

National Association of  
Women and the Law



Association nationale  
Femmes et Droit

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**Report of the “International Perspectives on Religious  
Arbitration in Family Law” Conference  
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*For the NATIONAL ASSOCIATION OF WOMEN AND THE LAW*

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## BACKGROUND

In December 2003, the creation and promotion of religious tribunals by the *Islamic Institute for Civil Justice* led to significant attention from the media and discussions among civil society actors in Canada as to the implications of the proposed “Sharia Courts”. Ontario’s *Arbitration Act* was amended in 1991 with a view to allowing for the resolution of civil, predominantly commercial, disputes in a more cost effective manner. Article 32(1) of the *Act* allows parties to resolve their disputes in accordance with any set of rules, providing religious groups with a legal framework within which to pursue faith-based arbitration agreements for family law and/or other matters. Arbitral sentences can be appealed in a court of law, however, in practice, parties forfeit their right to appeal upon entering into arbitration. Religious arbitration by Jewish ecclesiastic courts, or *Beis Din*, has been in use by the Orthodox Jewish community for the past decade.

Following the 2003 announcement of the *Islamic Institute for Civil Justice*, the practice of religious arbitration risks becoming even more widespread in Ontario. In response to pressure from the *Canadian Council of Muslim Women* and other women’s organizations, the Ontario government appointed Marion Boyd, (former Attorney-General and Minister Responsible for the Status of Women under the NDP Bob Rae government), to examine the impact of this practice on vulnerable individuals, and notably, women. Limited consultations took place during the summer of 2004, leading to the publication of the Boyd report this past December. Regrettably, the recommendations of the report failed to adequately address women’s equality. Given that faith-based arbitration through a parallel, religious court system allows for the resolution of divorce and child custody matters irrespective of the secular legal framework in Canada and of the equality guarantees in Sections 15 and 28 of the *Charter of Rights and Freedom* and numerous international conventions including the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, the precedent of allowing private, faith-based arbitration in Ontario poses a serious threat to women’s human rights not only in Ontario but in other provincial and territorial jurisdictions of Canada, and moreover, to women’s human rights in secular and non-secular societies worldwide.

This conference highlighted a series of challenges and questions relating to the privatization of justice, the interaction of cultural and religious practices with family law, the balancing of constitutional equality rights with freedom of religion and multiculturalism, and the rise of extreme right politico-religious fundamentalisms in the context of globalization and neo-liberal conceptions of the state.

## **OBJECTIVES**

The objectives of this conference were threefold. First, the event meant to bring together a diverse cross-section of women with experiences in family law, law reform and front-line activism in the violence against women and transition homes sector, in immigrant and visible minority women's organizations, francophone women's organizations, and Muslim women's organizations (see appendix), in order to learn from the experiences and legal realities of women in the *Women Living Under Muslim Laws Network* (WLUML), living in India, Pakistan, South Africa, Algeria, the United Kingdom, France and other parts of Europe and the Arab world. This opportunity for dialogue among Muslim women, the feminist community, and the international solidarity network was central in countering women's experiences of isolation as they struggle for religious freedom and gender equality in Canada. A second objective was to inform Quebec and Canadian feminists of the international implications arising from the practice of religious based arbitration in family law, the difficulties associated with multiple interpretations of Sharia or Muslim family law, and the challenges of defending women's equality rights in the context of increased fundamentalism. Canadian and Quebec feminists benefited from international insight into the debates in Ontario and Canada, and moreover, acquired an understanding of the implications of the Canadian debates upon women living in other countries. By sharing information and progressive analyses, equality-seeking women of diverse backgrounds were able to de-mystify the diverse sources of control over all women's lives and empower each other with strategies for challenging those sources of arbitrary violence and control. A final objective of the conference was to advance Canadian and Quebec feminists' understanding of how domestic family law can meet the needs of all women in a pluralistic society without violating women's constitutional

rights. The international testimonies of the WLUML network allowed for a concrete evaluation of how indigenous legal traditions and formal legal systems have worked together in other jurisdictions, and illuminated the threat posed by fundamentalist religious factions who attempt to impose a monolithic interpretation of religious beliefs to the detriment of women's human rights globally.

## INTERNATIONAL PANELISTS

### *Theme 1: International Perspectives on the Rise of Fundamentalism and the Implications for Women Worldwide*

**Marieme Hélie-Lucas**, an Algerian sociologist and founder of *Women Living Under Muslim Laws*, began the panel by identifying some of the terms of reference on the debates and by situating religious fundamentalisms within the context of the rise of extreme right political forces. Notably, she highlighted the differences among the terms Islam, Muslim and fundamentalist. Islam, she defined as a philosophy or ideology; Muslims as a people who live a certain way and invoke Islamic origins; and fundamentalists, be they Muslim or otherwise, as individuals who use religion, culture, ethnicity and racism to advance extreme political right perspectives. She noted the parallels between extreme right fundamentalisms, fascism, nazism and totalitarianism, and highlighted the fact that fundamentalists do not ask for the adoption of all Muslim laws, but often only push for those that will affect women's rights through family law and education policies, such as the case of veiling in France, or of separate schools (and curriculum) for girls and boys in the United Kingdom. She highlighted the need for a variety of strategies and pointed out the strength of the *Women Living Under Muslim Laws* network, which is enriched by the diverse realities and experiences of women to guide their resistance to women's oppression. She expressed her concern that host societies and politicians often only recognize representatives of the most extreme readings of Islam as the 'authentic voice', and they fail to recognize proponents of

liberation theology or more moderate Muslim perspectives as legitimate religious representatives.

**Rashida Manjoor**, a lawyer, research associate at the Faculty of Law at Cape Town University, and member of the Commission for Gender Equality in South Africa, spoke of the origins of *Women Living Under Muslim Laws* (WLUML). Highlighting a global shift in the political realities of many countries after 1997, she spoke of the network's awareness of key "warning signs" of fundamentalisms and of the WLUML conference on this topic in 2002, which allowed participants to take stock of the different forms and expressions of religious fundamentalisms worldwide. WLUML developed an understanding of the goals of fundamentalisms in seeking political, social, and religious power in order to transform societies towards fundamentalist views of morality, sexuality, women's proper roles within society. At the conference and beyond, solidarity among women was forged despite differing views. She highlighted the rise of the religious right in the United States, the role of "911" in promoting anti-Islamic and racist sentiment, which has further reinforced extreme right groups. She spoke of the network's strategies, such as legal intervention, educational campaigns to fight myths and stereotypes, the use of the media to challenge conservative interpretations of religious texts, and solidarity campaigns. Similarly, the letter of solidarity sent to Canadian women was an invitation for further dialogue and cross-border collaboration on this pressing issue.

**Zazi Sadou**, President of the *Rassemblement algérien des femmes démocrates*, illuminated the previous speakers' points with the case of Algeria. She described the rapid expansion of fundamentalisms in Algeria and the complicity of the state in adopting an ultra liberal stance towards religious encroachment upon secular institutions. With a state that remained passive in the face of attempts to take control of civil society, she highlighted the takeover by conservative forces in Algerian public and private spaces through the use of school teachers, children, brothers, and young men as the enforcers of morality, sexuality and strict social mores upon Algerian girls and women in the family, and in society generally. She described the ability of conservative fundamentalists to

replace the role of the state in the rural areas through the creation of parallel schools and the application of arbitral judgements governed by religious beliefs. The transformation was achieved in a very short timeframe given that 90% of the population resides in the regions. She described the violence, attacks of young school girls, the rape of women, the assassination of journalists, intellectuals, teachers, or others who resisted the dictates of conservative religious leaders mobilizing language, nationality, religion and culture to promote the spread of their authority over society. Despite women's awareness and desire to challenge these extremists, she admitted that even women such as herself had experienced the effects of women's seclusion, and slowly began to efface themselves, to disappear, or to try to attract less attention. This effacement of women from public spaces was not only symbolized by the veil, but also by women's rejection of bright colours for their clothing, in which they no longer felt safe, and in dressing themselves and their children in pale neutral colours. She lamented the silence of the formal democratic leaders in the National Assembly, such as parliamentarians who assured their own futures under the guise of democracy, by compromising with fundamentalist forces to maintain their own political and private power.

