



Comments on:
Bill 27,
The Family Statute Law Amendment Act, 2005

Submitted to
The Standing Committee on Justice Policy

By the

Ontario Council
Canadian Federation of University Women

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Submitted by:

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Standing Committee on Justice Policy
Shafiq Qaadri, MPP, Chair
Room 1405, Whitney Block/Bureau 1405, édifice Whitney
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December 14, 2005

RE: Comments of the Ontario Council of the Canadian Federation of University Women on Bill 27, Family Statute Law Amendment Act, 2005

Members of the Standing Committee on Justice Policy:

The Ontario Council of the Canadian Federation of University Women (CFUW/ Ontario Council) welcomes the opportunity to comment on Bill 27, amendments to the 1991 Arbitration Act.

CFUW/ Ontario Council commends the Government of Ontario for having undertaken the review of the 1991 Arbitration Act under the Hon. Marion Boyd.

The recommendations of the Boyd Report brought into clear focus the weaknesses in setting up a parallel legal system based on private law, especially on principles of religious law principles that would discriminate against women, particularly minority women and immigrant women and those otherwise vulnerable.

In March 2005, we voiced our concerns about the recommendations of the Boyd Report to the Attorney General.

Our national federation was in the forefront of the struggle to have the equality of Canadian women enshrined in the Canadian Charter of Rights and Freedoms. Our Ontario members did not want to see the Government of Ontario enact a law that would put in danger the equality of some Ontario women because of their ethnic, religious, or cultural origin community and/or their socio-economic background therein.

For our members it is imperative that all who live in Ontario, regardless of their culture, language, or faith, have equal access to the resolution of family disputes within the parameters and protections of the Family Law Act. No group, or member within that group, should be disadvantaged by lack of knowledge of her rights and responsibilities under Canadian law.

Family matters are at the core of most women's lives. Since there is rarely an appeal and only limited judicial review granted in arbitration and because of the unequal position of women in general, but particularly in some communities and families, we were concerned that in such crucial matters Ontario women could be forced to waive rights that exist for their own protection, such as the right to appeal and the right to independent legal advice.

Allowing dispute resolution in family law matters according to private law arbitration could mean in reality that the stamp of approval of Ontario law would be put on the continued victimization of the vulnerable and of women.

CFUW/Ontario Council could support Ms. Boyd's safeguard recommendations around the issues of education and regulation of mediators and arbitrators, legal aid, and public education to increase legal literacy in mediation and arbitration. These safeguards would however take a considerable government commitment of financial resources.

The economic and power imbalance traditionally experienced by women in family law matters and the uneven government record of providing legal aid to women led us to conclude that the Boyd safeguards with their dependence on provincial finances would be ineffective in providing women with equality before the law.

In August 2005, after a grassroots, Canada-wide study and discussion, the CFUW adopted the following policy on **Equality in Family Law**:

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada and all provincial and territorial governments of Canada to exclude family law disputes from arbitration legislation, so that the rights of an individual under the Canadian Charter of Rights and Freedoms are respected; and

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada and all provincial and territorial governments of Canada to ensure that all residents of Canada are made cognizant of their rights and responsibilities under family law legislation and the Canadian Charter of Rights and Freedoms.

CFUW/Ontario Council respects the right of all Ontarians to practice their religion freely. The standards for our members' dialogue on religion, culture, gender equality and women's rights are set out in UN documents such as the Beijing Platform for Action and the Beijing +5 Political Declaration and Outcome Document together with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights. (See Appendix A)

CFUW/Ontario Council is a member of the No Religious Arbitration Coalition that has been actively opposing the concept of religious arbitration in family law. As well members of this Standing Committee will no doubt have been contacted in their riding by the local CFUW Club about our concerns throughout this process concerning the Arbitration Act.

We commend Premier McGuinty for his government's September 11 decision to end all religious arbitration in family law disputes. It is in religious arbitration where the equality rights of women are most gravely endangered.

While it does not exclude the resolution of family law matters from arbitration, Bill 27, the Family Statute Amendment Act, 2005, introduced on November 14th by Ontario's Attorney General, Michael Bryant, promises remedies for some of CFUW/Ontario Council concerns with the Boyd recommendations. The bill provides for women a chance for equality in arbitration of family law matters.

CFUW/Ontario Council agrees with its allies in the No Religious Arbitration Coalition that the salient proposed Bill 27 provisions are "very important and positive", and we approve of the following:

Arbitration Act, 1991

(1) Section 1 (1) (b)

will be amended to include a new definition that states that family arbitration "is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction; ("arbitrage familial") "

(2) Section 2.1 will now state:

(1) Family arbitrations, family arbitration agreements and family arbitration awards are governed by this Act and by the Family Law Act.

(2) In the event of conflict between this Act and the Family Law Act, the Family Law Act prevails.

