

November 15, 2005

THE FAMILY STATUTE LAW AMENDMENT ACT, 2005

The McGuinty government is introducing legislation that would, if passed, ensure all family law arbitrations are conducted only under Canadian law, which includes all provincial statutes. Under the proposed legislation, resolutions based on other laws and principles — including religious principles — would have no legal effect and would amount to advice only. The proposal includes a number of legislative and regulatory changes — all designed to reform family law arbitrations and better protect people who choose to arbitrate their family disputes. The proposed bill would change the way family arbitrations are conducted because the old method of arbitration no longer works for 21st century Ontario families.

Proposed Legislative Changes

The bill includes a number of proposed amendments to the Arbitration Act and the Family Law Act.

The legislation, if passed, would also require that a family arbitration agreement be in writing and that each party receive independent legal advice before entering into an arbitration agreement.

Under the current system, participants of a family arbitration can waive their right to appeal an arbitrator's decision to a court. But under the proposed bill, the right to appeal could not be waived, so that anyone who was not satisfied with the result could take it before an Ontario court for review on a question of law.

Under the current system, people can agree in advance of an actual dispute arising, for example as part of a marriage contract, to use arbitration to resolve all family matters. This locks them into a position of little or no choice if and when family disputes arise. The new proposal would prohibit advance agreements to arbitrate family law matters, thereby ensuring that everyone has the right to resolve their disputes, when a dispute arises, using their method of choice.

With this proposed legislation, all family arbitration decisions would have to be made in the best interests of children.

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The proposed legislation also authorizes the regulation of family law arbitrators for the first time. If this legislation is passed, family law arbitrators would be required by regulation to:

- Be members of a recognized professional dispute resolution organization
- Undergo training, including training in screening parties separately for power imbalances and domestic violence
- Inquire into matters such as power imbalances and domestic violence
- Keep proper records and submit reports to be tracked by the Ministry of the Attorney General.

New Community Outreach and Education Programs

The Ontario Women's Directorate is developing new community outreach and education programs so that all Ontarians will better understand their rights under Canadian and Ontario family law and family law arbitrations. The Ontario government not only wants to better protect the rights of the vulnerable; it also wants to ensure that all Ontarians understands their choices and their rights.

These education and community outreach programs will include targeted funding and ensure that vulnerable people in communities across the province understand that only decisions conducted exclusively in accordance with Ontario and Canadian law are family law arbitrations and enforceable.

The Boyd Report

The Government of Ontario appointed Marion Boyd, former minister responsible for women's issues and former attorney general, to review family law arbitrations and to advise the government. Mrs. Boyd submitted her report, which contained 46 recommendations, in December 2004. Many of the provisions of the bill reflect her recommendations.

Changes to the Children's Law Reform Act (CLRA)

As part of the McGuinty government's commitment to the Domestic Violence Action Plan, the bill proposes a change to the Children's Law Reform Act, which, if passed, would ensure that violence and abuse are considered when determining the best interests of a child in the context of custody and access.

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