Section 7: Suggestions from the Review Submissions

Some respondents to the Review felt so strongly that arbitration should not be allowed in family law matters and, even more strongly, that religiously-based arbitration should be disallowed, that they declined to make any suggestions as to how the *Arbitration Act* or other legislation could be changed to better protect vulnerable people. The NAWL submission made the point by outlining the kinds of questions that need to be answered:

> This paper has not considered strategies for law reform as it is felt that a broad consultation of different groups, both Muslim and non-Muslim, is required to identify and evaluate strategies for ensuring that women's constitutional equality rights are not infringed in the process of arbitration. It is critical that certain questions be explored such as: is it possible to include safeguards to the arbitration process that will adequately protect women? Can one avoid the predictable limits of such safeguards? Is it possible to reinvent dispute resolution such that feminist concerns are met?[273]

However, others making submissions to the Review saw the Review process as the first step in answering these questions. Many respondents suggested concrete changes that they felt would address some of the possible risks to vulnerable individuals, if family law matters continue to be resolved using mediation and arbitration. As has been evident, particularly in Section 4, even respondents who support the use of arbitration believe that alternative dispute resolution requires safeguards to ensure that vulnerable people who choose arbitration have a similar level of protection of their rights that they would experience if their dispute were resolved through the courts.

Education and Training of Mediators and Arbitrators

Many commentators decried the lack of regulation and qualifications for arbitrators, pointing out that the *Arbitration Act* does not set standards for training or provide a code of conduct under which arbitrators must operate. No matter what position was taken about the use of religious principles in the arbitration of family law matters, most submissions called for minimum qualifications and standards for both mediators and arbitrators. One of the most outspoken proponents of better standards was Syed Mumtaz Ali of the Islamic Institute for Civil Justice:

> Right from the start, we have insisted that one of the main reasons for establishing the Institute is to bring some order and discipline to a code of professional ethics which seem to have grown like mushrooms to the chaotic back alleys, closed door ghetto-based confusingly and mistakenly

[273] Submission of the National Association of Women and the Law, Canadian Council of Muslim Women, and the National Organization of Immigrant and Visible Minority Women of Canada, Natasha Bakht, 'Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its impact on women' (September 13, 2004).

> so-called "arbitrations" which have the tendency to flourish. …The fact is that the Institute has managed to have a good number of its executives take and successfully complete the ADR Institute of Canada's approved courses in Arbitration law and its process.[274]

At a minimum, most participants believe that both mediators and arbitrators in family matters need to have knowledge of the legislation governing all aspects of Canadian and Ontario family law (such as the *Family Law Act*, the *Divorce Act*, the *Child and Family Services Act*, the *Children's Law Reform Act*, and the *Succession Law Reform Act*) as well as the *Arbitration Act* itself. In addition, most respondents believe that knowledge of the *Canadian Charter of Rights and Freedoms* should be mandatory for mediators and arbitrators. Respondents believe that the values articulated in the Charter ought to be mirrored in the policy choices government makes about the use of arbitration and other alternative dispute resolution mechanisms.

Many of those concerned about family law mediation and arbitration spoke of the need for mediators and arbitrators to also be educated about the dynamics and risks of family violence. Dr. Barbara Landau, a lawyer, psychologist and mediator, wrote to the Review with the following detailed recommendation:

> I believe that all Mediators and Arbitrators need a minimum of a Basic Training in mediation and arbitration skills, Canadian Family Law and screening for Domestic Violence. If a contract is reached under duress – it is not valid. Mediators now MUST screen for Domestic Violence and assess both men and women for appropriateness for this process. The Standards set by OAMF [Ontario Association of Family Mediators] or Family Mediation Canada, and the Arbitration Institute of Ontario would be a suitable base with some modification in the curriculum to meet the special requirements of these mediators and arbitrators. This would NOT be specific to any religious group, but rather would teach Mediation principles and skills and the law related to Arbitration, Family Law and a minimum of 2 days of training in Domestic Violence and Power Imbalance.[275]

Some respondents advocated for mandatory membership in one or another of the professional associations that have formed over recent years to set standards for mediators and arbitrators; at the present time, such membership is entirely voluntary. These professional groups include Family Mediation Canada, the ADR Institute, the Ontario Association of Family Mediation, the Association for Conflict Resolution, and the Arbitration Institute of Ontario, among others. Conditions of membership in these groups include meeting specific standards of education and training as well as acceptance of the code of conduct developed for the profession. Others believed that specific professional qualifications, such as a law, social work or psychology degree, would be sufficient, especially if the person were a member of a self-regulating profession. Still others wanted the Review to recognize and acknowledge that the

[274] Submission of Syed Mumtaz Ali, 'An Update on the Islamic Institute of Civil Justice' (August 2004).
[275] Submission of Dr. Barbara Landau (September 6, 2004).

extensive religious training of Rabbis and some Imams qualifies them to mediate and arbitrate in a faith-based context.

Several respondents pointed out that the government of Ontario has established qualifications for those practicing court-based mediation, and that this is an acknowledgement that there must be minimum standards for education and training where government-funded services are provided. It may be worthwhile to outline these standards; in its Request for Proposals for Family Mediation and Information Services to be provided at Unified Family Court locations, the Ministry requires the following of its transfer payment agencies:

(a) Education, training and experience
The Service Provider shall ensure that, at a minimum, mediators have the following education and family mediation training and experience:

1) a professional degree or equivalent (significant directly related experience);
2) a minimum of 60 hours of training in family mediation (a basic and advanced level course); and
3) a minimum of 100 hours of supervision and/or a minimum of five cases mediated to the point of agreement where a practicing/accredited Ontario Association for Family Mediation (OAFM) mediator, or a Family Mediation Canada (FMC) certified mediator, has provided supervision and/or consultation.

Mediators who provide proof of their accreditation by the OAMF, or proof of their certification by FMC, will be deemed to have met the above-noted family mediation training and experience requirements.

(b) Knowledge, skills and other personal attributes
The Service Provider shall ensure that mediators also have the knowledge, skills, abilities and other personal attributes outlined below:

Knowledge

1) negotiation, conciliation, conflict management and the mediation process;
2) family dynamics and child development;
3) law pertaining to the issues being mediated, including:
   - the legal steps involved in separation and divorce;
   - major trends in the case law relating to the issues referred to above; and
   - the laws which can assist and protect women who have been abused;
4) the effects of separation and divorce on parents, children and the extended family;
5) in-depth understanding of the sources of power imbalances in relationships and an ability to recognize the indicators of such imbalances on their Clients;
6) where mediation proceeds, knowledge about the techniques used to redress power imbalances while remaining impartial;
7) indicators of domestic violence/abuse;
8) procedures and instruments to screen for abuse before and during mediation;
9) safety planning requirements and procedures for Clients and staff;
10) community and educational resources for referral outside or for use within the mediation process;
11) alternative conflict resolution options;

12) current public concerns regarding mediation practice; and
13) multicultural issues in dispute resolution.

