

This column will deal with family law in all its aspects. I've been practicing family law for 23 years. I've had the privilege of seeing the best and worst of people, many of whom go temporarily insane when undergoing very difficult challenges, sometimes lasting years before their problems resolve.

I'm going to tell you about how the law impacts you and your friends, family, neighbours, lovers, co-workers and enemies. And I'm inviting you, the reader, to write to us by email with your questions about divorce, marriage contracts, separation agreements, international child abduction, child support, custody, child access, property division, adoption, estate planning – anything you need to know relating to family law. Even if you haven't seen Fahrenheit 9/11, we all know that, according to director Michael Moore, George Bush is the real oppressor of the Arab world and the great deceiver of the American people. Another columnist recently wrote that there is no Hollywood answer to Moore, no one to challenge his propaganda. Anyone who has seen the movie "Osama" will



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beg to disagree. An MGM and United Artists release that you can catch at any video store or on Rogers on Demand, "Osama" is a true story about an Afghani girl forced to dress up as a boy because the Taliban would not allow girls or women to work to feed their families. Without ruining the ending, I urge you to see this sad but beautiful movie. It reminds us that without George Bush and the liberation of Afghanistan by American forces and our heroic Canadian soldiers, the girls and women in Kabul would still be enslaved, hungry and many of them sex-slaves. My disgust with Fahrenheit/411 is only intensified after seeing this movie. It is because of the fear of the Taliban that many in Ontario are terrified that the Ontario government is permitting sharia Family Law to be practiced in Ontario.

What is worse, some fear that Ontario courts will be obliged to enforce the ruling of such sharia courts. Certain Ontario groups are particularly insistent that many Muslim women will feel compelled against their will to participate in these sharia courts that meet out male-oriented decisions that reduce their rights below Ontario family law standards; i.e. they may lose custody of their children and receive meager financial support or unfair property distribution. Moreover, they claim that under sharia law they will not obtain a fair hearing from Muslim preachers. Some have called for the removal of the right of any religious courts to make decisions concerning family law that would be enforceable by an Ontario court. As a result of these complaints, Premier Dalton McGuinty has just announced a review of Ontario's Arbitration Act to be conducted by Marion Boyd, Ontario's former Attorney General under Ontario's former NDP government. Ms. Boyd will face certain challenges. First, Jewish courts have been in operation for generations without complaint to

the government by anyone. Indeed, Article 27 of Canada's Charter of Rights protects the rights of each religious and cultural group to such courts, so long as they are conducted fairly. More importantly, Ontario's Arbitration Act as it is currently written does not permit and will not allow Courts to enforce any decisions by a religious court if those decisions are decided unfairly. In Jewish law, a Jew who wishes to follow his religion observantly cannot go to a non-Jewish court to resolve a family law dispute any more than he or she can break one of the Ten Commandments. He must go to a Beth Din, a Jewish religious court - but he cannot compel his wife to do so and neither is the Jewish community or the Rabbis permitted to compel her to go. She is free to go to an Ontario court (and often does.) But then again, she often doesn't and many freely do not wish to do so because it is her religious and constitutional right to settle her matrimonial dispute privately, outside of the embarrassment of a public forum, with clerical advisors and under Jewish law.

Moreover, in Jewish law there is an initial duty by the rabbinical court to promote reconciliation, a form of marriage counseling, failing which mediation of their dispute is initially attempted before a formal hearing is convened to decide the dispute under Jewish legal principles. Some couples prefer this way of dealing with their estrangement rather than going to an Ontario court. If Ontario actually eliminates the rights of Jews to have their own courts, which they have had without hindrance for thousands of years, because certain Islamic women feel threatened by Taliban jurisprudence, Ontario will be the first and only common law jurisdiction in the world to do so. Moreover, Islamic non-sharia courts that have also operated peacefully in Ontario will also be unreasonably threatened. The other problem is that Canadian legislation designed to protect Jewish and Islamic spouses from their spouses who will unreasonably withhold their consent to a religious divorce could be threatened by any suggestion that the power of such religious courts be curtailed. Currently section 21.1

of the Divorce Act and section 2(4) of Ontario's Family Law Act allow Judges to take away financial rights or even rights to visit with children for men (or women) who refuse to consent to a religious divorce for their spouses. (In the past, such recalcitrant spouses would sometimes blackmail their wives before giving their consent.) Without a religious divorce, observant Jewish and certain Islamic women cannot religiously remarry and Jewish women cannot have further children unless and until they obtain their husband's consent to a religious divorce. Fortunately, since this legislation came into effect in 1986/91, the problem has eased in Ontario dramatically. However, if the ability of religious courts was taken away, a Jewish couple could not even obtain a religious divorce in Ontario and it may even be problematic for an Islamic couple! The solution? Right now, under the Divorce Act when a spouse has custody of a child and the other parent has access, but they both want a divorce the couple approaches a Judge and often does so "on consent", without any bickering. However, the Divorce

Act will not allow the Judge to grant a divorce unless the Judge is satisfied that the parent with access is paying the other the correct amount of child support according to Canadian law, meaning in accordance with the access parent's level of income.. Even if the couple has agreed on a monthly amount that is lower than the Child Support Guidelines, the Judge can insist that the higher "legally correct" amount be paid before he will grant the divorce. Similarly, Ms. Boyd could recommend that before any family law decision from a religious court be enforced by an Ontario court, a Judge must be satisfied that the people who participated in the court did so voluntarily. Affidavit evidence affirmed before a lawyer, Certificates of Independent Legal Advice and if a Judge requires it, testimony in open court are all methods that could be canvassed. However, eliminating the rights of all religious groups is not an option.

Who am I and why should you be asking me questions? Well I'm a partner in downtown Toronto law firm called Beard Winter LLP where I

run a law practice restricted to family law and have been for 23 years. I've written a book called Religion and Culture in Canadian Family Law (Butterworths 1992). I've edited and authored a weekly digest of family law cases online called the Syrtash Family Law Netletter (LexisNexis) for several years and have lectured on legal research papers for divorce lawyers across Canada for over two decades for the Canadian Bar Association/Law Societies of Canada, law schools and other groups. I was also a consultant to the Justice Ministry on the effect of Canada's new child support legislation on spousal support. And in 1986-91 I initiated changes to Ontario and federal law that now makes it easier for Jewish and certain female Muslim Canadians to obtain religious divorces from their spouses. As former Adjunct Professor of family law (Ohio Institute), I also co-developed and operate the Spousal Support Database, Family Law Factum legal research service, and a Child Expense Database. For the past several years, these systems have helped family law

lawyers and their clients to navigate through judicial decisions with facts similar to a client's particular problems.

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