

# The state should not give its blessing to Muslim courts



**MARGARET WENTE**

I could have sworn we had separation between church and state in Canada. I could have even sworn we had one law for all. But I was wrong. Because if you're a Muslim woman in Ontario, your divorce and custody arrangements may soon be decided by your friendly local imam—with the full blessing of the state.

Pinch me, quick. What century is this, anyway? I thought the case against *sharia* courts was so obvious that this wretched idea would quickly expire. But I was wrong. This week a former NDP politician named Marion Boyd recommended that the province go ahead with them. She told us not to worry, because this is really all about "protecting choice." And since Ms. Boyd

has impeccable feminist credentials, Muslim courts must be a good thing for Muslim women.

Alia Hogben thinks not. She is president of the Canadian Council of Muslim Women. She thinks Ms. Boyd is being naive. Perhaps that's because Ms. Hogben knows a great deal more about Muslim women than Ms. Boyd does. "We're all for religious rights," she says. "But we want a balance between religious rights and women's equality rights."

Ms. Boyd was responsible for Ontario's Arbitration Act, which was passed in 1991, so I suppose you can't blame her for defending it. It allows people to bypass the public court system by using private arbitration — including private religious courts — to settle civil and family-law disputes. Theoretically, these courts must conform with the law of the land, and their decisions can be appealed. But theory is one thing, and reality is something else.

Imagine, for example, an immigrant Pakistani woman who has limited education, speaks no English, and is utterly dependent on her husband. Imagine she and her

husband divorce. In Muslim family law, the husband usually gets custody of the kids. He may stop supporting her entirely after a short time and keep nearly all the family assets. He may send her back to Pakistan and keep the kids here. All this is okay under the law, so long as she agrees to it.

Ms. Boyd has promised all sorts of safeguards so that a woman can appeal a decision she thinks is unfair. All the woman has to do is overcome the immense social pressure to conform, and withstand the shame and ostracism she will experience if she tries to defy the spiritual leaders of the community and her entire family.

To address this power imbalance, Ms. Boyd has promised to "ensure that our public legal education helps all women understand the consequences of choices." How enlightened.

The Arbitration Act has already been used by Jewish, Catholic and Ismaili Muslim courts, without incident. But chances are that women in these groups are more assimilated into Canadian life than your

average newcomer from Pakistan. As well, Western religions have accepted the separation of church and state for quite some time now. Islam has never done any such thing.

The person leading the movement for private *sharia-based* courts is a man named Syed Mumtaz Ali, who heads the Islamic Institute of Civil Justice. He has made various contradictory comments about how binding he expects these private rulings to be. He once said that "a Muslim who would choose to opt out at this stage [after a private court's decision] would be guilty of a far greater crime than a mere breach of contract—this could be tantamount to blasphemy-apostasy."

How equal are Muslim women in their own communities? Well, they're not allowed to pray alongside men. They're not allowed to preach or lead prayers. Last month, a liberal mosque in Toronto, whose members are from Guyana and the Caribbean, broke new ground by allowing a woman to preach a 10-minute sermon to celebrate the

end of Ramadan. But other mosques aren't even thinking of "No mosque in Canada would have a female giving a sermon," said spokesman for the Islamic Council of Canada.

For what it's worth, most worriers are firmly on Ms. Hogben's side this issue, not Ms. Boyd's—including the YWCA. Since last spring, when the *sharia* controversy broke, Ms. Hogben's phone has been ringing off the hook. "We are getting calls from all over the world saying 'What's going on there?'" she says.

Like other people who are worried about women's and children's rights, Ms. Hogben thinks that family issues involving divorce and custody are too important to be settled in private. "We want to say to all fellow Canadians: Write the government and say what you think," she pleads.

Here's what I think: Religious laws have no place in the legal system. One Canadian law should be good enough for all. Period. Full stop.

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