Skills
1) advanced communication and relationship skills;
2) advanced investigative, interviewing and assessment skills;
3) demonstrated case management skills;
4) ability to assess the degree of the power imbalance to determine whether mediation is an appropriate option;
5) ability to use techniques to redress power imbalances;
6) mediators doing comprehensive mediation must understand and the be able to work with various financial documents which may be relevant in a case involving support or property issues (e.g. court financial statements, budgets, financial statements prepared by accountants).

Personal Attributes
1) non-directive, non-judgmental nature, respects Client's autonomy;
2) warm and empathetic;
3) ability to be firm and assertive;
4) ability to employ effective dispute resolution skills;
5) sensitivity to cultural differences;
6) ability to work within a specific timeframe;
7) professional judgment;
8) flexibility;
9) ability to be calm, level-headed, caring in the face of hostility and tension;
10) problem-solving skills and ability to be clear, creative, imaginative;
11) intuition and perception;
12) sensitivity to issues of domestic violence;
13) patience.[276]

Some participants expect that all these requirements should be met in private dispute resolution services, including both mediation and arbitration, and not just those provided as government-funded services.

While the tasks of mediators and arbitrators are similar, arbitrators have the capacity to make binding decisions, not merely to facilitate the parties' reaching an agreement which then goes to court for confirmation. Many respondents believe it is essential for arbitrators to have a number of additional qualifications beyond those required for mediators. They believe that arbitrators must understand and be able to apply the rules of evidence, as set out in Canadian law. In addition, they believe arbitrators must be skilled in writing decisions, so that these decisions and the reasons for them are clearly understood, if not agreed upon, by the parties to the dispute, and, in the event of an application for court review, the court hearing the matter. Above all, they maintain that arbitrators must be able to ensure "fair and equitable" process to the parties, as this is understood in a Canadian context.

[276] Ministry of the Attorney General of Ontario, *Request for Proposals for Family Mediation and Information Services at the Family Court of the Superior Court of Justice* (Queen's Printer for Ontario, December 2003).

Some participants argued that there should be "equivalencies" of education and experience recognized where arbitrators have undergone extensive training in the law. The submissions from the *Beis Din,* included information about the extensive training judicial Rabbis receive prior to conducting arbitrations. These submissions made a strong case that additional training is not required where such qualifications have already been achieved.

> There are 2 qualifications that we require for our regular arbitrators. They must be ordained Rabbis and they must have the specific higher ordination for Rabbinic Judges.
>
> The normal Rabbinic training requires years of study. Beginning in grade school and on through Jewish high School, the Talmud is studied in great depth, much of this study being in the area of torts and legal procedures. In order to enter a Rabbinic ordination program, a person must have at least four years of post high school Talmudic study. This may vary slightly amongst the different Rabbinic programs, but rarely is it less than 4 years post high school. This study focuses mostly on Talmudic law. The Rabbinic ordination program is usually an additional 4 years.
>
> This Rabbinic ordination does not qualify one to be a Judge, though the bulk of the 8 years of post high school would have been in Talmudic law.
>
> To be admitted for the course to be a *Dyan*, or Rabbinical Judge, one is required to have the regular Rabbinic ordination. The course to be a Judge is a minimum of 2 additional years, often 4 or 6, depending on the particular Rabbinic school.[277]

Similarly, many felt that lawyers and judges, who have trained and practiced in Ontario, have sufficient education, knowledge and skill to conduct mediation and arbitration without additional training.

The Islamic community, by contrast, expressed significant concerns about how to ensure that those arbitrating according to Muslim personal law have sufficient knowledge and skill to do so effectively. Participants in the Review expressed deep misgivings about the very small number of Muslims who are expert in Muslim jurisprudence and are available to arbitrate. Commentators were equally concerned that, as a result, decisions may not be based on a clear understanding of Muslim law. Dr. Mohamed Elmasry of the Canadian Islamic Congress was quoted in an article in the Pakistan Daily Times in August of this year:

> Elmasry had said, "There are only a handful of scholars in Canada who are fully trained in interpreting and applying Sharia law – and perhaps as few as one." He had also said, "The arbitrators use gut feeling, they use common sense, and in

[277] Submission of Rabbi Reuven Tradburks (September 2, 2004).

> many cases they are successful," in that their decisions are not appealed in a court or overturned.[278]

Faisal Kutty, a prominent Toronto-based Muslim lawyer, has also highlighted the lack of formal qualifications to interpret Islamic law:

> As it stands today, anyone can get away with making rulings so long as he has the appearance of piety and a group of followers. There are numerous institutions across the country churning out graduates as *alims* (scholars), *faqihs* (jurists) or *muftis* (juris-consults) without fully imparting the subtleties of Islamic jurisprudence.[279]

The Islamic Council of Imams – Canada made the following points:

> In order for someone to be an Islamic Judge *(Quadi*), one requires extensive training in Islamic Jurisprudence. Besides this knowledge, his/her Character and Intelligence should also be superior. Unlike Ontario Judges, there is no formal accreditation, appointment, nor hierarchal relationship between certain decisions in the Canadian Muslim community.
>
> …Since Muslim family laws are not entrenched in the legal system in Canada, our Courts and ADR tribunals have little to go with and how these tribunals are going to implement their decisions, which is not accepted and if they are in violation of legal system, can be subject of litigation.
>
> Lack of standards for ADR tribunals, poses a serious problem for faith-based Tribunals. Moreover 90% of the rulings in Islamic matters can be discretionary, depending upon the circumstances.[280]

The Islamic Council of Imams proposed a Provincial Task force to "study and develop Canadian Muslim Family Law, to be used as basis for ruling by ADR Tribunals,"[281] suggesting that building an agreed body of law would be the first step in ensuring qualified arbitrators are available to the community.

