



## **BILL 27 JUSTICE POLICY COMMITTEE HEARINGS METRAC/YWCA Submission**

We are Pamela Cross, Legal Director of METRAC and Amanda Dale, Director of Advocacy & Communications of YWCA Toronto. We are speaking in favour of Bill 27, with some detailed concerns going forward.

METRAC, the Metropolitan Action Committee on Violence Against Women and Children, is a Toronto-based organization working for the eradication of all forms of violence against women and children. The mandate of our Justice Program includes law reform work as well as the development of legal information materials for women experiencing violence and those providing services to them. Through this second area of work, we meet and hear from literally thousands of women a year in Ontario who need our support because they do not have access to adequate or any legal representation. Many of these women are involved in one kind of alternative dispute resolution or another, and most of them do not have happy stories to tell.

YWCA Toronto is the City's only multi-service organization by, for and about women and girls. Since our national founding in the 1870's, we have grown to a member-based organization active in over 14 communities in Ontario, with 38 member associations in Canada. We have over 25 million members in our Association world-wide.

YWCA Toronto works through four major program areas: Housing and Shelter; Girls and Family Programs; Employment and Skills Development and Advocacy.

Annually we serve more than 49,000 individuals. We help them secure a job, find their voice, enhance a skill, develop confidence or flee violence. Across all our program areas, the most common factor limiting women's engagement with their community, their family, their careers or their potential, is the reality of violence in their home, and control over their decision-making autonomy in dispute, custody or immigration matters.

Each of us represents the broader concerns of our organizations and their membership. Their spontaneous and overwhelming outpouring of concern for the equality guarantees of a secular, public and universal system of law have motivated and fueled the campaign to end religious arbitration of family law disputes in Ontario.



We are here today to speak in support of Bill 27 because it will guarantee that family law arbitrations in Ontario will be conducted using only Canadian and Ontario law. It also ensures that other principles and rules – including religious principles – will have no legal effect and will amount to advice only.

We realize this has not been an easy issue for the government – by which we mean all three parties – and the individual politicians –as well all Ontarians-- to grapple with. It has required a balancing of different, at times apparently conflicting interests. This has often been posed in the public debate as the rights of women vs the rights of communities to diverse religious and cultural values. We want to clarify at these hearings that we –and our membership—hold these two Canadian values equally strongly. There is nothing in this Bill that in-and-of-itself limits religious freedom. It simply clarifies the role of the religious leader and the role of the state. In a secular liberal democracy, religious beliefs have an important role to play in civil society, community and the private lives of citizens. They have no place in the enforceable laws of the land. Bill 27 clarifies this confusion in the existing Arbitration Act of Ontario, an Act never intended for anything but commercial disputes.

Our Boards of Directors and our membership bases are made up of women of many faiths. The questions they brought to this debate were:

- How do we respect the rights of women to make autonomous choices for themselves –including faith-guided life-choices-- while ensuring that the most vulnerable are protected from abuse, manipulation and coercion?
- How do we ensure universal access for all women to equality, regardless of belief or community affiliation?

We believe that Bill 27 answers these questions, with some provisos that follow. We are very pleased that the government has seen fit to address the issue of religious arbitration in a general way, rather than focusing on any one or two specific religions. We know that it has been challenging to frame the debate and the legislation in an anti-racist way, especially at a time of global Islamophobia, and rising anti-Semitism. However, in and of itself, the Bill makes no comment on existing religious freedom to solve any dispute according to any system of belief. Bill 27 simply prevents the waiving of individual rights that exist under the public system of law in the Family Law Act of Ontario when doing so.

When passed, Bill 27 will ensure protection for those with the least institutional power in Ontario, and for this we applaud the Premier, the Attorney General and all those who support it.



It is clear the drafters of this Bill have worked long and hard to create legislation that will be effective. A great deal of legal expertise has gone into the drafting of the language –language that we would be concerned to see adjusted in any way. We believe, after careful reading, technical briefing and community consultation, tinkering for political appeasement would only serve to open loopholes that undermine the intent and effect of the Bill.

We are pleased to see the guaranteed right of either party to appeal an arbitral award. Certainly, one of the positive aspects of arbitration is its finality, and so we can appreciate that some will want to see the present regime, under which the right to appeal can be waived, maintained. However, our focus in reviewing this legislation has been primarily on women in abusive situations, in which they can be vulnerable to being intimidated, coerced or otherwise manipulated into “agreeing” to waive this right when that is not in their best interests. We urge the government to maintain the clauses relating to the right to appeal as they now appear in the legislation.

We do, however, have some concerns that we would like to see addressed either by way of friendly amendment or through regulations:

- the absence of changes to legal aid to support the legislation is a serious gap. Bill 27 requires mandatory independent legal advice for anyone using arbitration to resolve a family law dispute, which is a very good thing. However, legal aid is not presently available for arbitration. Many women in Ontario cannot afford to pay for a lawyer, so for them mandatory independent legal aid is a fiction and not a reality. This is not acceptable. We are asking that the provincial government make the necessary changes to Legal Aid Ontario’s mandate and budget to ensure legal aid assistance is available for arbitration;
- because this Bill essentially codifies family law arbitration in Ontario for the first time, we think a mandatory review after three years is essential. We believe, because of our experience with vulnerable women, that women’s equality-seeking organizations should play a role in the monitoring and review process, with appropriate financial support;
- while it is true that we believe women are better served through the system of public laws in Ontario, it is also true that those laws and processes continue to reflect outdated principles and values that make them culturally inaccessible to many. We strongly encourage the government to take steps to ensure that the laws and processes governing family breakdown achieve cultural competency by requiring and supporting appropriate services and by training those involved in the



- justice system to understand cultural difference within an equality framework;
- finally, we would like to see this government undertake a review of the *Family Law Act*, especially those provisions dealing with domestic contracts, to ensure women's equality rights are not compromised in ways that Bill 27 is meant to overcome.

We also want to note our support for the amendment to section 24 of the *Children's Law Reform Act* that will require judges to consider family violence when hearing custody and access cases. This amendment will have a positive impact on women seeking custody after leaving an abusive relationship.

Just as we have some concerns about the sections of Bill 27 dealing with arbitration, we have some concerns about the *Children's Law Reform Act* amendments. The language of the amendment dealing with violence is gender neutral, which does not reflect the reality of violence within most families. At present, violence at the hands of her husband or common-law spouse is the single major cause of injury among women in North America – more frequent than auto accidents, muggings and rapes combined. We are seven times more likely to be killed or hurt in our homes than by a stranger. Unfortunately, women are increasingly being “dual” charged in cases of “domestic violence,” when police fail to conduct a thorough investigation to determine the primary aggressor. Making the legislation “gender neutral” contributes to a climate inaccuracy –and therefore ineffectiveness-- in the policing and prosecution of this crime

We urge the government to include a definition of abuse that explicitly excludes acts taken in self-protection or in the protection of other vulnerable family members such as children.

We hope the parties that make up the government of Ontario can work together to enhance this legislation and to ensure its speedy passage into law. We do not feel a longer debate will change the principle at stake. It is the very cornerstone of a secular rights-based legal code: one publicly accountable universal set of laws for all –a common bond of public life, in a society that fosters tolerance and support for a multiplicity of private beliefs.

Our members have galvanized a common purpose on this matter across differences in profession, religion, race, culture, and ethnicity. New loopholes—if created--will renew only their determination. In the meantime, you can count on our support in the implementation of Bill 27 to strengthen what is, overall, a solid piece of legislation.