

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Answers to pressing questions on Family Law.

Divorce, religion woes.

Question: I am a 40-year-old Islamic woman from Somalia. Seven years ago, my husband signed a contract agreeing to give me an Islamic divorce and he has since broken that contract. I am now much older. It is now much more difficult for me to remarry within my faith and I have suffered great emotional anguish. Moreover, my husband now refuses to give me an Islamic divorce unless I consent to resolving our custody issue about our 9-year-old-child before Islamic *sharia* in court. I am afraid that I will lose before such a court. I know that the Ontario government doesn't allow these courts to enforce their rulings in the Ontario courts, but Ontario sharia courts don't care about such enforcement and never did. I would simply be shunned from my family and community or punished socially in other subtle ways. What can Canadian or Ontario law do to help me if I was brave enough to have its courts intervene? Can I seek civil damages for his putting me through all this anguish?

Answer: The Ontario court will likely assist you. Under Canada's Divorce Act and Ontario's Family Law Act, a Judge can prevent anybody from pleading their case of defending themselves from a family lawsuit if he or she has failed to remove barriers to their spouse's religious marriage. In the Islamic religion, a man grants a 'talaq'. In the Jewish faith spouses consent to a "Get.". So if you asked for custody, child/spousal support or property division – and your husband tried to make his own claim or tried to defend himself – an Ontario Judge would likely issue an Order that he must first remove barriers to your religious remarriage. This law has assisted many spouses in obtaining Islamic and Jewish divorces in Canada since it was enacted in Ontario in 1985 and across Canada in 1991. It is so successful that Israel is now attempting to enact a similar law. What's more, the Supreme Court of Canada just awarded a Quebec woman \$47,000 in civil damages very similar to yours for breach of contract. However, even though your husband also broke a similar contract such contracts in Ontario are "unenforceable" under section 56(4) of Ontario's Family Law Act. Therefore, this new Supreme Court of Canada case will sadly not apply to Ontario.

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