



Comments on:
The Boyd Review and the Arbitration Act

By the

Ontario Council
Canadian Federation of University Women

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Submitted by:

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Researched by

Joan Dunn, Chair Status of Women & Human Rights

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The Honourable Michael J. Bryant
Attorney General
Ontario Ministry of the Attorney General
720 Bay Street, 11th floor
Toronto, ON. M5G 2K1

March 31, 2005

RE: Comments of the Ontario Council of the Canadian Federation of University Women on the Recommendations of *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* by Hon. Marion Boyd

Dear Mr. Bryant:

The Ontario Council of the Canadian Federation of University Women (CFUW) wishes to comment to you on the recommendations of the report *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion (The Boyd Review)*, prepared for your ministry by Hon. Marion Boyd.

CFUW/ Ontario Council commends the Government of Ontario for having undertaken the review of the current Arbitration Act under the Hon. Marion Boyd out of concern for the vulnerable in our society who may be negatively impacted by having their family law issues resolved under the Arbitration Act.

Ms. Boyd's review of the Arbitration process was thorough and demonstrates the complexities of family disputes, religiously based tribunals and the difficulties of acknowledging cultural differences in a diverse community. Ms. Boyd's report recommends that

1. Arbitration should continue to be an alternative dispute resolution option that is available in family and inheritance law cases, subject to further recommendations of the Review.
2. The Arbitration Act should continue to allow disputes to be arbitrated using religious law, if safeguards currently prescribed and recommended by the review are observed.

After much consideration of Ms. Boyd's report in the light of CFUW policies and history - as well as taking into account our own life experiences as women, being mindful of more than thirty years of successful Family Law Reform that improved the legal status of women in Canada and in our province,

CFUW Ontario Council strongly recommends that the Government of Ontario exclude the resolution of disputes in family law matters from the 1991 Arbitration Act.

It is clear that human rights and the equality of women are not principles in the practice of many religions and cultures. Indeed, equality for women has not been at the basis of our own Canadian culture and Canadian law long enough that our members could take

lightly any prospects of having women's lives made subject to arbitrary private law again, be it the law of the family, the clan or the religious group.

Leaving family disputes to be settled under private actions with no real safeguards and usually no appeal and very little possibility of judicial review is to set up a two-tier system of law that will discriminate against women, particularly minority and immigrant women.

It is imperative that all who live in Ontario, regardless of 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. There is a precedent for this approach in the Civil Code of Quebec, where it provides that "disputes over the status and capacity of persons, family matters or other matters of public order may not be submitted to arbitration."

In her Review Report Ms. Boyd notes concerns with the vulnerable position of women in arbitration and gives 46 recommendations in order to make it acceptable to continue to allow family disputes to be resolved under the Arbitration Act of 1991.

That it would take the implementation of 46 recommendations to ensure those safeguards, including legal and regulatory changes to the Arbitration Act and the Family Law Act, is to recognize that resolution of family disputes under the Arbitration Act is highly problematic, and consequently undesirable.

Safeguard Recommendations

CFUW/Ontario Council can support Ms. Boyd's safeguard recommendations around the issues of education and regulation of mediators and arbitrators, legal aid, and public education for use in mediation and non family dispute arbitration. Similar provisions may be recommended as additional safeguards for the Family Law Act and Divorce Act. Indeed, the Ontario Government should endeavour to increase the legal literacy of all Ontarians.

We cannot support that women have to waive rights that exist for their own protection. Our collective history and experience as women, and the less than stellar government record of providing legal aid to women leads us to conclude that the existing imbalance of power and of choice that women experience in family disputes will not really be addressed by the safeguards proposed by Ms. Boyd.

Standards in Arbitration using Religious Law

Even if the Ontario Arbitration Act were extended to include further religious tribunals, "underground" unregulated private resolutions of family disputes would continue to take place, particularly in closed minority cultural and religious communities. There will always be sects and communities within a faith that will not accept the rules of another community within the same faith. Which particular faith interpretation would be the legal standard for "disputes to be arbitrated using religious law"? We fear that a basic common standard of arbitrated decisions would get lost in a sea of private laws. We are concerned about the fairness and equality of all Ontarians, but particularly of women, before the law.

