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Enforcing Mahr in the Canadian Courts

By Fareen L. Jamal

Ontario family lawyers have been educated about the Jewish “get”. Since the Supreme Court of Canada heard *Bruker v. Marcovitz*, 2007 SCC 54, [2007] 3 S.C.R. 607 ("*Bruker"*), the terms “get”, “agunah” and “mamzer” are known and understood by family law lawyers. In fact our provincial and federal legislation deals with the removal of religious barriers to remarriage as a consequence of the “get”.

Many family law lawyers, however, are not familiar with “mahr”, “kafala” or other Muslim family law concepts. Lawyers who practice without an awareness of these foreign family law concepts are doing their Muslim clients a disservice. For Muslim clients, religiously based marriage agreements are common, but often lawyers are unaware of their existence or implications.

Mahr (also spelled Maher, Mohr and Mehr) is a Muslim tradition in which an agreement is entered into prior to marriage concerning a sum of money that a groom promises to pay his bride in the event of a marriage breakdown or death.

The Encyclopaedia of Islam [E.J. van Donzel et al., eds., *The Encyclopaedia of Islam*, new ed., vol. 6 (Leiden: E. J. Brill, 1991) p. 78.] defines mahr as *“the gift which the bridegroom has to give to the bride when the contract of marriage is made and which becomes the property of the wife.”* [emphasis added]

A husband is obliged to pay this sum to his wife. It provides some financial security for the wife. There is a prompt *mahr* (*muajjal*), which is paid at the time of the marriage, and deferred *mahr* (*muwajjal*), to be paid only if the couple divorces or husband predeceases the wife. It is common for the bulk of the mahr to be deferred, both because young husbands do not have the finances to pay a large sum up front and because many wives see a large mahr as only necessary if their husbands are no longer supporting them. Where it is not specified which part is prompt and which part is deferred, Sunnis and Shias differ: Shias regard the whole mahr as prompt, and Sunnis regard one-half of the amount as prompt and the other half as deferred.

The mahr is not considered the settlement of all future financial dealings between the couple in the event of divorce or death. In fact, the Qur'an, the laws of several Muslim countries, and several schools of thought, state that the wife is entitled to maintenance and any of her own property *in addition* to the mahr upon divorce.

In Islam, doctrinal dispute is expected, as Islam offers no hierarchical authoritative interpretation of religious principles. There are several different schools of thought, which sometimes differ in aspects of their interpretation of the mahr agreement. Individuals are not bound to one Islamic school of thought but have the right to switch to different schools on different issues.

The Supreme Court of Canada in 2007 in *Bruker,* which dealt with an agreement by a Jewish man to give his former wife a get, held that the fact that a dispute had a religious aspect did not make it non-justiciable. Individuals can convert their moral obligations into legally binding obligations (as long as the object of the contract is not prohibited by law or public policy). The Supreme Court overturned the Quebec Court of Appeal, which had held that the court should not get into the “religious thicket”, and that these were not civil obligations but “le devoir morale, le devoir de conscience”. In *Bruker,* the Court held that it would order the fulfillment of undertakings provided for in religious marriage contracts if the requirements for a civil contract under the provincial legislation were met. The husband paid the wife damages for failing to comply with a freely negotiated agreement.

Marriage in Islam is a Contract

It should be emphasized that marriage in Islam (and also in Judaism) is a civil contract. There is nothing sacred about the solemnization of marriage as is familiar with the Christian traditions. Although Muslim wedding ceremonies often have a religious component, this is not essential for celebration of an Islamic marriage. Moreover, unlike in Christianity, in which the sacrament is indissoluble except in very rare circumstances, a Muslim marriage may be brought to an end by a simple divorce. The Quran itself speaks about divorce and the fair treatment of divorced wives.

Courts that have found that Islamic marriage or mahr is a 'religious' agreement misunderstand the nature of Islamic matrimonial culture. Canadian and English customs of marriage are more religious in character, despite the secular nature of their legal systems.