The Council on American-Islamic Relations – Canada (CAIR-CAN) envisioned a government initiative to ensure adequate education and training:

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[278] 'Sharia debate rages on in Canada' *Pakistan Daily Times* (23 August 2004).
[279] Faisal Kutty, 'Canada's Islamic Dispute Resolution Initiative Faces Strong Opposition' Washington Report on Middle East Affairs (May 2004) 70, online: <http://www.wrmea.com/archives/May_2004/0405070.html>.
[280] Submission of Islamic Council of Imams—Canada, 'Islamic Arbitration Tribunals and Ontario Justice System' (July 23, 2004).
[281] Submission of Islamic Council of Imams—Canada, 'Islamic Arbitration Tribunals and Ontario Justice System' (July 23, 2004).

> The success of an arbitration system based on Islamic law will largely turn on the arbitrators. CAIR-CAN is confident that arbitrators equipped with the appropriate training and who have an understanding of both the spirit and the letter of Islamic family and personal law will render equitable decisions that are consistent with the *Charter of Rights and Freedoms.* Accordingly, it is our position that significant efforts must be taken by the Ministry, in partnership with minority communities, to select and train qualified arbitrators. The status quo of allowing for the creation of private arbitration systems with little to no government involvement in the selection and training of the arbitrators does not adequately protect the interests of individuals who, for religious or other reasons, choose this form of dispute resolution.
>
> It is our position that any institute or organization intending to offer faith based arbitration ought to submit to the Ministry of the Attorney General the resumes of those candidates which the organization intends to appoint as arbitrators. In assessing whether such candidates are qualified to apply Islamic family law within a Canadian context, the Ministry needs to formally seek the advice of recognized Muslim scholars, leaders and activists within the Canadian Muslim community. Alternatively, the Ministry may turn to a recognized Islamic body within Canada such as the Fiqh Council of North America.
>
> It is also our position that arbitrators must meet minimum qualification standards in mediation and arbitration skills as well as have an understanding of Ontario's family and estate laws. In this regard, arbitrators would be required to obtain a certificate in arbitration and mediation and complete a set of basic Canadian law courses designated by the Ministry. [282]

Other respondents preferred to see the Muslim community itself, rather than the government, taking the lead in any such effort to ensure that arbitrators are properly trained and following appropriate standards of practice when Muslim family law is used.

Regulation of Mediators and Arbitrators

It was clear that most participants favour the regulation of mediators and arbitrators and asked the Review to urge the government to move in this direction. Consumer protection of the clients of mediators and arbitrators, with some mechanism by which clients could access a complaint procedure and get redress, seemed to be envisioned by most participants in the Review. In addition, most respondents felt that the educational and conduct requirements for mediators and arbitrators ought to be easily accessed by the public, so that parties considering mediation and arbitration understand the basic requirements of the profession.

However, there were a number of different models of regulation proposed. Many suggested either direct government regulation or the establishment of a self-regulating

[282] Submission of Canadian Council on American-Islamic Relations (CAIR—CAN) (August 10, 2004).

"college" or "institute" created by legislation. Some mediators and arbitrators are already members of self-regulating professions, such as the College of Social Workers, the Law Society of Upper Canada, or the College of Psychologists, but may not be bound by their rules of conduct when acting as mediators or arbitrators. Clarification of their obligations under these existing regulatory bodies when they act as mediators or arbitrators is required and, if conduct is regulated by these existing bodies, additional regulatory measures may not be necessary.

As an interim measure, some suggested that membership in the ADR Institute, Family Mediation Canada or Ontario Association of Family Mediators be required, as these organizations already have set standards for training in the skills required for mediation and arbitration and have established codes of conduct. Many of the lawyers who responded indicated that, in addition to their legal training, they have qualified as mediators and arbitrators by taking courses recognized by the ADR Institute or other professional associations. Similarly, the majority of those who are not members of self-regulating professions, but who are providing mediation and arbitration services, have received formal training, have voluntarily joined professional associations, and consider themselves to be bound by the codes of conduct of those associations. Many believe that the voluntary professional associations ought to work together toward the development of a specific regulatory body designed for mediators and arbitrators only.

Most commentators recognize that the profession of mediation and arbitration is still not mature enough to expect immediate self-regulation to occur and that this should be set as a long-term goal. There was general agreement that the development of a full-fledged regulatory regime would take some time, as has been experienced with the lengthy negotiations around regulating health care professionals, social workers, and public accountants. To accomplish this goal, most recognize that government leadership would be required from the outset and that eventual legislation must be passed to establish such a body. Alternatives such as regulation under another existing institution, as has been proposed for paralegals by the Law Society of Upper Canada, could also be explored as part of the process. Most felt that eventual licensing of some kind is desirable so that mediators and arbitrators can be prevented from practising if found guilty of misconduct or incompetence.

Some participants representing faith-based mediators and arbitrators seemed to prefer that their religious bodies be responsible for the regulation of those working in their own faith communities. The Beis Din is responsible to the *Vaad Harabonim,* the Orthodox rabbinical body in Toronto; there is also the Toronto Board of Rabbis, which is a multi-denominational umbrella group representing Conservative, Reform and Reconstructionist Rabbis. Because of the specialized judicial training required to sit on the Beis Din, representatives of the Jewish community indicated some resistance to outside regulation.

> It is our view that the credentials of the acting arbitrators are best assured by a system of self-governance by each religious/cultural group and not through any state-imposed standardized training or government charter-granting authority.

> …Going beyond that [a certificate of Independent Legal Advice] to impose any standard level of training may indeed interfere with *Charter*-protected religious rights. It also would create a state-sponsored paternalistic and legislated attitude towards all Ontarians of faith who have a right to choose, after they have been given independent legal advice by the lawyer of their choice.[283]

Many of those responding from the Muslim community, envisioned a regulatory panel of experts from their own community, possibly appointed by the government, but responsible to the community. Mubin Shaikh of Masjid El Noor, commented:

> Islam is a very flexible system and can operate under any situation. If we are to promote harmony and freedom of religion, then it is upon us to develop a plan we can all be proud of and which we can show to the rest of the world as a prime example of how the best country in the globe can produce the most accommodating legal system by having a formalized, regulated, Islamic Tribunal. However, these regulations must come from within the faith community otherwise it will be viewed with contempt and will lack the ability to encourage the observance of everyone's rights. [284]

Others providing religiously based mediation and arbitration seemed to feel that requiring membership in a self-regulating regime representing all mediators and arbitrators would not interfere with their ability to work according to principles of faith.

