

## Is family law really better than Sharia?

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Having practised family law in Ontario since 1985, I watched with some amusement the recent uproar over whether or not Ontarians should be allowed to arbitrate their matrimonial disputes using Sharia law.

In their haste to condemn what they view as an unjust and undesirable body of law, opponents of Sharia arbitration overlook the corollary implicit in their position: namely, that ordinary Ontario family law -- as specified primarily in the Family Law Act and the Divorce Act -- is a just and desirable code for resolving matrimonial disputes. To me, this proposition is laughable. Blinded by their fear of radical Islamists, Sharia opponents have played right into the hands of a different set of radicals: radical feminists.

Although gender-neutral in its language, today's family law legislation was enacted over the past two decades primarily with the intention of benefiting women at the expense of men. Family law today has institutionalized injustice at the expense of justice.

The Divorce Act, for instance, provides that a spouse's "conduct in relation to the marriage" is irrelevant in determining her entitlement to spousal support. Although superficially gender-neutral, this provision actually protects women (who comprise the overwhelming proportion of support recipients) from the consequences of their own blatant marital misconduct -- acts such as adultery, desertion and violence. Countless Canadian men pay support to their estranged wives and former wives despite the fact that these women deceived them, cuckolded them then departed to live openly with new lovers or new husbands. Other men are paying support to women who viciously assaulted them.

When I first began practising family law, such behaviour would have disentitled a wife to support. Nowadays, instead of punishing women for breaching their contracts, the law rewards them. Is this the legal system we hold out as an exemplar of justice? Then there are the child custody and support laws. The vast preponderance of custodial parents and child support recipients are mothers. Men who seek custody generally face an uphill battle. I have heard several judges openly admit to being biased in favour of granting custody to mothers.

Nevertheless, the law requires fathers to pay support in prescribed amounts even if the mothers poison their children's minds to the point where the kids refuse to speak to their fathers. Fathers have to pay even if the mothers uproot their children and drag them off to another province so that the fathers rarely or never get to see them.

Fathers have to pay even if the mothers are wealthier than they are and don't need the money. Several Canadian men are known to have committed suicide as a result of these laws. Others have fled the country. Is this the legal system we consider superior to religious arbitration?

Finally, there are Ontario's property equalization laws -- a code riddled with irrational, arbitrary provisions and flukes of timing. For instance, suppose two individuals who each own their own homes get married. They flip a coin and decide to occupy the husband's house, while renting out the wife's. Then they separate. The wife gets to keep the value of the house she owned as of the date of marriage, without splitting it. The husband, however, has to divide the entire value of his house with the wife and cannot deduct the equity he brought into the marriage.

Or suppose the wife's parents bestow a stock portfolio on their daughter. Not to be outdone, the husband's parents give their son a house. The couple moves in, then separates. The wife gets to keep her parents' gift without dividing it with her husband. The husband, by contrast, must divide the value of his parent's gift with his wife, merely because it happens to be a "matrimonial home" rather than stocks.

But there's a further wrinkle. If the wife's parents gave their daughter the stocks during the marriage, she wouldn't have to divide any of it with her husband. However, if they had given the stocks to her before the marriage, she would have to give her husband half the increase in value which occurred between marriage and separation. Perfectly comprehensible? Not.

These capricious property laws actually are gender-neutral. The same bizarre outcomes would occur regardless of which spouse owned what property. I have assigned genders to the spouses only because the examples become extremely difficult to follow if gender-neutral language is used. I suspect, however, that the original impetus to grant special status to a "matrimonial home" was rooted in a belief that it would more frequently favour wives -- a strategy which may in fact have backfired. Nevertheless, the point is that Ontario's matrimonial laws are hardly a shining example of rationality, impartiality or justice.

Now that Premier McGuinty has promised to revamp the existing Arbitrations Act by outlawing religious tribunals, he should consider taking a broom to the rest of the sorry mess.

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