(10) that the Act will be amended by adding the following section:

50.1 Family arbitration awards are enforceable only under the Family Law Act.

(11) that a new section will be added:

Section 58, Regulations where

- Family law arbitrators will be regulated for the first time in Ontario,
- Family law arbitrators will be required to undergo training, approved by the Attorney General including training in how to screen for family violence and power imbalances before beginning the arbitration;
- Arbitration will be monitored through mandatory record keeping and reporting to the Ministry of the Attorney General;

Family Law Act

Section 59.4 where

- Parties will no longer be able to enter into advance agreements to arbitrate their family dispute; such agreements will have to be made at the time of the dispute.

Section 59.6 where

- Arbitrations of family matters must be in writing;
- Parties entering into a family arbitration must have independent legal advice;
- Parties entering into a family arbitration cannot waive their right to appeal
- The arbitrator must comply with any regulations made under the *Arbitration Act, 1991*.

We note that the bill does not provide (neither the Act nor the Regulations provide) for legal aid, which is essential if quality advice is to be received. CFUW/Ontario Council is

very concerned that economically vulnerable women will not have the funds to pursue that legal advice.

We agree with the No Religious Arbitration Coalition when it says: “We also wish to sound some cautionary notes: women from marginalized communities will remain vulnerable to being manipulated and coerced into entering into processes that do not respect their rights and that keep them in unsafe situations; the lack of legal aid for family law means that many women do not have equitable access to justice.”

In our own 2003 CFUW policy on **Legal Aid Provision in Canada**, we

urge the federal, provincial and territorial governments of Canada to enact “access to justice” legislation which will ensure that adequate legal aid is an integral component of the Canadian justice system; and

to work collaboratively to establish regulations and standards which would define, and guarantee, effective and accessible civil legal aid throughout Canada, and to ensure the necessary funding to maintain these regulations and standards.

We are pleased that in concert with Bill 27 Community Outreach and Education Programs are being developed by the *Ontario Women’s Directorate* and the *Ministry of Community and Social Services* to increase legal literacy and make all Ontarians understand their rights under Canadian and Ontario family law and family law arbitrations.

CFUW/ Ontario Council

CFUW/ Ontario Council is made up of approximately 6000 women university graduates from all the regions of Ontario. We are totally member - funded. Our members live in 58 Ontario communities, in big urban areas as well as in rural and northern towns (see Appendix B). We are non - partisan and non- sectarian. When voting on policy each of our clubs has one vote so that the voice of members from Thunder Bay and Renfrew and St. Thomas have the same weight as those from the Toronto and Ottawa areas. This results in well-balanced policies that may be embraced by most Ontarians.

We are business women, scientists, teachers, university professors, nurses and physicians, seed specialists and engineers, farm women and artists and accountants, wives, daughters, mothers and grandmothers. All put their skills and education at the service of their community, and work

- in all public affairs
- for a high standard in public education,
- for the improvement of the Status of Women in Ontario, and
- to ensure Human Rights in the Province.

CFUW/Ontario Council is part of the Canadian Federation of University Women (CFUW) and has links with the International Federation of University Women.

Some of our Ontario Clubs were founded long before women were deemed "persons". Our national federation was formed in 1919. Our members, who may be considered privileged in many ways, remember Murdoch vs. Murdoch, and Rathwell vs. Rathwell only too well. Our members recognize that many difficulties and barriers still exist today for women in the main stream wanting to arrive at a family dispute resolution that is fair and equal.

CFUW members also know that Family Law Reform is a long term ongoing effort. We oppose arbitration in family law, but we can support the provisions made in the Family Statute Law Amendment Act, 2005 as a promise of better equality of women before Ontario Law.

We remain very concerned, however, about sufficient funding for legal aid and for the outreach and education programs that would guarantee equal access to civil justice for the poor and for minority and immigrant women.

Sincerely,

Edeltraud Neal, President,
Ontario Council, Canadian Federation of University Women

Appendix A



Some Canadian Federation of University Women Policy on Women's Equality and Family Law

**Note : CFUW /Ontario Council policy integrates
CFUW/ Ontario Council policy, as well as CFUW and IFUW policy**

2003 **Legal Aid Provision in Canada**

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the federal, provincial and territorial governments of Canada to enact "access to justice" legislation which will ensure that adequate legal aid is an integral component of the Canadian justice system; and

RESOLVED, That CFUW urge the federal, provincial and territorial governments of Canada to work collaboratively to establish regulations and standards which would define, and guarantee, effective and accessible civil legal aid throughout Canada, and to ensure the necessary funding to maintain these regulations and standards.

2005 **Equality in Family Law**

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada and all provincial and territorial governments of Canada to exclude family law disputes from arbitration legislation, so that the rights of an individual under the Canadian Charter of Rights and Freedoms are respected; and

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada and all provincial and territorial governments of Canada to ensure that all residents of Canada are made cognizant of their rights and responsibilities under family law legislation and the Canadian Charter of Rights and Freedoms.

2004 **Religion, Culture, Gender Equality and Women's Rights**

The 28th Conference of the International Federation of University Women (IFUW) resolves to:

1. urge IFUW and National Federations and Associations (NFAs) to promote the application of human rights standards within cultural and religious institutions and so achieve gender equality and prevent women's rights being made subordinate whilst being respectful towards each person religious belief, and
2. encourage NFAs to promote the standards for dialogue on religion, culture, gender equality and women's rights as set out in documents such as the Beijing Platform for Action and the Beijing +5 Political Declaration and Outcome Document together with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights.

