

## AN OPEN LETTER TO PREMIER DALTON MCGUINTY AND ATTORNEY GENERAL MICHAEL BRYANT

**Dear Premier McGuinty and Mr. Bryant:**

Based on our preliminary analysis, the Canadian Council of Muslim Women is deeply concerned about the recommendations contained in Marion Boyd's report, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*.

At its meetings with Ms. Boyd during the review process, CCMW had expressed serious concerns about the *Arbitration Act* and recommended that family matters be exempt from the *Act* as they are a matter of public order, as is the case in Québec. We will continue to advocate for the removal of family matters from the *Arbitration Act*, in order to protect women's equality rights. We are committed to seeing family matters settled under the *Family Law Act (FLA)*. In her report Ms. Boyd observes that the preamble to the *FLA* has strong gender equality statements. So why would we not want to have the *FLA* apply to all of us, regardless of religion, culture or ethnicity? There appears to be a lot of flexibility within the *FLA* to meet the needs of any religious person.

While in the body of the report Ms. Boyd discusses many concerns with respect to the use of Muslim family law and its potential harmful impact on the lives of women and children, these concerns are totally absent from the recommendations.

CCMW acknowledges that some other faith communities use arbitration to settle disputes. Our understanding of the use of religious laws by rabbinical courts is that it is used mostly to settle commercial disputes. The *Arbitration Act* is not used for the Jewish divorce or "Get". Neither the Catholics, nor the Anglican churches use the *Arbitration Act*. Ismaili Muslims have established their own Community Arbitration Board that follows Canadian laws.

While consent of both parties to arbitration is most desirable, the possibility that the woman may be persuaded to agree to arbitration still exists; the power and authority of the family and community may very well over-ride the opinion of the woman. CCMW has been criticized for characterizing Muslim women as incapable of making appropriate choices and decisions for themselves. It is not a matter of capability or capacity – it is simply that the influence of the family and community cannot be underestimated. In her report Ms. Boyd states, "...Religious law serves to determine who is considered a full member of the religious community. ... **Those who do not conform to religious law may find themselves ostracized, disentitled to practice their religion within the community or entirely disowned by the community**". So

what makes her think that those who do not conform will really feel like they have a choice?

The report recommends several legislative/regulatory amendments and safeguards to address the concerns regarding the *Arbitration Act* and the use of arbitration in the *Family Law Act*. The *Arbitration Act* was designed for business and commercial disputes and is inherently problematic for family matters. CCMW believes that the amendments/safeguards being recommended, while well intentioned, do not address the potential harm to women if religious laws are applied.

We highlight the following concerns with the recommendations contained in the report:

- Ms. Boyd recommends the use of religious law to settle family and inheritance disputes. This recommendation is puzzling to us because Ms. Boyd correctly points out in her report that there is virtually no information available on the impact of religious arbitration on women. On what basis then does she proceed to recommend the use of religious law in arbitration?

- Ms. Boyd proposes the application of the “statement of principles of faith-based arbitration” if the arbitration is under religious law. We have previously explained the difficulties of applying Muslim family law because of its complexity and differential application throughout the world. There is no one codified, agreed upon single law on which this statement of principles could be based. Who will formulate this statement of principles? How will consensus on the statement be reached given that there is no consensus on the application of Muslim family law?

- The recommendations related to education and training do not call for mandatory training of arbitrators in ADR. Furthermore, the issue of education of arbitrators in Muslim jurisprudence is not addressed. Who will these arbitrators be and what knowledge and expertise will they possess in Muslim jurisprudence?

- Recommendations on oversight and evaluation of arbitrators address record keeping and reporting requirements. Who will ensure full compliance with these requirements? Appropriate compliance and enforcement mechanisms will require additional resources to be effective.

- The idea behind ADR for family matters was to address the backlog in the justice system; we would prefer to see the resources that will be required to implement the proposed safeguards to be redirected to improve the existing justice system, e.g. increased use of cultural interpreters, cultural/religious sensitivity training of lawyers, judges, etc.