The Ontario Federation of Indian Friendship Centres was concerned that the requirement for credentials and regulation would pose a serious barrier to the development of mediation and arbitration practices in Aboriginal communities.[285] For Aboriginal peoples these requirements would tend to ignore the wisdom and experience so important within their communities and tie the process to the "white man's system of justice," from which the community seeks relief. It seems likely that Aboriginal people might seek exemption, possibly on Constitutional grounds, from any general regulatory scheme developed and would prefer to control any process of regulation independent of other regimes.[286]

Fair and Equal Treatment

Many respondents acknowledged that Section 6 and Section 19 of the *Arbitration Act* require that the parties to arbitration are to be treated "fairly" and have an "equal" opportunity to present their case before the arbitrator. However, the Act itself does not specify what fair and equal treatment actually means or how it would be interpreted by the court if it were asked to review an arbitral award.

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[283] Submission of B'nai Brith, 'Review of the Arbitration Process in Ontario' (August 31, 2004).
[284] Submission of Mubin Shaikh, 'Shariah Tribunals and Msjid El Noor: A Canadian Model' (August 24, 2004).
[285] In this report the term "Aboriginal" is used to indicate the First Nations, Metis, and Inuit people.
[286] Submission of Ontario Federation of Indian Friendship Centres (August 23, 2004).

The Review heard from many participants that the testimony of women, in Muslim culture, is given only half the weight of the testimony of men and that this may be regarded as "fair" by many Islamic people, even though it would not be considered fair by most Ontarians.

The Coalition of Jewish Women for the Get expressed concern that Jewish women appearing before the Rabbinic courts are often not allowed to have representation or even to have a support person accompany them. Many women find the process intimidating and may have difficulty articulating their case clearly. The Coalition reported that some Rabbinic tribunals are reluctant to accept expert testimony, even in the form of affidavits, and may not take into account the effect of violence within the marriage when making decisions affecting children.

Some respondents suggested that there be a clear articulation, for instance in a regulation to the *Arbitration Act*, which defines some principles of fundamental justice that should guide the process of arbitration. These would include the right to know the opposing case, the right to equal weight of testimony, the right to be represented (if desired), and the right to present your case.

Record Keeping

Although the *Arbitration Act* requires that there be written decisions of arbitral awards, it does not specify any other record of the proceeding. Although some arbitrators maintain full files on the arbitrations they conduct, including records of evidence presented and proceedings, other arbitrators were clear that such records do not exist in their practices. Some faith-based arbitrations are undertaken in languages other than English and French; the Review heard that sometimes those who are parties to the arbitration may not understand the language being used and may not have access to interpretation and translation of documents. Even if records are kept by the arbitrator, the Review was told that there is no guarantee that parties will have access to those records, should an appeal be contemplated or launched. Many participants suggested that there should be regulations to specify what records must be kept, in what form, and for how long. A number of different elements were identified as essential to a full record of the arbitration and these are discussed below.

The Arbitration Agreement:

The key to arbitration is the agreement of the parties to settle their dispute in this way. As noted above, the issue of consent by the parties is of great concern to many respondents. At present, arbitration agreements need not be in writing; nor is there any requirement that the parties have signed the agreement themselves and that these signatures are witnessed. Arbitration agreements may have been reached in the distant past, prior to the dispute even being contemplated. Some arbitration agreements may have been executed when parties were not legally competent to sign them, either

because of age or coercion. Most respondents agreed that the requirements for the arbitration agreement should be made clear either in legislation or regulation when family law and inheritance matters are being arbitrated. LEAF's submission states this need most succinctly:

> The agreement to arbitrate must be made contemporaneously with the breakdown of the relationship. This requirement is necessary to ensure that the arbitrations are consensual. A party who agreed to arbitration at the beginning of a relationship may feel differently at the time of breakdown. If the procedure is not consensual at the time when it is actually embarked upon, then it is not consensual at all. [287]

Most respondents urged the necessity for the arbitration agreement to be written, in the language understood by each of the parties, and witnessed by an independent person. They also felt that agreements should clearly indicate what, if any, rights under the *Arbitration Act* have been waived by the parties and what form of law has been agreed upon as the basis for arbitration. Some felt that regulations should prescribe the elements of the arbitration agreement. One respondent, Philip Epstein, included a copy of the standard agreement he requires parties to sign prior to entering into mediation or arbitration and that is included as Appendix VI.

Arbitration Awards

Although the *Arbitration* Act specifies that arbitration awards must be written, the parties can opt out of this provision. Even if an arbitration decision is written, the Act does not regulate the form and content of such awards. Most respondents advocated that awards should be in writing and must include reasons for the decision; otherwise, it is difficult for parties and their legal counsel to determine what course to take in contemplating an appeal. Arbitrators should specify what evidence they have considered and what weight they have accorded to each party's testimony and why. This is particularly crucial when Muslim law is being applied; the Review heard repeatedly from participants that, according to Muslim law, a woman's testimony is given only half the weight of a man's.

The Society of Ontario Arbitrators and Regulators has developed an extensive handbook and decision-writing continuing education courses to encourage the appropriate writing of decisions by arbitrators. Other professional organizations likewise provide training and education in this area. Respondents urging the regulation of arbitrators indicated that required education in decision-writing should be one of the mandatory elements of professional qualifications.

[287] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).

Independent Legal Advice (ILA)

Some groups, such as FACT and Fathercraft, absolutely opposed the imposition of mandatory ILA. The Islamic Institute of Civil Justice thought ILA should be an option available only if the arbitrator finds it would be helpful to the parties. However, according to the vast majority of respondents, the most important element to safeguarding vulnerable people is the requirement that they have received independent legal advice prior to agreeing to arbitration at all. Most of the lawyers the Review consulted already require ILA as a pre-condition to arbitration. It is useful to repeat some of the arguments for ILA here, as they provided strong guidance to the Review as to possible changes to the arbitration law. Again, LEAF's submission is helpful:

> It must be a requirement of the Arbitration Act that the parties to family law disputes obtain advice prior to agreeing to arbitrate. That advice must include information about the choices of procedure available for the resolution of disputes, and the rights and obligations that are imposed by Ontario family law. The Arbitration Act should also be amended to specify that parties may be represented by lawyers at an arbitration if they so choose.[288]

CAIR-CAN also recommended ILA as essential in cases to be determined in a faith-based arbitration process:

> In order to ensure that the parties are entering into binding arbitration voluntarily, a number of proactive measures need to be taken. First both parties must receive independent legal advice regarding their rights before committing themselves to an alternative form of dispute resolution. Moreover, each institute, organization or firm offering arbitration services must inform participants in writing of their right to appeal the arbitration decision once rendered, and their right to challenge the arbitrator under s.13 of the *Act*. If each party consents, a declaration shall be signed stating that the parties have received independent legal advice, understand their rights under the *Act* and are voluntarily consenting to binding arbitration according to doctrinal law.[289]

The most thorough consideration of ILA and how it could be the key to safeguarding parties to arbitration was presented in the B'nai Brith submission.

