

APPENDIX I

Terms of Reference

Marion Boyd's Review of Arbitration Process

Marion Boyd has been asked to provide advice and recommendations to the Attorney General and the Minister Responsible for Women's Issues about the use of private arbitration to resolve family and inheritance cases, and the impact that the use of arbitration may have on people who may be vulnerable including women, persons with disabilities and elderly persons. The review will include consideration of religious based arbitrations.

Mrs. Boyd, with the assistance of government officials, will consult interested parties to determine their views. Mrs. Boyd will take into account the prevalence of the use of arbitration in family law and inheritance cases and other matters affecting vulnerable persons. To the extent that it may be necessary to understand arbitration processes Mrs. Boyd may choose to examine the use of other alternative dispute resolution models (mediation, collaborative law, separation agreements). She shall consider the safeguards which are available to participants in different dispute resolution settings, and in different jurisdictions. Mrs. Boyd will provide her best advice and recommendations, taking into account the position of interested parties and any consensus amongst those parties on any of the issues. However, Mrs. Boyd will not be bound by any consensus in the development of her advice and recommendations.

Mrs. Boyd's advice and recommendations will reflect the following principles:

- Governments and legislation are bound by the *Charter of Rights and Freedoms* and government action should respect *Charter* values;
- Safeguards for private dispute resolution should be consistent no matter which method is employed;
- Parties should participate in any alternative dispute resolution process voluntarily and not because of pressure or coercion from family members or community;
- The safeguards for separation agreements outlined in s. 56 of the *Family Law Act* are minimum safeguards;
- Final resolution must be subject to the best interest of any children in relation to their parenting, continuity of care and financial support;
- The court retains oversight over children and their care and support;
- Final alternative resolution of private disputes in accordance with the principles of fundamental justice may be preferable to litigation.

The review should encompass the following topics:

- The prevalence and use of arbitration in family law and inheritance cases;
- The current use of the *Arbitration Act, 1991* to enforce arbitral awards through the Ontario courts;
- Any differential impact the use of arbitration has on women, elderly persons, persons with disabilities or other vulnerable groups.

Mrs. Boyd will provide updates on the progress of the review to the Attorney General or the Minister Responsible for Women's Issues on their request.

Mrs. Boyd will submit a final report to the Attorney General and the Minister Responsible for Women's Issues summarizing the views that have been expressed and her recommendations and advice. This report will be in a form appropriate for release to the public, pursuant to the *Freedom of Information and Protection of Privacy Act*.

To contact the review:

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