- We are very concerned about the recommendation regarding waivers of Independent Legal Advice with respect to the right to receive advice about Canadian and Ontario family law and Ontario arbitration law – no such waiver should be permitted; the parties have the right to know about these laws.
- The suggestion to provide more public education regarding family law and arbitration is certainly welcomed, particularly the provision of linguistically and culturally appropriate legal information. We are concerned about the resources required to do this well and reach those in greatest need of this information.
- We strongly object to the use of government funds for the development of information materials about rights and obligations under religious law. Again, we stress that these funds should be used to improve the justice system – public funds should not be used to fund any religious materials – who will monitor the content and quality of these materials?
- Legal aid still appears to be unavailable to the parties if private arbitration is used.

Ms Boyd heard from the proponents of the use of religious arbitration that they are exercising their right to religious freedom. CCMW believes that the rights of the person, in this instance the rights of women, under the *Canadian Charter of Rights and Freedoms* must be considered first and foremost as they protect the fundamental rights of the individual. These rights include equal treatment before the law. Ms. Boyd also heard the following: **“Major objection to the use of religiously based arbitration of family law is the inherent inequity between men and women in most religious contexts and the resulting imbalance of power between them when a dispute arises.”**

We are believing women who are committed to our faith and our members are very concerned that the use of Muslim family law will erode the equality rights of Muslim women that are guaranteed under the *Canadian Charter of Rights and Freedoms* and other Canadian laws. To respond to our members’ concerns CCMW has already begun work on developing a primer for Muslim women comparing Muslim family law with Canadian laws to ensure that Muslim women have the information they need to make informed choices and decisions about their lives.

In her report Ms. Boyd states, **“...the many years of hard work which have entrenched equality rights in Canada could be undone...to the detriment of women, children and other vulnerable people.”** Yet, if implemented, Ms. Boyd’s recommendations will have a negative impact on some of the most vulnerable people in the country. According to a recent report released by CCMW, based on the 2001

Census, Muslim women are among the poorest women in Canada. They are underemployed despite high levels of education and tend to work part-time in low-paying jobs. They have a higher rate of unemployment and a lower rate of labour force participation compared to all women. A higher proportion of Muslim women who work outside the home have pre-school and school-age children. Compared to other women twice as many Muslim women remain separated; fewer of them are divorced – probably because of cultural and economic pressures. Marriage breakdown among Muslim women aged 18-24 is higher than their peers. The full report, entitled *Muslim Women: Beyond the Perceptions* is available on our website at [http://www.ccmw.com/publications/Muslim\\_Women\\_Beyond\\_the\\_Perceptions.pdf](http://www.ccmw.com/publications/Muslim_Women_Beyond_the_Perceptions.pdf). Other studies conducted by our organization demonstrate an acutely low rate of civic participation among Muslim women. Relegating them to a separate, private religious arbitration system, away from the province's civil laws, will only exacerbate their level of disadvantage.

We believe the time is ripe for a serious public dialogue on the challenges of balancing women's equality rights with religious and cultural rights. CCMW will hold a symposium on the theme of *Muslim Women in the Justice System: Gender, Religion and Pluralism* this spring. We would be pleased to invite you to the symposium as details become available and would encourage your policy staff to attend this crucial event before formulating your response to Ms. Boyd's report. We intend to present a more detailed analysis of and response to Ms. Boyd's report at this public forum.

We recognize that members of all faith groups rely on their families and religious communities to mediate and settle disputes. Most family law disputes are resolved outside the courts and in contentious situations, mediation and arbitration by a third party might be sought, without going to a religious court or tribunal. Sanctioning the use of religious laws under the *Arbitration Act* will provide legitimacy to practices that are abhorred by fair-minded Canadians, including Muslim women.

Mr. Premier and Mr. Bryant, we urge you to reject the application of religious laws under the *Arbitration Act*.

Alia Hogben  
Executive Director  
Canadian Council of Muslim Women

cc: The Honourable Sandra Pupatello  
John Tory  
Howard Hampton  
Peter Kormos

Marilyn Churley  
Joseph Tascona