> …it is our recommendation that the *Arbitration Act* be formally amended to require that all litigants obtain a Certificate of Independent Legal Advice, from a qualified member of the Law Society of Upper Canada in good standing, in the form that will be set out in the regulations of the legislation. The individual will be advised as to the rights he or she is foregoing under Ontario's family and inheritance laws, and the nature of the alternative legal system will be explained before entering into a 'foreign' arbitration process of dispute resolution. …

[288] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).
[289] Submission of Canadian Council on American-Islamic Relations (CAIR—CAN) (August 10, 2004).

> Our suggested version of the certificate is very specific. It tells the Judge that the litigant [is] fully informed about the nature of the process and the alternative type of law and procedure that will be administered, as well as the benefit of the Ontario laws that the clients is foregoing.
>
> Some critics might suggest that a Certificate of Independent Legal Advice is insufficient to protect vulnerable litigants. In reality, lawyers consider these certificates very seriously. They are well aware that their insurance deductibles and professional standing are in question should a vulnerable spousal litigant later attempt to make a claim against the solicitor on the basis that she was not sufficiently apprised of the rights she was foregoing under any particular agreement. This is particularly so in cases of arbitration agreements that could affect rights of property, support, child custody and access. As a result, many solicitors reduce their advice to writing in order to protect their liability positions, or have their clients sign "waivers" when the clients sign agreements that contravene their advice. [290]

The B'nai Brith submission included a model certificate of Independent Legal Advice for both family law and inheritance matters (See Appendix VII). B'nai Brith went on to suggest:

> It is further recommended that the Certificate of Independent Legal Advice contain a specific clause making full and frank disclosure of all financial matters mandatory before any religious court, notwithstanding any prior agreement entered into by the spouses under Part IV of the *Ontario Family Law Act,* R.S.O. 1990, c.F3, in compliance with section 56 (4) thereof (see paragraph 5 of the recommended Certificate in Appendix VII).
>
> The legislation should also provide that prior to any religious court ruling being enforced by the Ontario Superior court, the litigant will be required to complete and file an Affidavit of Solicitor as Subscribing Witness (see Appendix VIII), to which a copy of the solicitor's Certificate of Independent Legal Advice will be attached as an exhibit. It would then be within the Court's discretion to either immediately grant the enforcement order, or schedule a full hearing to investigate the circumstances regarding whether or not the litigant's participation in the religious arbitration hearing was truly voluntary. This process will further ensure that it is the free and voluntary decision of a litigant to enter into the arbitration process.
>
> An analogous process now occurs when parties with dependent children apply for a divorce under the *Divorce Act.*[291]

[290] Submission of B'nai Brith, 'Review of the Arbitration Process in Ontario' (August 31, 2004).
[291] Submission of B'nai Brith, 'Review of the Arbitration Process in Ontario' (August 31, 2004).

The National Association of Women and the Law argued that ILA may not be the protection it is claimed to be:

> Moreover, it is unlikely that a lawyer would agree to represent a client at a tribunal that employs religious law because currently, the standard liability insurance provided by the Lawyers' Professional Indemnity Company, the insurance carrier for the Law Society of Upper Canada (members of the Ontario bar), does not cover lawyers acting in any area except Ontario/Canadian law.[292]

When discussing arbitration before the *Beis Din,* a Toronto lawyer notes:

> When it comes to Jewish law, Canadian lawyers really don't know anything. But even those who do know some *halacha*…[it] would be negligent to go before the Beis *Din* and argue Jewish law, since they are not covered for it in their insurance policy. If they made a mistake with financial repercussions, they could be personally liable.[293]

> Thus despite its recognized utility, in practice, independent legal advice may be of little use to clients who submit to arbitration using an alternative legal framework; this is so because most Ontario-trained lawyers are likely to be unaware of the repercussions and consequences of a system of law that they are not familiar with. Lawyers may only be of assistance to clients to the extent of explaining their rights in the Canadian legal context.[294]

Legal Aid Assistance

Even those respondents who enthusiastically endorse the notion of independent legal advice recognize that there may be financial barriers to obtaining that advice for vulnerable people. Most who recommend ILA also advocate that legal aid be available to those choosing arbitration to resolve family disputes. LEAF made the following recommendation:

> Legal Aid certificates or some other form of public funding (e.g. duty counsel) must be available to enable all parties to obtain independent legal advice and to be represented by lawyers in family law arbitrations. Funding must also be

[292] Submission of the National Association of Women and the Law, Canadian Council of Muslim Women, and the National Organization of Immigrant and Visible Minority Women of Canada, Natasha Bakht, 'Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its impact on women' (September 13, 2004) citing interview with a corporate counsel of the Lawyers Professional Indemnity Company (June 16, 2004).
[293] John Syrtash quoted by Lynne Cohen, 'Inside the Beis Din' *Canadian Lawyer* (May 2000) at 30 cited in Submission of the National Association of Women and the Law, Canadian Council of Muslim Women, and the National Organization of Immigrant and Visible Minority Women of Canada, Natasha Bakht, 'Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its impact on women' (September 13, 2004).
[294] Submission of the National Association of Women and the Law, Canadian Council of Muslim Women, and the National Organization of Immigrant and Visible Minority Women of Canada, Natasha Bakht, 'Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its impact on women' (September 13, 2004).