**Vahida Nainar**, President of the Board of the new Women's Initiatives for Gender Justice at the International Criminal Court, discussed the situation of fundamentalisms in India, and notably the role of Hinduism. Based on numerous mythological texts, Hindu fundamentalism has attempted to define and shape the national identity and cultural way of life in India as it seeks to capture broad-based political power. She noted that Hindu fundamentalism has been rising over the past decades, but that it had always existed, even during independence struggles. Today, it finds ideological expression through a think tank called the National Voluntary Corps. She noted the links between the rise of fundamentalist movements to create a Hindu nation and the co-opting of arguments in favour of freedom of religion and expression. She described how fundamentalists used the Christian and Muslim minorities as proof of Hindu victimization by outsider 'others' who seek to infiltrate and deny the Hindu way of life. She highlighted the instrumental use of the caste system to encourage low-caste people to maintain their loyalty to

Hinduism, emphasizing their important role within the overall system. She noted the infiltration of state institutions in Gujarat and the promotion of an ideology of women's different status, their deference to men, the inscription of ancient Hindu symbols on women's bodies, and the discourse praising mothers for raising Hindu warriors. With leadership coming from the upper class of Hindus, she noted the strong support from the lower class and castes through the vilification of "the other", leading to massacres of these "outsiders" and the appropriation of their property and wealth. She observed a final contradiction, namely the financial support to the fundamentalist Hindu leadership by the Diaspora worldwide, who perceive conservative Hindu beliefs to be the lifeline to their Indian identity.

***Theme 2: Religion, and Family Law: A Bad Mix?***

**Marieme Hélie-Lucas** presented documents and reports brought by WLUML that highlight the warning signs of fundamentalisms and identify the family laws and customs in countries throughout the Muslim world. She stressed that there is not a monolithic experience of Muslim laws, and that divergent, and often contradictory, interpretations of girl's marrying age, polygamy, veiling, property and inheritance rights are in use in different countries. She cited the example of Nigeria where contraception was initially outlawed as un-Islamic. Following extremely high birth rates, and a dire lack of schools and social support mechanisms, in the mid-1970s the highest religious authority gave the opinion that contraception and even abortion should be allowed where the mother's health is at risk. She also noted the imagination and creative sites of resistance by women through knowledge and use of Islam. She provided the example of women demanding that lawyers quantify the financial contributions of housewives upon divorce in order to assess their property rights. Under colonial Pakistan, as against Victorian British inheritance laws, she reminded us that women had pushed for recognition of Islamic laws in order that they might inherit property. Her key message was the need for increased knowledge and information for women worldwide so that they may better fight against the misapplication and oppressive use of Muslim laws against women's rights.

**Zazi Sadou** spoke of the Algerian Family Code wherein, contrary to the Algerian Constitution, women have the unequal status of minors and require a tutor (father or brother) in order to marry. She highlighted the irony of an Algerian judge who had the authority to pronounce the death penalty in the name of the state, and yet could not contract into marriage without the signature of a male relative by virtue of her inferior legal status as a woman. Under the codified family code, men can divorce by simply pronouncing it three times to a wife. Conversely, women must take extraordinary measures to either buy back their freedom from their husbands, go to a gynaecologist to prove that for 45 days straight their husbands failed to perform his marital obligations, or amass proof of physical abuse. She confirmed the reality that arbitration of divorce is done subject to strong family pressure, that the courts do not enforce support arrangements, and that even if women are granted custody of their children, a boy child can return to his father after the age of 13. She also noted the creative attempts to educate and raise awareness of these injustices through the use of theatre, songs, and plays that tell women's stories. She observed that Algeria has signed on to most international treaties, except those dealing with gender equality.

**Vahida Nainar** outlined the impact of British colonization of India. Since independence, local and family matters have been left to Hindu and Muslim religious laws. In the 1960s, the Hindu community demanded that the secular state codify a Hindu Code, which was also applied to the Christian community. The Muslim community, however, has used parallel structures for Hindu Muslim Sharia in matters of inheritance and divorce. She noted that these have been left to the judgement of local mosque leaders. She described the impact of the All-Indian Personal Law Board, which provides guidelines for interpretation of Muslim personal law, questioning its credibility given that it is not representatives of all Muslims, it is self-appointed, and that it has no state authority. Consequently, women continue to be subjected to divergent applications of Sharia for matters of divorce, polygamy, child custody and separation agreements. Despite pressures from women's groups, the state has refused to intervene to defend women's equality rights. Rather, it continues to heed the opinions of conservative leaders as the only

“authentic” voice of the community. She described recent efforts by the Muslim Women’s Network to introduce a model marriage contract that would reflect progressive understandings of marriage partnerships. Unfortunately, the All-Indian Personal Law Board likewise drafted a model marriage contract that reinforces patriarchal relations between husbands and wives. In response, women held a public protest and symbolically “tore up” the Board’s proposed contract. She outlined the stark reality that when laws are placed in the hands of community elders, the evolution of religious and cultural identity is prevented. As a result, women are expected to passively embody and represent the traditional ways of the culture, and are denied agency in its future construction and evolution. Contrary to the Canadian context, given the historical use of Muslim personal law in India, she noted that women’s groups are not able to prevent its use, and warned of the detrimental impact of Canada allowing for the use of Muslim personal law. She was clear that such a move by Canada would indirectly provide legitimacy to the goals of patriarchal fundamentalist movements in other countries.

**Rashida Manjoor** highlighted the excellent constitutional framework in South Africa, and the entrenchment of equality rights in a way that they trump all other rights. She explained that the right to freedom of religion, belief and opinion are protected and that Section 15.3 recognizes marriages enacted under customary law. She noted how this situation has created a tension between the secular family law norms and traditional African law due to the unequal status of women under traditional African law. Section 15.3 has also been used by the Muslim community for religious marriages, posing similar challenges to women’s equality rights. Efforts to bring religious marriages under the family law system have varied. Community groups, academics and bureaucrats drafted a Bill in order to amalgamate different schools of Muslim laws to provide a more progressive legal framework. She noted that although the idea of bringing religious marriages under legal oversight is a positive strategy, the inequalities of the faith-based customs would remain in effect, including rules on polygamy, divorce, child support, and mandatory mediation. Moreover, interpretations of Muslim laws would necessarily be provided by Muslim judges or lawyers, which would place women’s equality concerns

within primarily male control. Consequently, she noted that women's organizations have felt that lobbying to improve the proposed Bill would be insufficient. Rather, she discussed women's strategies of pushing for legislation that simply recognizes religious marriages. This would make the religious communities subject to the equality rights guaranteed by the South African constitution by virtue of granting female citizens recourse through the public system for matters of divorce. She concluded by acknowledging that this issue remains an uphill battle as the state does not yet treat women as full citizens and it remains resistant to state intervention in family matters.

