

Arbitration Act under review

Halton resident unhappy with proposed introduction of Shar'iah courts

By DONNA DANIELLI

Dalton McGuinty's new provincial government has come under fire in the past months, deservedly or not, with an unpopular budget and controversial new government policies. He has however made one very critical step in the right direction, a review of the 1991 Arbitration Act. He recently appointed Marion Boyd and Sandra Papatello the task of reviewing the Act in response to public outcry that it placed vulnerable persons in a position of possible harm in private arbitrations.

The Arbitration Act came into being in 1991 in an effort to streamline the crowded court dockets. Civil cases were diverted to arbitration, which could be conducted under religious principles if both parties agree. Under Ontario law, cases negotiated through an arbitrator must be upheld through the courts, as long as the arbitration has been entered into voluntarily by both parties. The Act has recently come under fire as a group of Canadian Muslims established a judicial tribunal to implement Shar'iah, or Islamic law, in Ontario for the resolution of civil disputes and marital disagreements.

"NEW IMMIGRANT MUSLIM WOMEN...MAY NOT BE AWARE OF THEIR RIGHTS UNDER CANADIAN LAW"

"It's believed that to be a good Muslim, you must live completely under the Muslim law," explains Halton's Elka Enola, who is strongly opposed to the use of Shar'iah law in Ontario. Under the Act, arbitrators such as imams, Muslim elders or lawyers will deal in such matters as property, marriage, divorce, custody and inheritance. Any arbitration must comply with Canadian law, but Enola fears for new immigrant Muslim women, who may not be aware of their rights under Canadian law. They may be the most vulnerable to abuses of the Arbitration Act as many don't speak English well, may be poorly educated and isolated from the broader community. "Their perception is that anything done at the tribunal is according to Canadian law, and they will be bad Muslims and ostracized from their communities if they don't go to Shar'iah court," says Enola.

Shar'iah law is based on the Koran and is central to a Muslim's belief, as it provides the divine rules for behavior. It varies in specific interpretations world wide, with the only theme common in all aspects of Shar'iah is that of a patriarchal system. Under the Islamic family law, for example, a male heir would receive a higher inheritance than a female heir, husbands, not wives, may initiate divorce proceedings, and custody of daughters who have reached puberty is given to fathers in divorce cases.

This patriarchy is only common sense, according to Muhammad Abdul Aleem Siddiqui's treatise on the role of women in Islamic society. He presents the point of view that men and women are equal in the eyes of Allah, but have different tasks. It is the job of women to raise the family, and as such "are not in a position to pay attention to securing their means of livelihood. The

men, therefore, have been made responsible for maintaining the family, including the wife, and have been given the duty of securing all the requirements of the home." He goes on further to explain that "It is a well known fact of medical science that mentality of the mother affects the mentality of her children just as, or even more than, her physical qualities influence their physical build. Islam, therefore, commands women to keep themselves away from places where there may be the slightest chance of their being influenced by an evil force or evil idea so that their chastity and purity may be preserved and the mentality of their offspring may be safe from corruption." One of the main tenets of the patriarchal Islamic law is the reverence of and protection for Muslim women from any influences that might lead them to sin.

Elka Enola argues the need to consider the fact that the definitions for "marriage" and "informed consent" are different under Ontario law than under Shar'iah law, differences which she feels can lead to such situations as Islamic sanctioned marriages between adult males and female children, and other abuses. "Family law must be removed from the Arbitration Act of 1991," she insists. "A new Arbitration Act for Family Law must be created under which specific terms are defined." Enola plans to continue to be a strong advocate against Shar'iah law in Ontario. "I talk to anyone who will listen," says Enola. "I see my role as trying to inform people whose backgrounds wouldn't give them access to this information." Enola is one of the many Ontario women who have already made presentations to former Attorney General Marion Boyd as part of the review. Boyd served as Minister Responsible for Women's Issues, Minister of Education, and Minister of Community and Social Services in the government of Bob Rae. She is a former executive director of the London Battered Women's Advocacy Clinic and is presently a Life Bencher of the Law Society of Upper Canada and an adjudicator for the Criminal Injuries Compensation Board. She is reviewing the arbitration process, along with Sandra Papatello, Minister Responsible for Women's Issues, and their report is expected to be completed in the fall.

While there may be some advantages to

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cases settled through arbitration, such as lower costs and a more timely end to the process, some like family lawyer Pat Hancock urge caution as to how it is used. "Any system that takes place behind closed doors has the potential to be an unbalanced thing," she says. "I'm not comfortable with a system that has the weight of law, but none of the checks and balances. I think efforts to improve the legal system and maybe make it more culturally sensitive and more accessible would be preferable."

Clippity clop to the blacksmith's shop



PHOTO BY JENNIFER ENRIGHT

Larry Maughan, a professional blacksmith from Guelph, helps demonstrate some of the skills required to be a blacksmith during a children's program offered at Waldies Blacksmith Shop in Milton. Larry fashioned a small metal snake out of a piece of metal. The Milton Historical Society is running children's programs at the smithy over the summer. For more information, contact Sonia Pacheco at 905-875-7354.



PHOTO BY JENNIFER ENRIGHT

Sonia Pacheco, an employee with the Milton Historical Society, shows kids some old horses' hooves on display at Waldies Blacksmith Shop in Milton. Budding blacksmiths used these hooves to test out their skills in making horseshoes. The Milton Historical Society is offering children's programs at the smithy over the summer. For more information, call 905-875-7354.