

February 9, 2013

THE HUFFINGTON POST

CANADA 



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Senator Brazeau: Guilty Before Proven Innocent?

Posted: 02/08/2013 6:36 pm

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Senator Brazeau's arrest and jailing dominated the news this week. However, thousands of Canadians who have been through even the most minor domestic violence incident know that criminal law is applied with no mercy and no balance, well before anyone gets their day in court.

And, let me be clear: family violence is wrong. It has no place in the Canadian family where it frequently damages children for life.

Senator Brazeau and the unnamed woman are caught up in a situation where family law ends and criminal law begins. As soon as assault charges (let alone sexual assault charges) become part of the picture, the police have no wiggle room. As soon as family violence is invoked, the police must act.

Fair enough. But what about false allegations used as ploys to get the other spouse out of the house, and mount a campaign of parental alienation? This does happen; during my 19 years of practice in family law, I have seen it far too often.

As soon as one party accuses the other of physical violence, whether the accusation is made two minutes later on a 9-1-1 call or five years later, the police have no discretion within Canada's legal system. They must arrest the person accused, take the accused to jail, and present a case for charges to be laid.

After the accused is charged, he (or she) must stay away from the matrimonial home, and stay away from the other spouse.

The couple are now not allowed to speak directly to each other, and must hire separate lawyers. This also means reconciliation is much more difficult.

If the accused travels to the U.S. or overseas on routine business, those trips won't be possible either because the accused is not allowed out of Canada. The accusation is now interfering with the ability to earn a living. The accused needs to find a new residence -- an added expense.

In Ontario, family law lawyers and criminal lawyers both refer to *Shaw v Shaw*, a precedent case before Justice Pugsley. In this instance, Mrs. Shaw was the accused. The father immediately moved for sole custody and significantly restricted the mother's access to the children.

As Justice Pugsley points out, the problem with the criminal justice system is that the Attorney General implemented a zero tolerance policy about domestic assault several years ago. This means that, however minor an assault may be, police are required to charge people and the Crown Attorneys are required to proceed in due course. This process tears apart families and fails to serve the best interests of children.

As these accusations and criminal charges are playing out in the court of public opinion, the privacy that should surround family law is non-existent.

While Senator Brazeau is the man in the spotlight, thousands of other Canadian men and women accused of a range of domestic violence have suffered the same punishments and the same obstacles to reconciliation while waiting for criminal courts to make decisions, truly harming the best interests of children, who keep asking "Where is daddy?" or worse, see their parent in jail on television.