## **REFLECTIONS FROM CANADA AND QUEBEC**

**Merav Shmueli**, doctoral candidate at the University of Toronto, highlighted the key component of her research, namely diversity within religion. She noted the many possible interpretations of a same religious text or norm in contrast to the monolithic reading of texts by fundamentalists who see religion as static and fixed in time. In order to reconcile religion with women's equality rights, she stressed that change from within these movements, traditions, and religious framework is needed. Religion and family law are a bad mix when religion is mobilized against women's rights to equality; however, it depends on the underpinning values expressed by the religious perspective in question. She argued that we must realize that these are political decisions and that women have historically been denied a role in the creation of religious laws, and are continually excluded from on-going processes of defining and shaping their religious traditions. Diversity and dissent within religions has been recognized by academics but this has not sufficiently been recognized by the law or by societal norms. She suggested that religious rules are seen as static, whereas the law should allow for dissenting voices in the resolution of perceived conflicts between gender equality and religion. She stressed that women in Ontario and in Canada must insist that the government look at the realities and complexities posed by power imbalances and diverse, often contradictory, interpretations of religious law. The government must listen to the voices of Muslim women who do not

accept mainstream definitions of Muslim laws. She noted the role of the state in granting religious tribunals legitimacy and in providing a space for conservative interpretations of Sharia, as against progressive interpretations. She concluded that the government has the responsibility to verify what version of Muslim family law the tribunals will enforce, and how women's voices will be included in that process.

**Susan Boyd**, Professor in the Faculty of Law at the University of British Columbia, reflected on her initial negative reactions to the use of religious arbitration. Given her position within Canada's cultural majority and as a non-religious person, she tried to further question her initial reaction. As a feminist, she is keenly aware of the difficulty women have in getting their voices heard in the public judicial system as a result of resistance to feminism, the father's rights movements, and invocations of the traditional family. She recognized that Canada is still trying to eliminate the patriarchal and racist effects of Judeo-Christian norms in law and that, in light of "911", racism against Muslims poses a significant challenge. Nonetheless, she noted that the judicial system has improved considerably and expressed her suspicion of attempts to move family law disputes to privatized settings through arbitration. As a warning sign, she noted that fathers' rights groups endorse mediation because they think fathers will do better in this privatized setting. Although the public secular legal system has its problems and suffers from the same racist and patriarchal ideologies, she articulated the opportunity to critique the flaws openly as we argue for change. The difficulty, she suggests, remains in our attempts to distinguish between Jewish and Muslim private resolutions, "acceptable" religious norms versus fundamentalist views. She articulated the goal for feminist family lawyers of empowering feminist voices within the public and private systems and within cultural communities. Clearly, if private arbitration is conducted predominantly by men, it remains questionable as to whether we want to encourage women to "choose" this method of dispute resolution. She argued that the concept of choice too often acts as a smokescreen and camouflages women's disempowerment. She concluded with concerns about the way private values are being brought into the public sphere, and cited the

Supreme Court decision to uphold an unfair separation agreement, reflecting the increased legitimacy of private norms in the public sphere.

**Alia Hogben**, President of the Canadian Council of Muslim Women, spoke of the founding objectives of the Council, namely, of helping Muslim women participate in all aspects of Canadian life and the use of Islam to promote social justice. She denounced the narrow definition of women's roles by fundamentalists that are funded by groups and governments outside of Canada. She highlighted the increasing segregation of the sexes at weddings, talks, and schools, and the love-hate relationship with all things Western, including cultural celebrations such as Halloween and Christmas. She observed the unholy alliances between the Conservative Party, despite racism within, and conservative Muslims who promote the "family values" discourse. She presented the position of the CCMW, which holds religion as central to their lives, but resists the regulation or sanctioning of religion by the state. CCMW asserts that arbitration can be used for commercial matters, but not for family matters, regardless of which religion is under consideration. She reminded us that this is not just a Muslim issue. Extreme liberalism, cultural relativity, abuse of the spirit of multiculturalism, and political cowardice are allowing for collectivist religious freedoms to trump equality rights. It has led to the Boyd report and recommendations in Ontario whereby a bad law will be used to justify discrimination against women within their communities, rather than have the state address the racist effects of the public justice system upon those communities. This is advanced in the name of choice and yet women do not have the choice of turning their backs on their families, their core social support networks, or their religious communities.

### ***Theme 3: Cultural Relativism, Multiculturalism and Women's Human Rights***

**Andrée Côté**, Director of Law Reform for the National Association of Women and the LAW, spoke briefly of Canada's multicultural policy, which was confirmed in law and granted constitutional status in the Charter of Rights and Freedoms. The promotion of

diversity is a clear Canadian policy that has evolved from the era of ‘folkloric’ multiculturalism, to include anti-racism initiatives, and the promotion of diversity, especially in the feminist movement. She reiterated previous panelists’ observations of how multicultural policies have been used to justify regressive religious movements, the notion of Muslim sovereignty, as compared to Aboriginal sovereignty. She noted that although the Boyd report rejected these arguments, it also invoked the multicultural policy in key ways.

**Natasha Bakht**, Professor at the Faculty of Law of the University of Ottawa, spoke to role of multiculturalism policies in Canada. She noted that Canada has grappled with the question of how to incorporate a plurality of cultures and traditions while simultaneously defining the country in the absence of a single collective identity. She recalled the fact that Canada’s policy of multiculturalism openly promotes diversity as a necessary, beneficial and inescapable feature of Canadian society. She also cautioned that the discussions of multiculturalism in the context of religious arbitration is misleading given that the *Arbitration Act* was not meant to address multicultural concerns, but rather, was intended to improve efficiency in the area of commercial law. An unforeseen by-product of this law has nonetheless been its use by religious groups. She argued that most of the concerns around multicultural policies tend to address the relationships among different cultures and/or between minority communities and the state. Regrettably, the negative effects of accommodation policies upon vulnerable individuals within those communities, notably women, are often overlooked, thereby reinforcing private hierarchies. She stressed that the task for societies is to find ways of simultaneously accommodating cultural differences and protecting at-risk group members from sanctioned violations of their equality rights. Rather than see this issue as a strict competition between freedom of religion and multiculturalism on the one hand and women’s equality on the other, she argued that we must seek culturally sensitive and gender equal solutions. Cultural relativism refers to the uncritical acceptance of all of the values/customs of a community, whereas cultural sensitivity, views culture and/or religious freedom through the lens of equality and maintains that all cultures are open to criticism and public scrutiny. She was

sympathetic to calls for resistance to the Islamic Institute of Civil Justice, however, she invited the possibility that not all supporters of religious arbitration have sinister aims. She concluded with praise for the WLUML position that there is no single strategy to combat fundamentalisms, and she advocated for a variety of strategies to promote social justice and for the protection of all women's voices, even when their dissenting voices may conflict.

**Lorraine Pelot**, a senior research officer with the Law Commission of Canada, highlighted the Commission's socio-legal approach and its commitment to consult the public, the real experts who are subject to the law. She focussed on the many questions that religious arbitration raises. Notably, the challenges of multiculturalism, equality, increased diversity, interaction of various moral frameworks, values and practices. She drew parallels with privatization affecting other sectors, including schools, health services, and non-European medical practices. She posed a series of questions to participants: To what extent can we accommodate parallel systems as a society? What implications does this have on governance, and the ability of the state to protect rights? Could some Canadians benefit from these practices or could they improve the formal legal system, and what is the role of choice? How do customs, practices, individual beliefs interact with the law? Who can determine what beliefs should be given protections on the grounds of religious freedom and which ones are fundamentalist or extremist? And finally, what are the practical implications upon the legal system, how courts respond, and how do we make sure that religious people also benefit from the protections of equality rights.