> provided to fund family law arbitrators (not religious arbitrators), so that all parties have the option of having Ontario Family Law arbitration, if this is their choice.[295]

B'nai Brith stated:

> Religious-based court system offers litigants the opportunity to settle disputes at considerably less cost than the Ontario court-based system. In order to best protect vulnerable and economically marginalized litigants, it is advisable that Legal Aid be made available to the voluntary participants in the arbitration system. …Consideration should also be made to expanding Legal Aid to permit the issuance of Legal Aid certificates when arbitration is used as an alternative form of dispute resolution in family law cases, whether before religious courts or other private arbitrators, as a means to reduce the cost of resolving family law disputes.[296]

Arbitration Agreements and Awards Subject to the Family Law Act (FLA)

Many respondents advocated that arbitration agreements and awards should be subject to the Ontario *Family Law Act*. In particular, if arbitration agreements are included as one of the forms of domestic contracts covered in part IV of the FLA, many of the important protections of the FLA, such as full disclosure of financial assets and liabilities, come into force. Many felt that arbitration decisions that do not follow the FLA should not be enforced by the courts. LEAF argues that bringing family law arbitrations under the FLA answers some of the *Charter* concerns raised by women activists:

> LEAF's objection is not the use of religious precepts to resolve disputes, *per se,* but to the fact that the current *Arbitration Act* effectively gives these principles—which are not reviewable under the *Charter*—the force of law. The state is required to protect and promote women's equality, and it has done so through the Ontario Family Law regime. Women may choose to opt out of this protection, but the state abrogates its *Charter* responsibility if it agrees to enforce such contracts. It is trite law that parties are not entitled to contract out of human rights legislation, and the state likewise cannot say to women, "we will protect you, but only if you want to be protected". This is directly contrary to the basic principle that the *Charter* is the supreme law of the land and must be upheld by the government in all instances, regardless of the desires of a specific individual or even a democratically elected legislature. LEAF submits that the *Arbitration Act* cannot be used as a backdoor way of giving *Charter*-proof principles legal effect. Only the Ontario Family Law regime can be reviewed for compliance with the Charter, so only this regime can be given effect by the state.[297]

[295] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).
[296] Submission of B'nai Brith, 'Review of the Arbitration Process in Ontario' (August 31, 2004).
[297] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).

Some respondents suggested that there need to be changes to the *Family Law Act* to include an explicit requirement for independent legal advice and to ensure that consent to arbitrate was not obtained under duress. Others requested that the *Family Law Act* be amended to guarantee substantive equality in arbitration and settlement agreements.

Again and again, members of the Muslim community assured the Review that Muslims who live in countries not governed by Islamic law are required by their faith to be obedient to the law in place in their country of residence. When pressed by the Review, even the Islamic Institute of Civil Justice has consistently stated that arbitration under Muslim family law would still have to accord with Canadian and Ontario law. When specifically asked if the inclusion of arbitration under Part IV of the FLA would pose difficulties, most indicated that, if that were the decision and became the law, it would be followed in religious arbitrations. Others stressed the importance of effective regulation to ensure that those not following the law would not be allowed to continue to arbitrate and that those damaged by a failure to apply the law would have some recourse.

Widening the Grounds for Appeal or Review of Arbitration Decisions

Many participants expressed concerns about the restrictions on the right to appeal included in the *Arbitration Act*. Others pointed out that the *Arbitration Act* allows parties to waive their appeal rights and that some arbitrators routinely include a provision that the parties waive all rights to appeal; they cannot waive their rights to judicial review. Some respondents, like LEAF, urged that parties not be allowed to waive their right to appeal on any grounds:

> Parties must not be allowed to waive the right of appeal under the *Arbitration Act.* This protection is required in order to make sure that decisions can be reviewed, if desired, for compliance with Ontario family law. Finality of decisions should be provided through strict timelines for appeal and there should be a mechanism to challenge appeals that appear to be frivolous or abusive.[298]

Some respondents feared that the benefits of arbitration would be lost if appeal rights were expanded. In particular, as noted above, FACT and Fathercraft both urged that appeal rights be narrowed, particularly with respect to child support guidelines and spousal support. These were the very areas on which proponents of expanded appeal rights put emphasis, pointing out that the potential for the impoverishment of women and children through unequal support provisions under religious law is the most serious possible outcome of allowing arbitration under these regimes.

Some respondents advocated a mechanism whereby courts could refuse to enforce decisions that ran counter to public policy, citing the ability of French and German courts to set aside family law agreements, made under religious laws, if these agreements are found to contravene “public order.” Ouahida Bendjedou, an exchange student to the Osgoode Hall Law School from France, urged that

[298] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).

> The arbitration agreement could provide an appeal which would lie on the ground that the decision conflicts with public policy in Ontario.[299]

Central Repository for Arbitration Decisions

One of the most urgent issues arising out of the Review is the need for some mechanism of oversight. The government's lack of information about the extent to which arbitration is used in family law and inheritance and how this mechanism has impacted vulnerable people was a major issue raised by virtually everyone responding to the Review. There is no repository to which arbitral awards must be sent and no reporting of cases; as a result, unlike court-based decisions, there is no way to track trends in decisions, no way to ensure that vulnerable people are not being disadvantaged as a result of choosing this dispute resolution method and no way for parties choosing arbitrators to know a potential arbitrator's "track record".

LEAF made the following recommendation:

> It should be mandatory to deposit all family law arbitration decisions (anonymized) with a central registry. All arbitration decisions must be required to include a statement of the issues in dispute, a concise description of the evidence tendered and a determination by the arbitrator, with reasons. The purpose of the registry would be to enable parties access to prior decision of arbitrators, and also to enable ongoing monitoring of the benefits and hazards of arbitrating family law disputes.[300]

The Islamic Society of Toronto envisioned strong government oversight.

> The Proposed…Tribunal shall require to formally register with the Ministry of the Attorney General under the Arbitration Act of Ontario. Minister of Attorney General shall have a commission similar to that of a "Human Right commission" comprised of Lawyers, Muslim community Leaders and Islamic Scholars who shall be capable and empowered to review any complaints filed within the intent of the act, understanding of Sharia laws and Canadian constitution.[301]

A more detailed scheme was included in the submission from CAIR-CAN:

> In addition to ensuring voluntary participation and qualified arbitrators, it is important to ensure that participants and their representatives are able to make informed decisions about the decision-maker in their dispute. The *Arbitration Act* allows the parties to specify the individual that will arbitrate their dispute but does not provide for a framework whereby an individual arbitrator's previous decisions

[299] Submission of Ouahida Bedjedou (September 2004).
[300] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).
[301] Submission of Islamic Society of Toronto (August 31, 2004).

