

# False Allegations and Criminal Sanctions

by Steve Osborne

Almost every father who's been to family court knows what false allegations are, knows how seriously even the most absurd allegation against him is taken, and knows how effective they are. The burden of proof required to support such an allegation in a family matter is zero, the rules of evidence are irrelevant and actions described as "Offences Against the Administration of Law and Justice" in Part 4 of the Criminal Code of Canada are not only ignored, they're rewarded. Shattered relationships are rarely restored and nothing is ever done to punish offenders when there turns out to be no substance to allegations in family court. It's a mess, a mess that's getting worse instead of better, and if something isn't done to bring balance and fairness back into the process, there will be more and more serious consequences.

Signs of collective dissatisfaction with family law are showing up more and more. When I started my daily activism the only other person I knew of who was confronting the system in the same way was John Murtari. There's no doubt that our approaches differ, but the underlying theme is the same - consistent, non-violent confrontation with a clear pressure point. In those days my signs were considered too confrontational by most people in the business; the concept of risking criminal indictment to have a family law matter addressed was inconceivable. That's not to say that people weren't supportive of what I was doing, because support came in from all over the world, but not many of them were willing to follow suit.

That's changed dramatically. These days a regular supply of new people is coming into this work with new ideas and new approaches that make my stuff look timid and meek! Men are learning that they have no real recourse to the law and no political voice, that we have to work together to do anything about it and that the usual protest methods aren't going to work. We're growing more vocal about not accepting our lot and getting more daring in how we express our frustration. More and more of us are standing up and asking where *our* right to be treated equally is, and doing it by pushing the system to the limits of its own absurdity. The ironic part is that in order to stretch the system to its most extreme we have to expose ourselves to another round of allegations, allegations of *criminal* behaviour!

All's been quiet on the eastern front since last summer, when s.301 of the Criminal Code of Canada was found to be of no force or effect in New Brunswick. No written reasons for the decision have been produced yet, leading me to believe that the formal judgement, when it finally appears, is going to be a well-crafted piece of jurisprudence. I'm not overly concerned about the time it's taking to produce the final version, it befits a ruling resulting from a constitutional question raised by the judge hearing the case himself, and based primarily on submissions from people he himself invited, in a case where one of the central issues, if not *the* central issue, would be the conduct of a family court judge. I'd be careful too if I was in Mr. Justice McIntyre's shoes.

I can't imagine him trying to put a good face on the Attorney General's conduct after 32 months of criminal prosecution that never stood any chance of succeeding in purely legal terms. There's been no change in the collective viewpoint of Canada's judiciary about the offence of defamatory libel minus the part that says "*known to be false*", nothing that might raise some question about the use of the section from a legal perspective. Any way you look at it the A.G. went away out on a limb that turned out to be too thin to carry the load.

If you're the judge juggling this hot potato, how do you describe the indictment in the matter when it lists the very signs that were alleged to be criminally liable, lays them out verbatim? How do you put into the archives of the court - and the whole country - the facts of the case without causing more trouble than the signs in question ever could have caused on their own? A constitutional ruling, making it a matter of public interest, with the best-left-unseen family law stuff wound all through and around it - this is going to be a *very* well crafted ruling.

The entire case has turned out to be a blatant political attack using the Criminal Code and Criminal Courts, one involving numerous pre-trial motions and applications, some of Canada's senior judiciary and politicians, a stay, an appeal, more pre-trial maneuvering and a judge's own motion to top it all off at the end. From the day of my arrest there was never any possibility that I'd be convicted, I can see that now, however, the mere *threat* of pending criminal sanction has a way of improving the prosecution's position when offering such things as Peace Bonds and negotiating pleas, not to mention the control inherently exerted by a criminal case over the behaviour of the accused.

Despite the risks for the accused, the benefits of risking criminal allegations to expose family law are many. What happens in court is regularly reported on in the media. The raw data - evidence - that can be obtained only by means of disclosure is phenomenal. The evidence and documentation involved in the case becomes part of the country's archives. Because of that, we're now coming to the real danger in the civil disobedience method for the state, the judiciary and the family law industry as a whole: the place where exposure is inevitable. The common law system virtually ensures that the story of R.V. Osborne will travel - lawyers researching arguments, publishers checking their position on libel, civil rights proponents, anyone who cares to look for it can read all about the case as a matter of historical fact, officially.

There's more than one way to make allegations!

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