Until the legislatures in Canada enacted modern matrimonial property legislation, prenuptial agreements purporting to deal with marriage breakdown were unenforceable on public policy grounds, since they undermined the institution of marriage. Mahr and Muslim marriage contracts, however, have been recognized since time immemorial.

In light of this, mahr is not a matrimonial right. It is not a right derived from the marriage, but is a right *in personam*, enforceable by the wife or widow against the husband or his heirs. In a strict contractual sense, the right is not derived from the marriage, but from a contractual agreement between two consenting adults.

Symbolic Importance of Mahr

Mahr must be paid to the wife herself, and not to her guardian or parents. It provides financial independence and security to a wife in the event of her husband's death, or a separation. It recognizes that women are often more financially vulnerable than men in many Muslim societies, particularly after a divorce.

Since the property belongs to the wife, it is not a bride price. In pre-Islamic Arabia, "bride price" was a customary payment to the bride's father. Islam introduced mahr as a payment to the bride for herself absolutely.

Mahr is given by the husband as a mark of respect for his wife-to-be, and to express his love for her. The payment of mahr is not a condition which affects the validity of the contract, nor is it an essential requisite for marriage. Therefore, if the mahr is not mentioned in the contract, the contract is still valid. Marriage is not exactly "consideration" for mahr, nor a gift to the wife to allow intercourse with her.

Mahr is sometimes rendered into English as 'dower,' although this translation is problematic. Dower under the common law was a husband's contribution to the wife on marriage. However, as married women in England, and Canada, could not own property until the late nineteenth century, it was only on her husband's death that she was entitled to any dower - usually a life interest in the husband's estate. This is distinguishable from mahr, which gives greater recognition to the equality of women than that of 'dower'. A consequence of the obligation to pay mahr is that in Islam, a woman is treated as an individual in that she personally receives mahr, and acquires an independent legal status, denied to her Western counter-parts until the late nineteenth century.

Some courts have referred to mahr as 'dowry': this is entirely inaccurate. In old English law, dowry was the contribution of the father of the wife to the marriage, paid to the groom. Dowry is not part of the Muslim legal tradition, while mahr is an integral concept of Muslim marriage law.

The structure of the mahr agreement reflects the inherent purpose of easing financial and social inequities between the husband and wife. The deferred mahr saves the wife from complete financial destitution if the husband ceases to support her financially. Upon the husband's death, the deferred mahr is paid from the husband's estate before any other debts. It is, in a sense, the wife's "security deposit" for the marriage in case she suddenly loses her husband and her means of financial support. And, it is to deter the husband from divorce, by making it more costly.

The terms of the mahr usually reflect the relative bargaining power and wealth of the parties in the negotiation of contractual obligations related to the family. The sum can range from a token amount of one dollar to millions of dollars. Any kind of property may be settled as mahr, including beneficial interests such as benefits from any business or benefits arising out of any life insurance policy. Sunnis and Shias differ on whether a father is liable to pay the mahr if his son has no means to pay for it.

Under some Muslim schools of thought, if a wife seeks the divorce, she typically forfeits her right to the mahr, unless she does so with cause, by proving her husband is at fault. There is a difference of opinion between scholars regarding when a woman forfeits her right to mahr, if ever. The issues are controversial and complex. This is further complicated in no-fault divorce jurisdictions, such as Canada. Canadian courts may enforce mahr agreements irrespective of who initiated the divorce, or why, as the mahr agreements typically contain no reference to the different forms of divorce. I believe this is an appropriate approach and will inspire reform of the mahr agreements, if parties still desire these terms.

Judicial Enforcement of Mahr

Canadian courts have been divided on the enforcement of mahr. The challenge has been enforcing Canadian contract law while remaining sensitive to cultural and religious traditions. Appendix A to this paper is a chart of select cases outlining how courts have addressed mahr in Canada.