> can be reviewed and studied. This is particularly troublesome in the case of religious arbitration where the application of religious law can vary widely between religious scholars and schools of jurisprudence.
>
> CAIR-CAN recognizes that one of the advantages of the private arbitration of disputes is the confidentiality of the proceedings and the outcome. Nevertheless, it will only be possible for participants to make informed decisions about particular arbitrators and arbitration centers if there is a mechanism for gaining access to past decisions, which, under the *Arbitration Act*, must be made in writing.
>
> CAIR-CAN recommends the institution of a Registry of Ontario Arbitral Decisions ("Registry"). Essentially, every registered arbitrator would be required to provide a 'sanitized' copy of their decisions to the Registry within 1 month of the decision being rendered. Naturally, all confidential information must have been removed prior to the submission to the Registry. An index to and the text of the decision in the Registry would be made available to the public online or in paper form on request.[302]

The Islamic Council of Imams—Canada, recognizing that most of the concern with respect to arbitration was directed at Islamic personal law, expressed a willingness for oversight of Muslim arbitration decisions, even if other decisions were not being similarly monitored. As an interim measure, they proposed that:

> A five-member team be established as a pilot project to monitor decisions of the tribunals. The members of this team should comprise of:
> - Two Muslim lawyers, one female and one male;
> - Two Muslim qualified Scholars from two major sects, one Sunni and one Shi'a;
> - A Judge or legal expert from Attorney General's office.
>
> Our Council's Coordinator, Imam Abdul Hai Patel, offers his services in his capacity as Human Rights commissioner to the panel to ensure compliance with the Human Rights Code of Canada.
>
> The panel should be empowered to:
> - Approve establishment of tribunals;
> - Monitor their decisions; and
> - Assist the Judges in the Appeal process.[303]

While other respondents in the Muslim community agreed that there should be Islamic-based oversight, some were quite sceptical about having the oversight body under the

[302] Submission of Canadian Council on American-Islamic Relations (CAIR—CAN) (August 10, 2004).
[303] Submission of Islamic Council of Imams—Canada, 'Islamic Arbitration Tribunals and Ontario Justice System' (July 23, 2004).

auspices of the Council of Imams, voicing concern that this model might not provide a broad enough perspective to gain the community's confidence in the process. Alternatively, Wahida Valiante of the Canadian Islamic Congress suggested an oversight body, widely representative of the Muslim community, composed equally of men and women, and including the expertise of lawyers, social workers, psychologists, and others working on specific issues, such as violence against women, within the Muslim community.

Another variation on the theme of oversight was the suggestion that the law be amended to make all arbitration awards in family law matters, and in particular in religiously-based arbitrations, advisory only. In this way, like separation agreements or divorce settlements, arbitration decisions would be scrutinized by the court in a routine manner.

Ongoing Review of Family Law Practice in Arbitration

Many respondents suggested that, once arbitration decisions are collected, there should be regular reviews of the results. LEAF proposed:

> There should be a mandatory review of registered decisions on a periodic basis. After two reviews, there should be a report on the extent and nature of family law disputes being arbitrated, on compliance with Ontario family law, and on possible concerns for vulnerable women. The review should include consultation with potential stakeholders, including representatives of a diverse range of women's groups. Recommendations for change should include recommendations about the requirement for further review or study. [304]

Public Education and Community Responsibility

During the Review, many participants commented on the apparent lack of awareness and understanding of Ontario and Canadian law among the general population, specifically with respect to family law issues. While this lack of knowledge is of great concern in the court-based system, it becomes even more acute when parties are considering the use of arbitration under some other form of law. Many asked how parties can "choose" one law over another when they may not have accurate and complete knowledge of how either law may impact their future lives. Preeya Rateja, a member of the Muslim Police Consultative Committee, echoed the sentiments of many other respondents in stating,

> The participants, as well as the public at large, should be made aware through education and clear language, about the arbitration process and any other options that can be made available to them. Specifically, this knowledge will empower women who have been abused and children who have been exposed

[304] Submission of Legal Education and Action Fund (LEAF) (September 17, 2004).

> to woman abuse, to make more informed decisions about their lives. The public also benefits from this knowledge as it helps remove myths and/or any misconceptions about this process.[305]

It is important to acknowledge the efforts that have been made to inform the public of their rights and responsibilities under Ontario family law. The Ministry of the Attorney General, with assistance from the Department of Justice Canada, has developed an excellent resource booklet, entitled "What You Should Know About Family Law in Ontario"; many respondents were familiar with this resource but pointed out that it is only available from the government in English and French and may not be distributed evenly in all communities. Although this guide does discuss the mediation process, the option of arbitrating family law issues is not mentioned, much less explained. The Ministry has also developed Family Law Information Centres in family court locations, in an attempt to ensure that those requiring information have an accessible and reliable source available in the courts themselves. Again, these services are provided in English and French but may not be able to be provided in the multitude of languages now used by our increasingly multicultural community.

Similarly, organizations such as Community Legal Education Ontario (CLEO), the Barbra Schlifer Commemorative Clinic, and other legal clinics have worked hard to develop written educational materials and to distribute these widely. Most of the educational resources available focus on criminal law or on such administrative law areas as housing, social assistance or workplace injury tribunals. The legal clinics often work in conjunction with other community service organizations, in particular settlement, English-as-a-second-language, and violence against women services, to provide public information sessions that are culturally sensitive and meet the wide range of legal questions that may arise. Nevertheless, many respondents pointed to the obvious lack of accurate and publicly available legal information on family law matters in languages other than English and French and in accessible formats for those facing specific communications challenges as a serious problem for most vulnerable and marginalized people in our society.

Although there was some unanimity in identifying the problem of lack of knowledge around family law issues, there was little agreement on the best method to resolve it or where the responsibility should lie for remedying the problem. Some respondents stressed the value of a general public legal information campaign, while others concentrated on delivering information to specific vulnerable groups. Some believe the education needs to happen at the time a family law issue arises and the parties are considering their options around dispute resolution, putting the onus on lawyers to ensure that clients understand the impact of their choices. Others believe that specific communities, wanting to advocate for religiously based arbitration, should be responsible for ensuring that all members of the community have access to the specific information required to meet their individual needs. Some favour written materials, while others advocate for multi-media approaches.

[305] Submission of Preeya Raeja (August 20, 2004).

Many commentators told the Review that government has a responsibility to develop and deliver public legal education materials to generate awareness, to inform citizens of their legal rights and obligations and to ensure access to the services and resources available in the province. All respondents were concerned about the cost implications of effective educational efforts and most looked to government as a source of funding. However, participants were clear that government cannot and should not act in isolation. They suggested that government should take a leadership role in providing a platform to bring together all interested groups and community organizations to assist in the development of appropriate resources. Government can help communities increase their capacity through respectful partnerships. Respondents felt that government-community partnerships are necessary to ensure that public education material is accurate, accessible, gender sensitive and culturally appropriate.

Such a model would likely require some changes to the funding programs currently in place. Many commentators were critical of the way funding criteria affect their ability to access public education assistance. In particular, many felt, given their past experience, that funding through the Ontario Women's Directorate or the Victim's Justice Fund may not be available to them if they wish to provide education in a non-gendered way or through a religiously-based organization. Several Muslim respondents indicated that efforts focussed only on women and coming from a feminist perspective might exacerbate some of the tensions around gender roles within their communities.

