of  
Rape Crisis Centres

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February 9, 2017

**RE: Toronto man jailed for drugging friend with 'date rape drug', Toronto Star, February 7, 2017**

OCRCC's membership includes 29 Anglophone sexual assault centres from across Ontario. Our work also includes partnering with many allies in addressing and preventing sexual violence in Ontario. We are pleased to be a member of the Premier of Ontario's Roundtable on Violence Against Women<sup>1</sup>, and an active participant in the implementation of the Ontario-wide Action Plan, *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*<sup>2</sup>.

OCRCC is writing [regarding the case concerning Duilio "Nick" Franchino](#). Earlier this week, he was sentenced to nine months in jail after a jury found him guilty of drugging a close friend with the date rape drug GHB— but acquitted him of sexual assault.

We note in particular, Justice John McMahon's comments related to the case:

- Due to the jury's verdict, Justice McMahon said there is no evidence before him that explains why Franchino brought the GHB-laced wine to the complainant's home and gave it to her to drink.
- While McMahon said drugging someone with a street-level drug of unknown strength leads to a serious risk of harm, he found the crime falls into the less serious category of intending to aggrieve or annoy, rather than endangering life or causing bodily harm.
- McMahon also noted in his ruling that Franchino has no criminal record and has the support of his family, his fiancée and his fiancée's family<sup>3</sup>.

While we are aware that the decision to acquit was informed by a jury (and not solely Justice McMahon), we write nonetheless to express disappointment. We wish to highlight components of the final ruling that we see as problematic from the perspective of survivors and their allies:

1. We cannot understand how the jury acquitted Franchino both of sexual assault and administering a stupefying drug for the purpose of sexual assault; while convicting him of administering the drug itself. This nullifies the complainant's testimony, in which she states she woke up to find Franchino lying next to her and engaged in sexual contact with her to which she did not consent.

<sup>1</sup> Ontario Women's Directorate. March 31, 2015. *First Meeting for Ontario's Roundtable on Violence Against Women: Province implementing \$41 Million Action Plan to Stop Sexual Violence and Harassment*. Online: <https://news.ontario.ca/owd/en/2015/03/first-meeting-for-ontarios-roundtable-on-violence-against-women.html>

<sup>2</sup> Office of the Premier. March 8, 2015. *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*. Online: <http://www.news.ontario.ca/opo/en/2015/03/concrete-measures-to-end-sexual-violence-and-harassment.html>

<sup>3</sup> Hasham, A. for The Toronto Star. *Toronto man jailed for drugging friend with 'date rape drug'*, Toronto Star, February 7, 2017. Online: <https://www.thestar.com/news/gta/2017/02/07/toronto-man-jailed-for-drugging-friend-with-date-rape-drug.html>



2. We are extremely concerned that the total amount of GHB in the bottle was described by a toxicologist as a lethal amount<sup>4</sup>. In addition, the offender administered the drug to the targeted victim twice. Despite this, the harm and potential harm to the complainant in this case is not reflected in Justice MacMahon's comment. Instead, McMahon found the crime falls into the less serious category of intending to aggrieve or annoy, rather than endangering life or causing bodily harm. We believe this finding is subjective, and implicitly reflects the social misconception that sexual violence is only violence when the victim is physically injured: that is, "real" rapes result in the woman being murdered (or, at the very least, visibly harmed)<sup>5</sup>.
3. We are concerned that Justice McMahon's ruling notes that Franchino has no criminal record and has the support of his family, his fiancée and his fiancée's family<sup>6</sup>. In our opinion, this comment is confusing, perhaps irrelevant, and appears to suggest that criminality on the accused's behalf may be unlikely given these contexts.
4. We are concerned about the criminal justice system's capacity to query the accused's side of the story (i.e. that the administering of GBH was, in fact, accidental) in this case. This functions to "obfuscate the more deliberate aspects of violent behavior"<sup>7</sup> that may have occurred (i.e. intentional drugging and sexual activity without consent).
5. Last, we are concerned that this case reflects the criminal justice system's over-reliance on physical evidence – of which, we know, there is often little of in sexual assault cases. Instead, acquaintances, friends and dates are more likely to use drugs or alcohol, tricks, verbal pressure, threats, negative consequences, or victim-blaming rhetoric (i.e. "You know you wanted this") during episodes of coercion<sup>8</sup>.

This inevitably impacts upon a survivor's capacity to resist what happened or point to physical evidence. Unfortunately, as seen here, it may also impact the courts' capacity to name such incidences as real; or clearly name them as violence.

The criminal justice system has an important role in supporting victims of crime. Misconceptions about sexual crimes contribute to a context in which sexual violence remains either minimized or invisible, and survivors are reluctant to report. Further complicating the choice to engage in the criminal justice system is the fact that the majority of sexual assault offenders are known to the victim in some way<sup>9</sup>. This was true for the complainant in this case, who identified Franchino as a friend.

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<sup>4</sup> Hasham, A. for The Toronto Star. *Toronto man jailed for drugging friend with 'date rape drug'*, Toronto Star, February 7, 2017. Online: <https://www.thestar.com/news/gta/2017/02/07/toronto-man-jailed-for-drugging-friend-with-date-rape-drug.html>

<sup>5</sup> Ibid, 1074.

<sup>6</sup> Hasham, A. for The Toronto Star. *Toronto man jailed for drugging friend with 'date rape drug'*, Toronto Star, February 7, 2017. Online: <https://www.thestar.com/news/gta/2017/02/07/toronto-man-jailed-for-drugging-friend-with-date-rape-drug.html>

<sup>7</sup> Coates, L. and Allan Wade. "Telling it Like it Isn't: Obscuring Perpetrator Responsibility for Violent Crime". *Discourse & Society* 2004: 15, 503

<sup>8</sup> Hakvag, H. *Does Yes Mean Yes?: Exploring Sexual Coercion in Normative Heterosexuality*. Canadian Woman Studies/les cahiers de la femme. Volume 28, Number 1. York University Publication: 122

<sup>9</sup> Statistics Canada, 2003, *The Daily*, 25 July



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Given the important role of the court and other systems meant to support victims of crime, we believe this ruling has done a great disservice to survivor-victims in Ontario. Last, we fear that if Canadian justice systems do not consciously work to recognize, name and address systemic contexts<sup>10</sup>, women's vulnerability to sexual assault will continue to go unchallenged.

**OCRCC makes the following recommendations:**

- Seek justice for survivors of drug-facilitated sexual violence, particularly in criminal justice settings. We wish to see better verdicts than that outlined above
- Acknowledge sexual assault myths, and commit to strongly repudiating them in your day to day practices
- Consult with sexual assault survivors, and incorporate their expertise into criminal justice procedures and understandings of sexual violence.

The Ontario Coalition of Rape Crisis Centres has a 30-year history of working in Ontario and Canada to address and end sexual and other forms of violence in our communities.

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*The Ontario Coalition of Rape Crisis Centres (OCRCC) includes 29 sexual assault centres serving survivor-victims of sexual violence across Ontario. Sexual assault centres deliver free and confidential crisis, advocacy and ongoing support to survivors of sexual violence throughout all of Ontario.*

*If you or someone you know has been affected by violence and are seeking support, please go to <http://www.sexualassaultsupport.ca/support>.*

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<sup>10</sup> Hakvag, H. *Does Yes Mean Yes?: Exploring Sexual Coercion in Normative Heterosexuality*. Canadian Woman Studies/les cahiers de la femme. Volume 28, Number 1. York University Publication: 122