In Ontario, due to a public outcry, the government appointed Ms Marion Boyd to review the use of the Arbitration Act to settle family disputes in private arbitration, using religious or other forms of law. In December 2004, Ms Boyds review was completed, and she concludes that she sees nothing wrong with the use of arbitration and therefore recommends its continued use in family matters.

It is important to understand that the issue is not Muslims or any other religious groups were demanding the application of religious law, rather the issue is that government of Ontario is allowing the use of religious laws for private arbitration.

We had requested Ontario to follow the example of Quebec which views family matters as matters of public order and public interest, and does not allow for legally binding arbitration done in private. We have also explained to Ms Boyd and to the governments of Canada and Ontario that the worlds media has reported on this issue, because any actions here will impact other countries as well.

We, the Canadian Council of Muslim Women, an organization of believing women, have expressed concerns about the use of religious law in family matters. As Muslims, we are involved in an internal discussion to ensure the equality of men and women, and have the support of many eminent Muslim scholars who agree that the current application of Muslim family law does not meet the equality rights of women. We have reiterated time and again that we cannot be against the concept of Sharia, but are against the application of Muslim family law in Canada.

In this discussion amongst Muslims, what we dont need is the legal approval, by our own provincial government of Ontario, of the imposition of family religious laws.

We want the same laws to apply to us as to other Canadians, and we dont want religion or the use of religious laws to ghettoize us as Muslim women. We feel that in Canada, we have freedoms which allow us to live fully as Canadians and as Muslims.

Ms Boyds Review of the Arbitration Act has serious flaws. Her report pays little attention to womens equality rights, emphasizing religious freedom and encouraging the use of religious tribunals as an alternative to the courts. She makes the assumption that the freedom to practise ones religion includes laws affecting family matters. This is not true for Muslims, as the practice of Islam does not require us to live under Muslim jurisprudence. Rather we are asked to ensure that any law adheres to principles of social justice, equality and compassion. We think that these principles are embodied in Canadian laws.

In the body of the report, Ms Boyd raises concerns but her recommendations take little account of these concerns. For example, she notes that the Review was unable to determine the extent to which arbitration is used because no records are maintained, and yet she concludes that she found no evidence that the use of arbitration was detrimental to women.

Some of her other recommendations are that women could waive the right to independent legal advice, and that if arbitrators give the parties a statement of faith based principles that would suffice, there is no requirement of any training of arbitrators and of course there is no legal aid provided. We find it hard to believe that Ms Boyd recommends that public funds be provided to the private religious arbitrators for public education, when we know that the public court system could be improved with additional funds.

It seems to us that her underlying premise was to defend the Act which was enacted under her government in 1991. The fact that the legislation was passed primarily for commercial disputes and not for family matters gave her no pause in recommending its continued use now.
In contrast to the Arbitration Act, the Ontario Family Law Act has strong gender equality statements, which even Ms Boyd appreciates. This move to ensure equality within a marriage took many years, so why then would we not want these values to apply to all of us, regardless of religion, culture or ethnicity? Also, the Family Law Act provisions have enough flexibility to allow for its use by any religious person.

Ms Boyd acknowledges that the Arbitration Act is problematic for family matters and yet she tries to ameliorate an inherently unsuitable legislation, rather than considering any other alternatives.

We agree with the organization, the Legal Education and Action Fund, who in their submission to Ms Boyd, explained the difference between religious law and public law,

The Ontario Family Law regime reflects equality principles and, unlike religious principles, is subject to Charter scrutiny.

At the end of the day, if a woman wants to challenge the arbitral agreement or the award, she faces a long, expensive and difficult court procedure. Why would she go there, if we already know that judges defer to arbitrators, especially if religious laws are used and few of these challenges have succeeded in the past?

As the Quebec Minister of Justice M. Jacques P. Dupuis stated recently,

The principle of equality before the law is one of Quebesc fundamental values. The Civil Code applies to all residents of Quebec, whatever their religious affiliation, and no arbitration system will be tolerated in family matters and matters of public order.

If one province understands the issues related to private arbitration and religious laws why cant we expect another Canadian province to consider the problems of applying other laws to family matters? If the religious rights of Quebecois are protected under their Family Law Act, then why cant Ontarians expect the same?

In collaboration with other groups and individuals, CCMW will continue to advocate that the government not implement Ms Boyds recommendations as we know these will adversely affect many womens equality rights and welfare. Why cant we ask that the same laws apply to us as to other Canadian women?