



## **Ontario Bans Religious Arbitration in Family Law**

After much public and legislative discussion, the Ontario government passed *Bill 27, The Family Statute Law Amendment Act* on February 14, 2006, which requires that all family law arbitration in Ontario be conducted only in accordance with Canadian (including Ontario) law.

The new legislation contains a number of very important and positive provisions:

1. Section 1 of the *Arbitration Act* now states that family arbitration must be “conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction”;
2. Section 2 now provides that both the *Arbitration Act* and the *Family Law Act* govern family arbitrations and, when a conflict arises between the two, it is the *Family Law Act* that will prevail;
3. Parties entering into a family arbitration must have independent legal advice;
4. Parties entering into a family arbitration cannot waive their right to appeal the arbitration if they are not satisfied with it;
5. Family law arbitrators will be regulated for the first time in Ontario, and will be required to undergo training, including training in how to screen for family violence and power imbalances;
6. Arbitration will be monitored through mandatory record keeping; and
7. Parties can no longer enter into advance agreements to arbitrate family disputes; such agreements can only be made at the time of the dispute.

In addition to banning the use of religious laws in the arbitration of family law disputes, *Bill 27* tackled the issue of custody and access. In Ontario, custody and access are dealt with in the *Children’s Law Reform Act*, which requires that decisions are to be made using the best interests of the child test.

The best interests of the child test has been expanded to include consideration of “the ability of each person applying for custody of or access to a child to act as a parent” and goes on to state that:

“In assessing a person’s ability to act as a parent, the court shall consider whether the person has at any time committed violence or abuse against (a) his or her spouse; (b) a parent of the child to whom the application relates; (c) a member of the person’s household; or (d) any child.”

Passage of this legislation is of considerable importance to women and children, especially those fleeing abusive situations. It is also important because it came about directly as the result of law reform lobbying by a broad coalition of organizations that committed itself to focusing on women’s equality rights. However, it is not without its shortcomings:

1. While it is extremely positive to see an end to the use of religious laws in the arbitration of family law disputes, NAWL would have preferred a complete ban on arbitration in family law; and
2. Without a change to the present legal aid criteria – which do not allow legal aid assistance for arbitration -- the requirement that all parties to a family arbitration have access to independent legal advice is largely meaningless for low-income women.

And more remains to be done:

1. Regulations to support the legislation, in particular the sections dealing with training, regulation and monitoring of arbitrators, have yet to be written. Until they are, those sections of the *Act* are not in force;
2. Massive community outreach and education are necessary to ensure that all women – but especially those from marginalized communities – know what their rights are under Canadian law.

NAWL remains active on this issue. The Ontario Women’s Directorate has recently entered into a contract with a consortium of community-based organizations, including NAWL, to develop and produce public education materials on various family law related matters aimed at vulnerable and isolated women.

To read more about the Bill, visit the Ontario government website at [www.ontla.on.ca/Library/bills/382/27382.htm](http://www.ontla.on.ca/Library/bills/382/27382.htm)