

August 26, 2004

## Submissions by Muslim Canadian Congress Review of Arbitration Process by Marion Boyd

The Muslim Canadian Congress is a national organization that provides a voice to progressive Muslims who are not represented by existing organizations. The Muslim Canadian Congress members reject organizations and a distorted view of Islam that is either sectarian, ethnocentric, authoritarian, and influenced by a fear of modernity.

Members of the Muslim Canadian Congress are proud of their Muslim heritage and the great contribution of Islam to human civilization. As Muslim Canadians, when it comes to rights and responsibilities, we believe in the *Canadian Charter of Rights and Freedoms*, and the Canadian constitution as our guiding principles.

The Muslim Canadian Congress is a secular organization that works to create a safe space and environment for all Muslims who are opposed to any form of theocracy. We believe in the separation of religion and state in all matters of public policy. We feel such a separation is a necessary prerequisite to building democratic societies. Societies where religious, ethnic, and racial minorities are accepted as equal citizens enjoying full dignity and human rights enunciated in the 1948 United Nations Universal Declaration of Human Rights.

The Muslim Canadian Congress respectfully submits:

1. that the *Arbitration Act* does *not* cover family disputes being resolved within its parameters. Furthermore, that the *Family Law Act* and the other pieces of legislation covering family law jurisdiction are the sole, exclusive and comprehensive scheme for resolving all family law matters touching on relationships between spouses and their children, including estate and inheritances by spouses and children. It is therefore our position that none of these matters can be dealt with under the *Arbitration Act*.
2. that if indeed the government takes the position, as it seems to be doing, that the *Arbitration Act* can deal with these matters, then the MCC further takes the position that, to that extent, the *Arbitration Act* is unconstitutional and of no force and effect in that:
  - a. It breaches the rights contained in sections 2, 7, and 15 of the *Canadian Charter of Rights and Freedoms* as enunciated by the Supreme Court of Canada with respect to any differential treatment not specifically set out in the *Constitution Act, 1867*;
  - b. Breaches the unwritten constitutional norms enunciated by the Supreme Court of Canada in the *Quebec Succession Reference* namely the rule of law, constitutionalism, federalism, and respect for minorities;
  - c. Breaches even the common law rights to equality of citizenship as enunciated by the Supreme Court of Canada in *Winner*; and

- d. Is otherwise repugnant to public policy in the *de facto* privatization of the legislative function and duty of parliament, which in fact, has been declared as unconstitutional as being the abandonment and abdication of the legislative function of parliament, as enunciated by the Supreme Court of Canada in *Re Gray* and further endorsed by the Supreme Court in *Hallett* and *Carey*.
3. In light of the fact that this *Act* exists and the Government states that there is such statutory and constitutional jurisdiction, and in light of the fact that MCC completely rejects and disagrees, we demand, on behalf of not only Muslim-Canadians, but all other Canadians who defend the rule of law and constitutionalism and equality, that the matter be referred on a reference to the Ontario Court of Appeal pursuant to section 8 of the *Courts of Justice Act* to determine:
    - a) Whether the *Arbitration Act* confers jurisdiction, outside the *Family Law Act* and other related family law statutes, to determine disputes of property, children, inheritance and estates in the family context.
    - b) If the Arbitration Act does confer such jurisdiction, whether it is constitutional.
  4. With all due respect, if the Government maintains that the *Act* does confer such jurisdiction, then these consultations are a charade as the Parliament has already spoken and any “report” or opinion to the Attorney General is just that: an opinion.
  5. In practical and realistic terms, what began as a demand to introduce “Sharia Law” has now dishonestly mutated into the same thorn by any other name, and is still offensively unacceptable for the following reasons:
    - a) There is no such thing as a monolithic “Muslim Family/Personal Law” which is just an euphemistically racist way of saying that we will apply the equivalent to “Christian Law” or “Asian Law” or “African Law”;
    - b) It ghettoizes the Muslim community, which otherwise spans five different continents covering 1.3 billion people, in an extensive array of sects, languages, cultures, and customs, all into one second-class compartment in the determination of human and family law rights, which are of public importance and domain;
    - c) This insidious and discriminatory ghettoization and marginalization, into “out of sight” only plays into:
      - i) The hands of the extremist political and ideological agenda of a certain sector of Muslim-Canadian proponents of “Muslim Law” that is antithetical to the Canadian Constitution and values; and
      - ii) Equally into the hands of the reactionary, intolerant and otherwise racist segments of Canadian non-Muslim society who want nothing better than to exclude Muslims from the mainstream;

all of this, behind the dishonest guise of religious tolerance and accommodation.
  6. These practical and real objections are not only visible and apprehended by moderate Muslim Canadian members and voices, who adhere to the same rights and responsibilities of all other Canadians regardless of religion or race, but also highlight and focus the legal and constitutional repugnancy of these proposed measures.
  7. In our respectful view, any public official body or institution that does not squarely and openly address the racism of these provisions and measures, is complicit in them.

8. Any “arbitration” system ought to be neutral and equally apply to any and all citizens regardless of race, religion, ethnicity, gender or sexual orientation. To have a system built on the exact opposite is to defile our Constitutional framework.

It would be extremely dishonest, and derelict of its responsibility for the government of the day to engage in this “consultation” and report with the public, and not refer it to the Court for validity, and expect groups such as the MCC to bring such a challenge.

In light of the above, MCC reiterates its demand that the Provincial Government refer the matter on a reference to the Ontario Court of Appeal pursuant to section 8 of the *Courts of Justice Act*.

All of which is respectfully submitted this 26<sup>th</sup> day of August 2004

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