**Nathalie DesRosiers**, Dean of the Faculty of Law (Civil Law Section), and former President of the Law Commission of Canada, spoke of the new strategies that are needed in a neo-liberal era. She observed that the Quebec response to religious arbitration was simple given that the civil code does not allow for arbitration in family matters, whereas in Ontario, things are more complex. She challenged the notion of privatization motivated by cost cutting give that it rests upon the idea that the state had been initially spending

significantly on family law, which is not the case. She spoke of the community empowerment model that has gained currency. She admitted her devout belief in the importance of rights as a political tool, and as the affirmation of principles that affect human psychology and identity. However, she conceded that rights are no longer enough. She lamented that there is still not enough access to legal aid, that child poverty is higher than when we started arguing for its disappearance, that violence against women is raging and that the level of enforcement of child support payment and spousal payments are very low. She wondered if we have put too much hope in the state to the detriment of other avenues. She argued that all groups and communities must speak the language of equality and mainstream equality into the functioning of their organizational practices. She stressed the influence of neo-liberal politics, which has led to the state removing the means for it to play a progressive role in social change. Pressures to remain globally competitive have meant that the state invests fewer resources in public services, and is relying on voluntary controls or privately negotiated norms. The logic of decentralization and offloading to the community has then been re-cast as a mean of “empowering” civil society, promoting voluntarism and citizen participation. In light of this disturbing trend, as another strategy to promote women’s rights, she suggested that women invest in community and private spaces to ensure that their voices are heard.

She suggested that we must stop viewing the state as the only actor capable of promoting equality. The community empowerment movement is one that contests elite power, includes risks, and can be a site of women’s exploitation. She noted that attempts to multiply the sites and agents of change promoting equality represent a PLAN B, since PLAN A has been exposed already in previous presentations. She argued for increased accountability through empirical research that would expose the result of arbitration, post-separation violence and such. She suggested that we should be training the decision-makers on child and spousal support guidelines and that Muslim women could create their own competing system of arbitration, and develop a feminist expertise in Sharia that is in compliance with international treaty norms. She argued that we must support women’s voices within these communities and recalled the millions of arrangements

made within communities, families, and couples. Given that these economic exchanges have practical force of law despite being informally negotiated, equality must aim at the full participation of women as citizens, and the denunciation of inequality both from within and outside our multiple communities. Finally, she presented a more sinister reading of the Boyd Report as a covert attempt to derail religious arbitration. Perhaps the 40 some recommendations in her report make compliance so difficult as to demobilize fundamentalist groups and/or make faith-based tribunals by the extreme difficulty posed in implementation.

**Ariane Brunet**, Women's Rights Project Director for Rights and Democracy, spoke of the role of her organization, which was created by an Act of the federal parliament with a view to influencing international discussions in favour of progressive commitments to human rights, and by providing information on the application and use of the Canadian Charter of Rights and Freedoms. She suggested that we link the discourse of rights with governance, and place this conversation within its international context. She recalled that in the 1990s, there was a multiplication of international conferences; each time women put forward the notion of women's human rights and finally women's human rights gained acceptance in Dakar, and also in Latin America and Asia. On March 8<sup>th</sup>, 2002, *Rights and Democracy* invited three UN rapporteurs to Canada, and their joint declaration called for recognition of diversity among women, the rights of people in communities to enjoy their culture, and that states could not invoke religion to justify denying the rights of their male or female citizens. She iterated that it was very dangerous that we would turn responsibilities over to the community and forget the recognition of the right to freedom of conscience. She argued in favour of reminding state leaders of the international agreements and conventions they have signed, and recalled the instrumental use of women by Bush and by religious fundamentalists. She cautioned that Aboriginal women could tell us about the effects of community empowerment, although challenging the control of political elites is a positive form of resistance. Nonetheless, she stressed that we must insist upon the implementation of the international conventions that Canada has ratified. She argued that we must not dilute the impact of these political and legal

commitments, but rather, we must develop strategies of international solidarity in the face of the pressures of globalization. Although provincial governments in Canada are responsible for issues of family law, this does not mean that the federal government is not accountable for the use of religious arbitration in matters of family law in Ontario. Not only does the *Divorce Act* fall under federal jurisdiction, but moreover, it is unacceptable that the Canadian Minister of Justice evade government obligations to defend Charter equality rights in all jurisdictions across Canada.

**Dolores Chew** of the South Asian Women's Community Centre spoke of the services, support and advocacy of her group done for women from Bangladesh, Sri Lanka, Nepal, India, and Afghanistan, among other countries. She described the impacts of "911" and the impact of the Diaspora in increasing pressures upon immigrant and refugee women. She highlighted the murders of women in Bangladesh in 1988, the events in Gujarat, and the ties to women in Montreal, which provided impetus to a recent panel on religious arbitration. She spoke of efforts to gather information from their membership of Hindu, Zoroastrian, Muslim, Christian women. She noted the danger of associating family law with the private sphere and asserted that anything to do with women's rights must be understood as a public sphere issue. Although the secular laws are not perfect in Canada, we need to strengthen the ways to protect women from domestic violence and to provide women access to justice.

## **IMPLICATIONS FOR CANADA**

### *Re-visiting the Political Foundations of Modern Democracies*

One of the crosscutting themes that emerged from the presentations and discussions was a critique of modern liberal democratic practice. In particular, participants challenged the impact of neo-liberal globalization for mixing of the state and church, and for abandoning substantive equality and reinstating the more limited formal legal equality as the cornerstone of minimal citizenship protections. Due to feminist political theory and

feminist legal theory, the principle of substantive equality was enshrined in the *Convention For the Elimination of All Forms of Discrimination Against Women* in 1979, the Canadian *Charter of Rights and Freedoms* in 1982, and upheld by over 180 countries in the Beijing Platform for Action of 1995. Despite obligations to fully implement these commitments to the substantive equality of citizens, over the past decade, neo-liberal governments have began a process of stripping their capacity to intervene in the interests of their citizens, and have preferred to return to minimalist interpretations of their responsibility to provide the equal benefit and the equal protection of the law to male and female citizens. Many countries look to Canada as a progressive society whose public policy decisions are informed not only by economic development, but also by the social welfare and individual rights and freedoms of its population, including women. The symbolic and practical impacts of the Ontario and the federal governments' decision to tolerate religious arbitration in family law matters sends a strong political message as to the core foundations of Canadian society in the 21<sup>st</sup> century. It will either bring us in line with fundamentalist politico-religious perspectives, also present in American society, that seek to impose the religious norms of select groups upon their communities, either by direct state action, or by its failure to take action to defend basic civil and political freedoms. Conversely, Canada may align itself with progressive societies, such as Quebec and those in Europe, who have taken a stance against religious arbitration in family law given that it directly contradicts the full implementation of gender equality commitments. As an actor with concrete legal and political obligations towards its own citizens, and to the international community, Canada must send a clear message in favour of remaining a "free and democratic society", (*Canadian Charter of Rights and Freedoms*, Section 1) and therefore to maintaining a strict demarcation between religion and the secular state.

*Promoting Diversity or Profiting from Interest-Group Politics?*

A second theme related to the retreat of the secular state in the face of private political forces. Members of the *Women Living Under Muslim Laws* spoke of the warning signs of religious, right wing or political extremisms, be they based on neo-liberal economics, fundamentalist interpretations of Islam, Christianity, or Hinduism, or based on notions of ethnic and cultural supremacy. They spoke of extremists' attempts to compete with, and ultimately replace secular political power in order to impose, through the state and rule of law, a monolithic moral and political vision on all citizens, not simply those individuals who have voluntarily chosen to follow their teachings. So-called progressive countries, such as Canada, have been explicitly targeted given that the legal regime provides widespread liberty of action to private organizations and religions through fundamental freedoms of association, expression and conscience. As argued by Fatima Houada-Pépin in the Quebec National Assembly, "The idea of implanting so-called Islamic tribunals in Canada began fifteen years ago with calls from the World Islamic League, an organization with its headquarters in Saudi Arabia. The World Islamic League financed, in August 1991, a meeting in Washington, attended by the imams of the United States and Canada, notably, from Montreal, Toronto, Mississauga, London, Edmonton and Vancouver. The theme of the meeting: the elaboration of strategies for introducing Sharia into Canada and the United States" (liberal translation).