1978 **Family Court**

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the provincial Attorneys General and the federal Minister of Justice to enact co-operatively the legislation necessary to create a Nation-wide Unified Family Court System presided over by judges with the necessary training, and staff to deal effectively with all aspects of family law.

1981 **Convention on the Elimination of All Forms of Discrimination against Women**

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the Government of Canada to take all necessary measures in order to ratify the 1979 United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) as soon as possible; and

RESOLVED, That CFUW urge all provincial and territorial governments to take the necessary steps to amend without delay their provincial/territorial laws so as to make them conform to the provisions of CEDAW.

From the Convention on the Elimination of All Forms of Discrimination against Women

Part I Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

PART IV Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

PART IV Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(c) The same rights and responsibilities during marriage and at its dissolution;

Source: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

1982 **Charter of Rights and Freedoms**

RESOLVED, That Canadian Federation of University Women adopt a policy, to be followed by the national Board of Directors, of continuous vigilance and subsequent appropriate action concerning any overriding provincial or federal legislation which may seem to contravene the spirit of the Charter as expressed in Section 1, Guarantee of Rights and Freedoms.

1983 **UN Decade for Women**

RESOLVED, To invite the national federations and associations of the International Federation of University Women:

1. to call on their governments to implement the World Program of Action adopted at the World Conference of the UN Decade for Women: Equality, Development and Peace,

1995 **Follow-Up To United Nations International Conferences 1993-1996**

RESOLVED, That national federations and associations should urge their governments to follow-up and implement the recommendations included in the Programs and Platforms for Action adopted at:

World Conference on Human Rights, 1993 [Geneva]
International Conference on Population and Development 1994 [Cairo]
World Summit for Social Development, 1995 [Copenhagen]
Fourth World Conference on Women, 1995 [Beijing]

with particular reference to the well-being of women and girls.

From **The United Nations, Beijing Declaration and Platform for Action**
Under Human Rights of Women:

Strategic objective I.2. , Ensure equality and non-discrimination under the law and in practice

.....

Strategic objective I.3., Achieve legal literacy

.....

Source: <http://www.un.org/womenwatch/daw/beijing/platform/human.htm>

1995 **Co-management**

RECOMMENDED, That national federations and associations constantly reaffirm the right to fair co-management between men and women in all areas, whether social, professional, economic, cultural or political, and that they actively defend this right.

1995 **Credit Splitting Following Dissolution of Marriage -Extension of Application Period**

RESOLVED, That the Canadian Federation of University Women (CFUW) urge the Government of Canada to act with provincial and territorial governments to extend the application time limit for the splitting of Canada Pension credits (credit splitting) and to ensure that all spouses who, between January 2, 1978, and January 1, 1987, divorced, annulled by court-order, or separated from a legal or common-law relationship, will have the right to apply for a pro-rated share of CPP/QPP benefits on a non-retroactive basis, and

RESOLVED, That CFUW urge the Government of Canada to continue to engage in a universal public education and information program regarding the splitting of Canada Pension Plan credits upon the divorce, court-ordered annulment, or the separation of legal or common-law spouses.

1994 **Division of CPP/QPP**

RESOLVED, That the Canadian Federation of University Women urge the Government of Canada to amend the criteria so that, following the dissolution of a marriage, the division of Canada Pension Plan/Quebec Pension Plan(CPP/QPP) credits will recognize both the cohabiting period and the period subsequent to the dissolution of the marriage when the parent/parents continue(s) to bear responsibility for the care of the children (to age 18) of that marriage; these changes to be made retroactive to the time of separation.

1982 **Credit Splitting**

RESOLVED,

1. That the Canadian Federation of University Women urge the Government of Canada to make the splitting of Canada Pension Plan credits acquired during the marriage mandatory, automatic and unrenounceable on divorce or annulment; and
2. That a similar representation be made to the Government of Quebec with respect to the splitting of Quebec Pension Plan credits.

Appendix A



Ontario Council of The Canadian Federation of University Women Club Locations

Ajax - Pickering	Kingston	Oshawa & District
Aurora - Newmarket		
Barrie & District	Kitchener - Waterloo	Ottawa
Belleville & District	Leaside - East York	Owen Sound & Area
Brampton	London	Perth
Brantford	Markham- Unionville	Peterborough
Brockville & District	Milton & District	Renfrew & District
Burlington	Mississauga	Sarnia Lambton
Cambridge	Muskoka	Saugeen
Chatham -Kent	Nepean	Scarborough
Cornwall & District	Niagara Falls	Southport
Etobicoke	Norfolk	St. Catharines
Georgetown	North Bay	St. Thomas
Grimsby	North Toronto	Stratford
Guelph	North York	Sudbury
Haliburton Highlands	Northumberland	Thunder Bay
Hamilton	Oakville	Toronto
Kanata	Orangeville & District	Vaughan
Kincardine	Orillia	Welland & District
	Orleans	Weston & District

Windsor