Equality of Women before the Law

Family matters are at the core of most women's lives. The Boyd recommendations note that "most family disputes are resolved without court action". Alternate dispute resolutions may constitute a satisfactory consensus for all parties in some family matters. But given the unequal position of women and the vulnerable in some communities and families, where these Ontarians seek a resolution of family disputes under Ontario Law, they should be assured the full access to, and the full protection of their equality under that law, particularly since there is rarely an appeal and only limited judicial review possible in arbitration. Inclusion of dispute resolution in family law matters in the Arbitration Act could mean that the stamp of approval of Ontario law will be put on the continued victimization of the vulnerable and of women.

In 1981, our members accepted the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) as policy, 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".

CEDAW provides us with clear provisions as far as women's equality before the law is concerned. Canada has acceded to the Protocol. In the context of the 1991 Arbitration Act we refer particularly to the following articles in CEDAW (see appendix A)

Part I *Article 2* , 2c, on eliminating discrimination against women to establish legal protection of the rights of women on an equal basis with men.

PART IV *Article 15* , 1 to 4, accords to women equality with men before the law.

PART IV *Article 16* , 1, 1c, requires appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and accord the same rights and responsibilities during marriage and at its dissolution.

CFUW Ontario Council wants to see the principles of the UN CEDAW observed in all Ontario laws, including in dispute resolution in family law.

Recognising Cultural and Religious Diversity

Cultural and religious sensibilities as part of justice and policy considerations are not new to our CFUW /Ontario Council members. CFUW /Ontario Council is part of the Canadian Federation of University Women(CFUW) and has links to the International Federation of University Women (IFUW) During our 85 year affiliation with IFUW, our members have been working on policy for human rights and the improvement of the status of women together with women in countries on every continent. With these women, who are equally dedicated to their own cultures and religions, our Ontario members share a large body of human rights and women's equality policy, such as the most recently passed IFUW policy on "Religion, Culture, Gender Equality and Women's

Rights” (2004) which urges our members “to promote the application of human rights standards within cultural and religious institutions and prevent women’s rights being made subordinate whilst being respectful towards each person’s religious belief.”

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

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.

Some of our Ontario Clubs were founded 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. Some have had to fight through similar legal situations. All 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. We can only imagine how much more difficult this is for minority and immigrant women.

With leaders such as past CFUW President Dr. Laura Sabia, our federation was in the forefront of the struggle to have the equality of Canadian women enshrined in the Canadian Charter of Rights and Freedoms. We do not want to see the Government of Ontario enact a provincial law that may put in danger this equality for Ontario women because of their ethnic, religious, cultural origin and community and their socio - economic background.

We have had the Hon. Marion Boyd explain her recommendations to us, and our local groups in towns small and large have listened to and considered the opinions of local Muslim women. We have also reviewed the submissions and responses to the Boyd Review by other groups concerned with the equality of women, including the Canadian

Council of Muslim Women, the Women's Legal Education and Action Fund (LEAF), the Metropolitan Action Committee on Violence Against Women and Children (METRAC), the YMCA Toronto, and National Association of Women and the Law (NAWL). When CFUW Ontario Council strongly recommends that the Government of Ontario exclude the dispute resolution in family law matters from the 1991 Arbitration Act, CFUW/Ontario Council adds its voice to these groups.

Our members are also concerned about choice and inclusion. If dispute resolutions in family law would be subject to arbitration, would women, particularly those before religious tribunals, be made aware of existing Ontario Family Law options, and would they be able to make a true choice for arbitration? In the end, will these women be included in the equal legal status of Ontario women or will these women be second class citizens, abandoned, and excluded from the protection of their equality by Ontario law?

It is our sincere hope that when deciding on the recommendations of the Boyd Review of the 1991 Arbitration Act that you and your ministry will consider CFUW Ontario Council's strong recommendation that the Government of Ontario exclude dispute resolution in family law from the 1991 Arbitration Act.

CFUW Ontario Council representatives and I would be very glad to meet with you to discuss this issue.

Sincerely,

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

cc: The Hon. Dalton McGuinty
The Hon. Sandra Pupatello

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**

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 B



Ontario Council of The Canadian Federation of University Women Club Locations

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