Consequently, multicultural policies and religious freedoms have been increasingly used by fundamentalist ethno cultural and religious groups to place demands on the state to support and promote their minority cultures, without passing judgment on the misogynist and often intolerant values that underpin these organizations. By virtue of wanting to remain neutral, the Canadian state has acquiesced to their demands, all the while denying equivalent funding and political support to women's organizations from these same cultures and religions. The state has effectively intervened in favour of conservative groups as the single authentic voice of the community in order to avoid calls of racism that might cost the governing party votes within key ethnic communities. Similar to American-style clientelism, or interest-group politics whereby individual MPs become captive to the single-issues of minority groups, the neutrality of the state has been increasingly compromised over the past decade, leading to a blurring of lines between a neutral and secular public service and the political interests of political parties that rely on the support of the financial and political elites of conservative ethno-cultural or religious groups. Rather than defend the public interests and rights of all Canadians, including women, some political parties in Canada have become increasingly complicit in providing enhanced political voice and recognition to conservative groups in return for ongoing political support to the detriment of over half of the population who are women.

*The Decreasing Space for Secularism*

A third contradiction that was clearly exposed in conference discussions relates to the state's role in protecting the individual rights of its citizens, female and male, in the face of potentially totalitarian forms of collectivism. Through use of multiculturalism policies generally, and by allowing for the use of the *Arbitration Act* in family law by organizations like the Islamic Judicial Institute, the Canadian state will allow for a parallel legal system to be imposed upon all members of the affected religious communities. Despite Charter guarantees that all individuals enjoy freedom of conscience and freedom of religion, the practical impact of allowing faith-based arbitration in family matters is that the beliefs of religious arbiters, whether progressive or misogynist, will be imposed upon women and men of the religious community, regardless of their individual spiritual convictions. Given that many arbiters ask parties to waive their right to legal review of decisions upon agreeing to arbitration, the motivations behind decisions regarding family matters will not only have the force of law, but moreover, they will not be based on the principles and values expressed in the social contract of the Charter of Rights and Freedoms. In short, arbitral decisions will reflect the arbitrary views of a given community leader's interpretation of morality and religious conformity. By falling into the trap of cultural relativism and by lacking the political courage to withstand false claims of racism and discrimination, the Canadian state is violating the political contract among Canadian citizens by ignoring its obligations, as outlined in the *Charter of Rights and Freedoms*, to ensure fundamental freedoms to each and every Canadian citizen. Protections against religious totalitarianism and/or monolithic ethno-cultural nationalisms among the majority and minority communities must be maintained in order to protect the right of each individual citizen to freedoms of religion, expression, and conscience. This is crucial to the maintenance of a secular public sphere within which individuals may safely express dissent without suffering political, social, ethno-cultural, or religious blackmail, as is the provision of a publicly funded judicial system through which citizens may secure the equitable resolution of family law matters.

*Conclusions: Recalling the Spirit of the Canadian Charter of Rights and Freedoms*

Throughout the course of this two-day conference on religious arbitration in family law matters, the participants identified a number of contradictions and tensions in terms of the theoretical principles and commitments of modern democratic societies and the concrete practices of family law and other areas that affect the ability of diverse women to enjoy equality, security, and autonomy. With respect to the Canadian social and legal contract, as expressed within the Charter of Rights and Freedoms, Sections 2 through 14 ensure the fundamental rights and political freedoms of individuals as a means of protecting the full participation of every citizen in the public life of the country without fear of political or religious persecution. As such, the right to freedom of conscience and freedom of religion expressed in Section 2 is meant to protect against the imposition of political or religious views upon individual Canadian citizens through laws or state intervention. Moreover, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which the federal and provincial governments are subject, explicitly states an obligation “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (CEDAW, Article 2f). Consequently, the Canadian and Ontario governments cannot turn a blind eye to the effects of religious arbitration upon women from minority or majority religious communities. Nor can the Canadian government, according to international obligations under CEDAW, and according to Section 1 of the Charter of Rights and Freedoms, sacrifice the freedom and democratic guarantees of Canadian society by allowing faith-based morality to trump the legal authority of the political contract among citizens, including those governing the family.

On the contrary, to the extent that individual women will become subject to the arbitrary rules of their religious communities, their right to freedom of religion and freedom of conscience are violated. By virtue of their specific vulnerability as women to patriarchal religious beliefs promoted by certain strands of Christianity, Islam and Hinduism, and other religions, the right of individual women to non-discrimination under Section 15 is also violated. We can also imagine the incongruity of affirming Canada as a “free and democratic society” if misogynist and homophobic demands of religious communities receive protection under Section 27 to the detriment of the fundamental

right of all individuals to religious freedom under Section 2, and the rights of all women and all homosexuals to non-discrimination under Section 15.

Finally, where there is a discrepancy, Section 28 of the *Charter of Rights and Freedom* clearly states, “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons”. The aspirations of fundamentalist religious communities to dominate their female members through privatized faith-based settlements that exploit a loophole in the Ontario *Arbitration Act* cannot be tolerated. The individual rights of all citizens, including women, to freedom of conscience and freedom of religion under Sections 2 and 28 must prevail.

In conclusion, all governments in Canada are bound to protect the individual freedoms of religion and conscience against the rise of domestic and global forces that promote anti-democratic politico-religious objectives, and that aim to encroach upon and ultimately replace the state as the central organizing body of society. The extreme fundamentalist leadership is watching the developments and responses of the Ontario and federal governments with great interest. Women throughout Canada must resist.

## **WARNINGS SIGNS IN CANADA**

It is tempting to look at international experiences as not being relevant in our own “progressive” country. The discussion at the conference left the Canadian participants with no illusions about Canada’s immunity to extreme fundamentalist influences, which impinge on the core of women’s equality. From the conference, we learned that fundamentalist movements look remarkably similar -- no matter where they are found on the globe. In addition, many of the underlying conditions that facilitate the encroachment of fundamentalisms on the hard won rights of women are apparent in Canadian policy and practice. Consequently, we have derived the following from the insights of *Women Living Under Muslim Laws*. It is a list of warning signs, inspired by the network’s own list, that can serve as a short list for ourselves and our colleagues:

### ***FUNDAMENTALISMS EMERGE FROM DIVERSE SOURCES***

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- undamentalist movements do not emerge from a single source; they are well-financed through majority group political elites, and minority group political elites in their home countries, as well as in the Diaspora.

WLUML includes defensive identity-politics mass movements that use religion, ethnicity, and/or nationalism to advance their goals of obtaining power within formal and informal sectors of society. The World Social Forum and DAWN (Development of Alternatives for Women for a New Era) include neo-liberal globalization, which they argue, is a political-economic movement that represents itself as obeying immutable truths about "the market" which cannot be challenged or resisted.

### ***MANY RELIGIONS HAVE FUNDAMENTALIST MOVEMENTS***

Fundamentalist movements are of many religious affiliations, be they Christian, Muslim, Hindu, or Zoroastrian, and they have worldwide implications and immediate ramifications upon the equality rights of women and sexual minorities, and upon the individual rights and freedoms of all citizens.

At the United Nations Beijing +10 Conference in New York this past March, Christian fundamentalist and religious right-wing forces worked to prevent the adoption of a political statement in favour of the Beijing Platform for Action by inserting language that would deny access to reproductive health services, such as abortion, and by inserting language that would prevent the recognition of "new rights", given that the Beijing Platform for Action did not specifically name the rights of lesbian women in the original document of 1995.

### ***GOVERNMENT DOWNSIZING WEAKENS THE STATE’S CAPACITY TO UPHOLD THE RIGHTS AND FREEDOMS OF ITS CITIZENS***

Neo-liberal policies and global re-structuring has consistently weakened the state’s capacity to protect the rights and freedoms of citizens, providing increasing space for privately-funded parallel structures that function according to anti-democratic and

arbitrary power, that are open to co-option by fundamentalist forces, and that lead to social and inter-cultural violence.

