



Marion Boyd
c/o Ministry of the Attorney General
720 Bay St., 11th Floor
Toronto, ON
M5G 2K1

December 24, 2004

Dear Ms. Boyd:

In response to your report, *Dispute Resolution in Family Law: Protecting Choice Promoting Inclusion*, YWCA Toronto wishes to submit this letter and the accompanying position paper to further and advance the debates that this undertaking has prompted in Ontario.

YWCA Toronto is part of an international movement based in Geneva that is working with women and girls around the world. In Ontario, YWCAs are an integral part of 14 different communities. YWCA Toronto is the largest and only women's multi-service organization in the Toronto area. As an integral part of the province's most multicultural centre, we serve just under 50,000 people from a huge variety of cultures, faiths, creeds and ethnicities. As public sponsors of the fight to include equality rights in the Canadian Charter of Rights and Freedoms, we bring to bear a unique perspective to the debate surrounding the introduction of Muslim Family Law into the Arbitration Act of Ontario.

YWCA Toronto was not part of the initial formal consultation on this matter last June. However, once we became aware of the issue through the Canadian Council of Muslim Women, YWCA Toronto took a public stance. In this letter, I wish to outline the substance of our critique, and include with this letter the background paper we prepared that contextualizes our intervention in this matter.

With a great deal of respect for your stateswomanship and experience, and your obvious fair-mindedness, we believe your report misunderstands the fundamental risk of allowing women to "choose" to waive their rights under law in alternative dispute resolution processes.

Our initial objections fall into two main categories – the first is a matter of principle, and the second is a matter of practicality that results from what we see to be a misunderstanding of principle.

The Principle

Your report identifies the core dilemma facing Ontario in this matter to be the clash between "...accommodation of minority groups...balanced against a firm commitment to individual autonomy" (Boyd, p.1). The real clash, we believe, is not between individual rights and group accommodation, but that between secular and religious moral codes. By definition, religious codes define social behaviour in moral terms. The groups that are defined as such are known in advance; they are groups protected under our public legal system (women, homosexuals, ethnic minorities). In the name of religious freedom we wind up tolerating the oppression of those deemed by their particular community to have no legitimate claim to equality rights because their identity and conduct are seen through a moral lens. A rights framework shortcuts this elusive determination through transparent, if highly imperfect, principles that do not shift from moment to moment or religion to religion. It has proven crucial in providing access to fairness for groups previously seen to be "less equal".

Because equality is not yet a given in Ontario, not for women of any faith or creed, and not certainly for Muslim women, the assumption that rights can be accessed or waived with true consent is, we believe, naïve. Caught between a general public who see them and their men as terrorists, and intra-cultural expectations that root their identity as Muslims in religious codes that diminish their rights as protected by the Charter, who and what do women "choose" from? Faced with a similar choice where would any of us go? Educated or not by the means outlined in your report, once women have been told we can resolve our family disputes through religious or Ontario Law, your report leaves us with the cold comfort that any choice amounts to an exercise of our rights. Legal precedent shows that later recourse to the court system has not been useful in similar cases in the past.

We share your concern not to assume that the Ontario legal framework is in keeping with every belief system present in a multicultural society. In this sense, it isn't truly "universal". At its best, multiculturalism values the diversity of the immigrant society by accepting difference as 'not better, not worse but equal'. At its worst, it is a naïve cultural approach that ignores real structural (economic and legalistic) inequalities, such as employment barriers, and the privilege that comes from being part of the dominant cultural values and institutions.

Many critics of official multiculturalism have predicted that the surface niceness of Canadian society leaves open the possibility for overt racism on the one side and conservative isolationist intra-cultural domination of "minorities" on the other. We believe this latter is the risk inherent in your report, and that the former, unfortunately, is excited in the opposition to it.

The Practical Issue

While you state your commitment to the full range of competing aims between religious freedom and women's rights put forth in the Canadian Charter of Rights and Freedoms, ultimately it appears your faith is placed in training for arbitrators.

We believe that if there was a foolproof mechanism for screening for abuse and protecting women from the power imbalances that threaten their equality and safety, they'd surely be in evidence in the courts, the judiciary and the police by now. We have plenty of

sensitivity training and protocols in place throughout the various parts of the legal system that do nothing to protect women at the end of the day. As the recent tragic deaths of so many Ontario women at the hands of their partners or ex-partners exemplifies, training is a flimsy mechanism for protection. It assumes a level of aptitude, good will, and accountability that has never been present before.

While we appreciate your commitment to incorporate all Ontarians' concerns, YWCA Toronto feels you are being naïve about the limits of choice in unequal circumstances. Your recommendations count on the willingness of those who would be required to give up power to be cheerfully educated to give up their advantage. Nowhere in the world did women wake up one day to find enlightened men in positions of power handing over equality. We have always had to fight for our rights. We believe your report steps over this recurring, cross-cultural fact.

One only needs to look at the words of one of the main proponents of Sharia to see where the danger lies.

Mr. Mumtaz Ali, leader of The Islamic Institute of Civil Justice and inspiration for the movement for private Sharia-based courts, says of any Muslim opting out of a Sharia agreement, "...a Muslim who would choose to opt out at this stage, for reasons of convenience would be guilty of a far greater crime than a mere breach of contract - this could be tantamount to blasphemy-apostasy." Mr. Ali's own words testify that as with women from many faith groups, Muslim women may also be shamed into complying with the most conservative interpretations of their rights and are at risk of losing their community's support. In these circumstances, what does 'choosing' to give up your equality rights really mean?

We believe that this proposal has the potential to throw women in Ontario back decades.

Please read on and understand our perspective. We invite you to contact us for further clarification or constructive suggestions.

Yours sincerely,

A handwritten signature in black ink that reads "Heather N. McGregor". The signature is written in a cursive, slightly slanted style.

Heather McGregor
Executive Director

Cc: Premier Dalton McGuinty, The Honourable Sandra Pupatello, The Honourable Michael Bryant