The Review heard from a number of community-based groups that are already providing educational services around religiously-based mediation and arbitration. Earlier I provided extensive information on the Ismaili Conciliation and Arbitration Boards and the Masjid El Noor mediation and arbitration services, both of which have made education about the options and the process paramount to the provision of their services within their communities. Many respondents believe that those offering the services have the primary responsibility to ensure that their clients are fully informed of their rights and responsibilities under both Ontario and the religious law to be used; some felt that this responsibility should be included in regulations.

Most of the religious leaders advocating for religiously-based arbitration recognize that education is essential if parties are to have real choices with respect to dispute resolution mechanisms. They tended to suggest that the religious leadership needs to accept the primary responsibility for education. Although there was an expressed willingness by most advocates to provide such education, there were concerns about building expertise and finding resources to ensure excellence in the information to be given. Some respondents were fearful that the information produced by religious leaders might be one-sided, forcing community members toward a particular path, as opposed to ensuring informed choice. Others were concerned that some leaders in the community may act as gate-keepers to educational resources, using their power to block information about the possible drawbacks to mediation and arbitration.

It appears from the responses to the Review that a collaborative approach, involving many facets of the community, would likely be the most effective approach to public

education. During the Review, I met a number of dedicated groups and individuals already taking a leading role in informing members of their faith communities about their rights and the services available to them.

One of these groups, the Canadian Coalition of Jewish Women for the Get[306] was formed in 1988 to "reach as many Jewish people as possible in order to explain the need for a GET (Jewish religious divorce), to expose the misuse of Jewish law as a tool for extortion and emotional abuse, and to find the means for victims of GET abuse to be freed."[307] The group has developed a series of help lines, an information booklet, and an instructional video to inform Jewish women of all the options available to them under both Canadian and Jewish law. The materials explain the Jewish divorce process, what to expect at the Beit Din, and how a Jewish divorce differs from a civil divorce. The Coalition works to inform not only the Jewish community, but also the broader legal and social service communities, of the ways in which the potential problems which may be faced by Jewish women going through the *get* process can be alleviated. The Coalition was able build a strong movement to change the federal Divorce Act and the Ontario Family Law Act to prevent recalcitrant spouses from withholding the *get*. The group provides a strong role model to other women's groups concerned about potential abuses of religiously-based mediation and arbitration.

In the Muslim community, a number of groups are already in existence and providing support to the vulnerable in their midst. The Review saw many examples of women working at the grassroots level to educate both the Muslim community and the general public about Islam and to promote the collective well-being of their community. These women have been working for years with a variety of sectors, including social services, education, settlement agencies, media and faith-based organizations to enable them to provide better services to Muslim women, people with disabilities, new immigrants and refugees from diverse backgrounds. The Canadian Council of Muslim Women is one group that has worked hard since its inception within the various Islamic communities to enhance the role of women within the faith and to foster an understanding of the principle of equality so central to Islamic teachings. As I met with other groups, such as the National Organization of Immigrant and Visible Minority Women of Canada, the Ontario Council of Agencies Serving Immigrants, the Council of Agencies Serving South Asians, the Islamic Humanitarian Service, the Muslim Canadian Congress, and others, I was struck by the wealth of talent, knowledge and leadership available within the Muslim community.

On several occasions, respondents emphasized the importance of educational endeavours coming from within the affected communities. Ouahida Bendjedou observed:

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[306] The Coalition is comprised of several cross-denomination Jewish women's organizations, including Emunah Women of Canada, Hadassa-WIZO Organization of Canada, Jewish Women International of Canada, Na'amat Canada, National Council of Jewish Women of Canada, Status of Women Committee of the Canadian Jewish Congress, Toronto Jewish Women's Federation, Women's Canadian ORT, Women's Federation CJA, Women's League for Conservative Judaism.

[307] Norma Baumel Joseph, Evelyn Beker Brook, Marilyn Bicher, ' 'Untying the Bonds' Jewish Divorce: A GET Education Video and Guidebook' (The Coalition of Jewish Women for the Get, 1997).

> An important core work is necessary among the Muslim community. First Muslim women's education should be done by organizations which represent Muslim women in Canada (e.g. the Canadian Council of Muslim Women). By education I mean, first to teach them English, because a major reason of Muslim women's exclusion of Canadian society is that they don't know the language of the country they immigrated into; consequently, they remain dependent on their husband. Second, by education, I mean to teach them Islam in order for them to know what rights they own under Islam. [308]

At one meeting with a group of young Muslim women, participants felt strongly that the responsibility lies within their own community organizations and institutions to develop and disseminate information about rights, obligations and options with respect to family law. These young women felt insulted by the suggestion that Muslim women do not have the knowledge, strength and will to understand and take action to protect the vulnerable within their own communities. Several respondents pointed out that there are ongoing efforts to build connections within the Muslim community and to build consensus on issues affecting the community. One such organization, the Coalition of Muslim Organizations, is an umbrella organization of 35 Mosques and community agencies in the Greater Toronto Area and was seen as a possible vehicle for ensuring a community-based delivery of education about Muslim personal law and its interface with Ontario family law.

The Review sought out advice on how to identify best practices for the development and distribution of community legal education. Both CLEO and the Barbra Schlifer Commemorative Clinic were most helpful. Staff suggested that any public education strategy would be most effective if it incorporates the following elements:

- Defining and researching target audiences, and ascertaining the availability of existing written materials in relevant languages and formats; determining whether material is written in a culturally appropriate way, if the translations and legal information are accurate, and if the language is accessible.
- Development and delivery of a strategy of partnership with appropriate community agencies. Any agencies involved must have credibility in the community as well as an understanding of the issues that need to be communicated to the public. Champions within the community are also essential, as is the support of faith leaders or community elders who have a wide sphere of influence.
- Effective distribution plan to ensure that materials will be available in places that target audiences are likely to frequent. In the case of immigrant women, in particular, materials should be distributed to LINK programs, settlement agencies, ethno-specific agencies, community- based health clinics, skills training programs, including language training, faith-based institutions and mainstream organizations with programs that immigrant women may attend.

[308] Submission of Ouahida Bedjedou (September 2004).

- Broad-based approach to media resources, including making use of language-specific radio, television and newspapers in ethno-specific communities in order to effectively reach wide audiences.