Global restructuring, Western economic and cultural imperialism and the impacts of American allied foreign policy abroad have created a climate that has increased the occurrence of terrorist activities in many countries worldwide. Domestic policies adopted in Canada and the United States in the name of enhancing security have contributed to a distrust of individual citizens who look Arab or of the Muslim faith. This had also led to increased racial profiling by state bodies, the denial of due process to individuals deemed to be 'suspect', and ultimately, the adoption of Anti-Terrorism Bills that have escalated racism and inter-cultural violence among citizens and social groups.

***GOVERNMENT DOWNSIZING WEAKENS THE STATE'S CAPACITY TO UPHOLD THE RIGHTS AND FREEDOMS OF ITS CITIZENS***

State acquiescence and complicity with the creation of parallel private structures are first introduced in social areas that affect women's equality, such as the justice system (family law), the health care system (reproductive services), and the education system (opportunities and training for girls).

Many provinces have adopted policies of mandatory mediation in family law to keep down costs to the public justice system, private health care is openly promoted in Alberta, BC, Ontario and Quebec, and under the Harris government in Ontario public funding was provided to private religious schools in Ontario under the guise of cultural sensitivity.

***FUNDAMENTALIST ENCROACHMENTS ON CIVIL RIGHTS ARE OFTEN CLOAKED IN THE RHETORIC OF RELIGIOUS FREEDOM***

Politicians that are captive to fundamentalist financial and political elites are increasingly invoking the rhetoric of religious freedom, of promoting multiculturalism, of cultural sensitivity, of community empowerment, of private-sphere matters, and/or of jurisdictional limitations on their ability to act in order to justify their failures to act to protect the rights and freedoms of women and girls in Canada.

The capture by the Christian religious right of the Alliance Party, now Conservative Party of Canada, and of the Family Values Caucus members of the Liberal Party of Canada, was in evidence in the debates on the Same-Sex Marriage Bill. Rather than respect the separation of church and state by representing the interests and rights of all Canadians, individual MPs of certain parties have demonstrated their willingness to vote against the Bill in order to secure their individual re-election in the forthcoming election.

***FUNDAMENTALISMS IMPINGE UPON FUNDAMENTAL PRINCIPLES OF CANADA'S SOCIAL AND LEGAL FRAMEWORK***

In the interest of advancing their own political power and privilege as the political elite, national and sub-national politicians have been co-opted by the neo-liberal logic of private power wherein might equals right, rather than defend the core foundation of the social and legal contract, namely: that citizens agree to limit their freedom and entrust

their individual security to the state, which is to remain the only legitimate actor that may apply coercion or punishment in accordance with the rule of law, to which all legal actors in a society are subject, and which is produced by a democratic process that is inclusive, transparent, and accountable to the full range of voices in society.

## APPENDICES

### ***Women Living Under Muslims Laws Letter of Solidarity of the Women of Canada***

The international solidarity network Women Living Under Muslim Laws wishes to express its solidarity with the women of Canada, in particular those migrants whose families come from Muslim societies, in their struggle to resist the introduction of so-called ‘Shari’a Courts’ in the resolution of family matters in Canada.

WLUML links women in over 70 Muslim countries and communities, linking women in majority and minority contexts, in states where laws are framed with reference to Islam and in secular states, and crossing boundaries of geography, language, ethnicity, and other identities.

Despite our diversities, we share the commonality that all too often our oppression as women is justified with reference to Islam, and that extreme right forces seek to manipulate religion to gain political and social power.

In all Muslim countries and communities there has been a history of resistance to the imposition of a homogenous, authoritarian vision of society, such as that promoted by fundamentalist groups. Progressive scholars have consistently challenged traditional patriarchal monopolies over the interpretation of Islam, while women’s and progressive human rights activists have insisted that human rights and social justice form the basis for local social development. Where democratic expression has been allowed to develop, the people in Muslim countries and communities have rejected the fundamentalists’ project, while even in undemocratic countries women and progressive men have forced the opening of debate and had a measure of success in protecting the spaces for alternative voices.

This victory has led the extreme right from Muslim contexts to launch a new strategy opening up a new front in Europe and North America. In the name of ‘freedom of expression’ and anti-racism – the very values we stand for – and under the guise of defending ‘community rights’, fundamentalist groups have increasingly succeeded in entering progressive circles here, which continue to take cultural relativist positions.

This Unholy Alliance between some progressives and the fundamentalists has then sought to take advantage of state policies of multiculturalism and the painful realities of continuing racial discrimination to demand special rights for the ‘Muslim community’. But these special rights inevitably involve anti-women practices and highly regressive interpretations of Islam. They also unquestioningly presume that all migrants from Muslim contexts identify as ‘Muslims’.

The women linked through our network have already had a bitter experience of the trampling of women's human rights in the name of Islam though regressive changes to family and criminal laws and the introduction of discriminatory policies since the rise of fundamentalist groups in the 1980s. Constitutional guarantees of equality have not been sufficient to protect women from the effect of such changes nor from the anti-women social atmosphere that they have encouraged.

Indeed, family and community pressure can severely limit a woman's right to exercise 'choice' regarding for example which legal option she approaches for her claim. Provisions which apparently offer a range of legal options can in reality force women to have to 'choose' one aspect of their multiple identities at the cost of another.

This often jeopardizes women's autonomy, as already demonstrated in other migrant communities, such as in France and the U.K. This is particularly true given that women's voices on community issues are given less legitimacy than men's voices.

We are also keenly aware that any victory for conservative forces among Muslim communities in Europe and North America will in this globalised world automatically reinforce fundamentalist groups in Muslim countries and communities elsewhere. This will lead to a backlash against us in contexts where we have had a measure of success in preserving the space for women's and alternative voices. In addition to our sense of solidarity, it is fear of such a development that leads MLUML to express our support for women in migrant Muslim communities in Canada and elsewhere.

We recognize that migrant communities and Muslims face an atmosphere of grouping prejudice, discrimination and exclusion in Europe and North America, particularly in the context of the 'war on terror'.

But giving power and legitimacy to extreme right political movements, such as fundamentalists within Muslim communities, is neither an acceptable nor effective way of addressing such problems. The complex notion of identity cannot be left to right-wing male community leaders to define.

Obscurantist men cannot legitimately claim to 'speak for' these communities which are as politically and socially diverse as the majority community. If the majority community expects its issues to be resolved through democratic and pluralist processes, and be addressed as citizens rather than members of any congregation, why should these processes be denied to those from a migrant Muslim background?

It is vital that the voices of women and progressive men from migrant Muslim backgrounds are recognized- by progressive social movements in Europe and North America as well as by the state in these contexts. Progressives seek to address the problems facing their societies in ways that ensure the rights of all are respected and implemented.

We also urge women in migrant Muslim communities to link with women's and progressive struggles in other Muslim contexts, and to recognize the victories gained by these struggles. It would be ironic if women in other Muslim contexts find themselves with greater rights than their sisters in migrant contexts who have accepted a curtailment of their rights on the pretext of 'defending Islam' or the community in the face of discrimination.

WLUML wishes to applaud the on-going struggle of Canadian women to ensure an end to all forms of discrimination. It celebrates the unity of women's struggles, and extends its fullest support to the efforts of women from migrant Muslim communities to resist all efforts to further exclude them from their rights.

### **WLUML Letter to the Canadian Authorities**

The international solidarity network Women Living Under Muslim Laws urges the Canadian government and the authorities of Ontario and other provinces to listen to the voices of the women of Canada, in particular those migrants whose families come from Muslim societies, who are resisting the use of the 1991 Arbitration Act to introduce so-called 'Shari'a Courts' in the resolution of family matters.

WLUML links women in over 70 Muslim countries and communities, linking women in majority and minority contexts, in states where laws are framed with reference to Islam and in secular states, and crossing boundaries of geography, language, ethnicity, and other identities.

Despite our diversities, we share the commonality that all too often our oppression as women is justified with reference to Islam, and that extreme right forces seek to manipulate religion to gain political and social power.

In the name of 'freedom of expression' and anti-racism – the very values we stand for – and under the guise of defending 'community rights' in face of painful realities of continuing racial discrimination, fundamentalist groups and their cultural relativist allies on the left are demanding special rights for the 'Muslim community'. But these special rights inevitably involve anti-women practices and highly regressive interpretations of Islam. They also unquestioningly presume that all migrants from Muslim contexts identify as 'Muslim'.

In the bitter experience of the women linked through our network, constitutional guarantees of equality have not been sufficient to protect women from the effect of 'Islamisation' of laws nor from the anti-women social atmosphere that they have encouraged since the rise of fundamentalist groups in the 1980s.

Indeed, family and community pressure can severely limit a woman's right to exercise 'choice' regarding for example which legal path she approaches for her claim. Provisions which apparently offer a range of legal options can in reality force women to have to 'choose' one aspect of their multiple identities at the cost of another. This often

jeopardizes women's autonomy, as already demonstrated in other migrant communities, such as in France and the U.K.

This is particularly true given that multiculturalist policies often give women's voices on community issues less legitimacy than men's voices. Obscurantist men cannot legitimately claim to 'speak for' these communities which are as politically and socially diverse as the majority community. If the majority community expects its issues to be resolved through democratic and pluralist processes, and be addressed as citizens rather than members of any congregation, why should these processes be denied to those from a migrant Muslim background?

The UN Human Rights Committee in General Comment No. 28 has said that "States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all Covenant (on civil and Political Rights) rights."

WLUML therefore urges the Canadian authorities to listen to the concerns expressed by women and to follow international rights law on this matter.

Your sincerely,

*Women Living Under Muslim Laws*  
International Coordination Office

**Canadian National Authorities**

Prime Minister  
The Right Honourable Paul Martin

Justice Minister and Attorney General of Canada  
The Honourable Irwin Cotler

Minister responsible for Status of Women  
The Honourable Liza Frulla

Minister of State (Multiculturalism)  
The Honourable Raymond Chan

**Canadian Embassies/High Commissions**

This website has information for Canadian embassies, consulates and high commissions abroad <http://www.dfait-maeci.gc.ca/world/embassies/cra-en.asp>

**Provincial Authorities**

Premier of Ontario  
The Honourable Dalton McGuinty

Attorney General  
The Honourable Michael Bryant

Minister Responsible for Women's Issues  
The Honourable Sandra Pupatello

**United Nations Special Rapporteurs**  
Special Rapporteur on Violence Against Women  
Ms. Gabriela Rodriguez Pizarro

Special Rapporteur on Freedom of Religion  
Asma Jahangir

<b>International Perspectives on Religious Arbitration in Family Law</b> <i>National Association of Women and the Law</i> May 16 <sup>th</sup> -17 <sup>th</sup> , 2005 (Ottawa)	
<b>Monday, May 16</b>	
9:00am - 10:15am  (10 minutes)  (10 minutes)  (10 minutes)        (45 minutes)	<b><i>Opening Remarks and Introduction of the Conference Theme</i></b>  Arbitration, Religion and Family Law in Ontario: An Overview  Objectives of the Conference  Presentation of the Women Living Under Muslim Laws Experts: <ul style="list-style-type: none"> <li>• <i>Farida Shaheed</i>: Founding member of WLUML, Director of Shirkat Gah's Programme of Women and the Law (Lahore, Pakistan).</li> <li>• <i>Zazi Sadou</i>: President of the <i>Rassemblement algérien des femmes démocrates</i> (Alger/Paris).</li> <li>• <i>Rashida Manjoo</i>: Lawyer, Research Associate, Faculty of Law, Cape Town University; Member of the Commission for Gender Equality (South Africa).</li> <li>• <i>Marieme Hélie-Lucas</i>: Sociologist, Founder of Women Living Under Muslim Laws (Algeria/France).</li> <li>• <i>Vahida Nainar</i>: President of the Board of the new Women's Initiatives for Gender Justice at the International Criminal Court (India).</li> </ul> Presentation of participants (name; organization; expectations)
10:15am - 10:30am	<b>BREAK</b>
10:30am - 12:15 pm  (5 minutes)  (55 minutes)  (40 minutes)	<b><i>Theme 1: International Perspectives on the Rise of Fundamentalism and the Implications for Women Worldwide</i></b>  Public reading of the WLUML Letter to Canadian politicians  Presentations from the WLUML experts on the rise of fundamentalism.  Questions and comments from participants
12:15pm – 1:30pm	<b>LUNCH ON-SITE</b>
1:30pm - 3:00pm  (60 minutes)  (30 minutes)	<b><i>Theme 2: Religion, and Family Law: A Bad Mix?</i></b>  Presentations from the WLUML experts on Muslim Family Law.  Questions and comments from participants

3:15pm – 3:30pm	<b>BREAK</b>
3:30pm – 5:00pm  (45 minutes)  (15 minutes)  (30 minutes)	<p><b><i>Reflections from Canada and Quebec</i></b></p> <ul style="list-style-type: none"> <li>• <i>Merav Shmueli</i>: PhD, University of Toronto.</li> <li>• <i>Fatima Jaffer</i>: Member, The Vancouver Custody and Access Advocacy Group.</li> <li>• <i>Susan Boyd</i>, Professor, Law Faculty, University of British Columbia</li> <li>• <i>Alia Hogben</i>: President, Canadian Council of Muslim Women.</li> </ul> <p>Present excerpts of the letters of the <i>Canadian Council of Muslim Women</i> and the <i>National Association of Women and the Law</i></p> <p>Discussion and strategic considerations</p>
<b>Tuesday, May 17</b>	
9:00am - 10:45am  (60 minutes)  (30 minutes)  (15 minutes)	<p><b><i>Theme 3: Cultural Relativism, Multiculturalism and Women’s Human Rights</i></b></p> <p>Presentations from the WLUML experts as to developments in their own country and region.</p> <p>Questions and comments from participants.</p> <p>Present excerpts from the <i>Rights and Democracy</i> letter.</p>
10:45am – 11:00am	<b>BREAK</b>
11:00am – 12:15pm  (45 minutes)  (30 minutes)	<p><b><i>Reflections from Canada and Quebec</i></b></p> <ul style="list-style-type: none"> <li>• <i>Natasha Bakht</i>: Professor, Faculty of Law, University of Ottawa.</li> <li>• <i>Dolores Chew</i>, South Asian Women’s Community Center</li> <li>• <i>Lorraine Pelot</i>, Senior Research Officer, The Law Commission of Canada</li> <li>• <i>Nathalie DesRosiers</i>: Dean of Law (Civil Law Section), University of Ottawa; Past President, The Law Commission of Canada.</li> <li>• <i>Ariane Brunet</i>: Women’s Rights Project Director, Rights and Democracy.</li> </ul> <p>Comments from participants</p>

12:15pm - 1:30pm		<b>LUNC H ON- SITE</b>
1:30pm – 4:00pm  (2 hours)	<i>Theme 4: Strategies and Campaigns</i>	
(20 minutes)	<p>Discussion</p> <ul style="list-style-type: none"> <li>• Access to Justice and the Privatization of Women’s Rights.</li> <li>• Faith-based Arbitration in Family Law.</li> <li>• Cultural Sensitivity, Racism and the Courts.</li> <li>• National and International Networking for Change.</li> </ul>	
(10 minutes)	Conclusions and Steps Forward	
	Closing Remarks	

<b>Tuesday May 17</b>		<b>PUBLI C FORU M</b>
7:00pm – 9:00pm	<i>International Perspectives on Religious Arbitration in Family Law</i>	
(10 minutes)		
(50 minutes)	<p>Opening Remarks</p> <p><b>Women Living Under Muslim Law International Network</b></p> <ul style="list-style-type: none"> <li>• <i>Zazi Sadou</i>, President of the Rassemblement algérien des femmes democrat (Alger/Paris).</li> <li>• <i>Rashida Manjoo</i>: Lawyer, Research Associate, Faculty of Law, Cape Town University; Member of the Commission for Gender Equality (South Africa).</li> <li>• <i>Marieme Hélie-Lucas</i>, Sociologist, Founder of Women Living Under Muslim Laws (Algeria/France).</li> <li>• <i>Vahida Nainar</i>, President of the Board of the new Women's Initiatives for Gender Justice at the International Criminal Court (India).</li> </ul>	
(15 minutes)		
(30 minutes)	<b>Implications for Women in Canada and Quebec</b>	



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# PUBLIC FORUM

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Closing Remarks

*The National Association of Women and the Law  
(NAWL)  
and the Faculty of Law present:*

## “International Perspectives on Religious Arbitration in Family Law”

**Speakers: Women Living Under Muslim  
Laws**

**Marieme Hélie-Lucas (Algeria/France)  
Rashida Manjoo (South Africa)  
Vahida Nainar (India) Zazi  
Sadou (Alger/Paris)**

**Law Faculty, University of Ottawa  
Moot Court, Fauteux 147  
*57 Louis Pasteur***

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**Participation in the “*International Perspectives on Religious Arbitration in Family Law*” Conference**  
*May 16-17, 2005 (Ottawa)*

National Association of Women and the Law
Association national Femmes et Droit
National Association of Women and the Law
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Conference Coordinator / University of Ottawa
Canadian Council of Muslim Women
National Organization of Immigrant and Visible Minority Women
Vancouver Custody and Access Support Services
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Fédération des Femmes du Québec
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Mouvement contre le viol et l’incest
South Asian Women’s Centre (Montreal)
South Asian Women’s Centre (Montreal)
Association des femmes immigrantes de l’Outaouais
Centre d’aide et de lutte contre les agressions sexuelles
Comité national d’action politique des femmes - Section Régionale de l’outaouais
Harmony House

Canadian Council of Muslim Women (Ottawa)
Canadian Council of Muslim Women (Ottawa)
Canadian Council of Muslim Women (Ottawa)
Ottawa Muslim Women's Organization
Ottawa Muslim Women's Organization
Education Wife Assault
OCASI
Mouvement ontarienne des femmes immigrantes francophones
Action ontarienne contre la violence faite aux femmes
RéSAFF (Réseau Socioaction des Femmes francophones)
Sojourner Truth Research, Policy and Development Org,
Ottawa Rape Crisis Centre
Ottawa Rape Crisis Centre
Ottawa Rape Crisis Centre
Eastern Ottawa Resource Centre
Eastern Ottawa Resource Centre
Western Ottawa Resource Centre
Western Ottawa Resource Centre
Cdn Council of Muslim Women (Ottawa)
Cdn Council of Muslim Women
Cdn Council of Muslim Women
Fédération nationale des femmes canadiennes françaises
Le Conseil national des femmes métisses
Canadian Feminist Alliance for International Action
Canadian Federation of Univ. Women
WEST COAST LEAF
Womenspace
Mediawatch
Canadian Labour Congress
MATCH International Centre
MATCH International Centre
YWCA Canada
YWCA
PSAC
National Council of Women

## **Declaration on Religious Arbitration in Family Law**

The following groups and organizations have come together out of concern for the application of any religious laws in family matters using the Arbitration Act in Ontario, pursuant to Marion Boyd's report entitled Protecting Choice, Promoting Inclusion.

Notwithstanding Ms Boyd's assurances to the contrary, we are shocked by the possibility of the erosion of equality rights as guaranteed in Sections 15 and 28, of the Canadian Charter of Rights and Freedoms. Our statement reflects a common position that the recommendations advanced in this report sanction the erosion of women's equality rights under the laws of Ontario. We believe that the *Arbitration Act* was never designed to accommodate family matters but was conceived of as a vehicle for commercial disputes. Stretched to this purpose, even with Ms. Boyd's "safeguards", it would effectively put at risk decades of legal reform in keeping with an equality and equal rights framework.

Our diverse organizations share one purpose with respect to:

- Exclusive use of family law legislation for the resolution of family disputes regardless of faith, ethnicity and culture
- No religious arbitration and/or any principles, which would undermine the equality guarantees of the Charter in the resolution of family matters

We are supported by an international coalition of groups watching closely the Ontario government's decision in relation to Boyd's report. Their concern for the potential erosion of women's rights within constitutional democracies based on religious justifications is in keeping with the provisions of the Canadian Charter, and with international agreements (i.e.. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women) to which Canada is a signatory. We demand that the Government of Ontario both understand the intent of these agreements and ensure that domestic laws and regulations are not in contravention of them.

Signed,

**National Association of Women and the Law / Association nationale femmes et droit (ANFD)**

**National Organization of Immigrant and Visible Minority Women of Canada (NOIVMWC) / Organisation nationale des femmes immigrantes et des femmes appartenant à une minorité visible du Canada (ONFIFMVC)**

**Metropolitan Action Committee on Violence Against Women and Children (METRAC)**

**National Council of Women of Canada (NCWC) / Conseil national des femmes du Canada**

**Rights and Democracy / Droits et démocratie**

**YWCA of Toronto / YWCA de Toronto**

**Education Wife Assault**

**Multicultural Women's Organization of Newfoundland and Labrador**

**Action ontarienne contre la violence faite aux femmes**

**Canadian Association of Elizabeth Fry Societies (CAEFS) / Association canadienne des sociétés Elizabeth Fry (ACSEF)**

**Métis National Council of Women / Conseil national des femmes métisses**

**Nelson House of Ottawa Carleton**

**Mouvement ontarien des femmes immigrantes francophones (MOFIF)**

**Provincial Council of Women of Ontario / Le conseil provincial des femmes de l'Ontario**

**Provincial Council of Women of Québec / Le Conseil provincial des femmes du Québec**

**Women's Legal Education and Action Fund (LEAF) / Fonds d'action et d'éducation juridiques pour les femmes (FAEJ)**

**Ontario Association of Interval and Transition Houses (OAITH)**

**Ottawa Rape Crisis Centre**

**Pictou County Women's Centre**

**Mouvement contre le viol et l'inceste.**

**Fédération des femmes du Québec (FFQ)**

**l'Association des femmes immigrantes de l'Outaouais**

**MATCH International Centre / Centre International MATCH**

**Canadian Labour Congress / Congrès du travail du Canada**

**Ontario Federation of Labour**

**Le Réseau socioaction des femmes francophones**

**Interlude House / Maison Interlude**

**Northwestern Ontario Women's Centre**

**Centre Victoria pour femmes (Sudbury)**

**Transition House (Thunder Bay)**

**L'R des centres de femmes du Québec**

**Canadian Research Institute for the Advancement of Women (CRIAOW) / Institut canadien de recherches sur les femmes (ICREF)**

**l'Association canadienne des centres contre les agressions à caractère sexuel (ACCCACS) / Canadian Association of Sexual Assault Centers (CASAC)**

**L'équipe de La Passerelle**

**L'Association des femmes immigrantes de l'Outaouais**

**Le Centre "Au Coeur des Femmes"**

**Le Centre "Entre-Femmes"**

**L'association pour les droits de la femme et le développement (AWID) / Association for Women's Rights in Development (AWID)**

**La Marg'elle de St-Rémi**

**Mouvement contre le viol et l'inceste (MCVI)**

**Fédération nationale des femmes canadiennes françaises**

**Canadian Federation of University Women (CFUW) Ontario Council / la Fédération canadienne des femmes diplômées des universités (FCFDU)**

**Centre D'Main de Femmes**

**Réseau socioaction des femmes francophones de l'Est ontarien**

**Interval House of Ottawa**