The courts initially refused to enforce "*a nominal award in relation to a so-called "mahr" or "morning-gift","* in 1987, [*Vladi v. Vladi* (1987), 7 R.F.L. (3d) 337, 1987 CarswellNS 72 (N.S.S.C), para. 11.] and viewed mahr as a contractual donation which offended gender equity principles in 1991. [*M.H.D. c. E.A.* (1991), Droit de la famille -1466, 1991 CarswellQue 221 (C.A.Q.).] The British Columbia Court in 1996, in the case of *Nathoo v. Nathoo,* [1996] B.C.J. No. 2720, 1996 CarswellBC 2769 (B.C.S.C.), enforced a $20,000 mahr, and Justice Dorgan stated at paragraph 25,

> "Our law continues to evolve in a manner which acknowledges cultural diversity… Attempts are made to be respectful of traditions which define various groups who live in a multicultural community. Nothing in the evidence before me satisfies me that it would be unfair to uphold provisions of an agreement entered into by these parties in contemplation of their marriage, which agreement specifically provides that it does not oust the provisions of the applicable law."

In 1998, Ontario still refused to enforce mahr agreements, and in *Kaddoura v. Hammoud*, [1998] O.J. No. 5054, 44 R.F.L. (4th) 228 (Ont. Gen. Div.), the court held that it should not determine the rights and obligations of the parties under an agreement providing for mahr, as it would lead the court into the *"religious thicket"*, as *"the obligation of the mahr is a religious obligation and should not be viewed as an obligation that is justiciable in the civil courts of Ontario."* [paras. 25 and 26]. The Ontario court wrongfully equated mahr to an obligation in a Christian marriage *"such as to love, honour and cherish, or to remain faithful,"* [para. 25], and expressed a clear desire to keep church and state separate under the law (mentioning the United States Constitution, as there is no codified separation of church and state in Canada).

In 2000 and 2004, two more cases in British Columbia enforced the mahr agreement, of $51,000 and $51,250 respectively, in addition to the division of family assets and spousal support [*Amlani v. Hirani*, 2000 BCSC 1653, 13 R.F.L. (5th) 1 ["*Amlani*"], and *M. (N.M.) v. M. (N.S.).*, 2004 BCSC 346, 26 B.C.L.R. (4th) 80.].

By 2005 in Ontario, courts were *"prepared to enter the 'thicket' and find that (mahr agreements) represented more than mere religious significance to the parties and that it did bind them civilly,"* [*Khan v. Khan*, 2005 ONCJ 155, 15 R. F. L. (6th) 308, para. 32]. However, the circumstances in the case before the court in *Khan v. Khan*, did not justify enforcement.

In Alberta, in 2008, the court in *Nasin v. Nasin,* 2008 ABQB 219, 53 R.F.L. (6th) 446, found that mahr was a prenuptial contract, but not enforceable as the formalities were deficient, including the fact that there was no written contract about the mahr between the parties. This case highlights that to be enforceable in Canada, the mahr agreement must be considered a valid "marriage contract" and must be in writing, signed and witnessed. In addition, there may be issues of disclosure, understanding of the obligations assumed, and absence of duress. In short, mahr agreements have to meet the provincial contractual validity requirements in order to be enforceable.

The Ontario Court of Appeal in 2011, in *Khanis v. Noormohamed,* 2011 ONCA 127, 91 R.F.L. (6th) 1., confirmed that mahr is indeed enforceable in Ontario. In 2009, the trial judge held that it was a valid marriage contract under Ontario law, and the Court of Appeal in 2011 confirmed that the terms of the mahr agreement were valid and binding. The court applied these principles and enforced the mahr in *Ghaznavi v. Kashif-Ul-Haque*, 2011 ONSC 4062, 5 R.F.L. (7th) 241.

Interestingly, the B.C. court refused to enforce two mahr agreements in 2012, [*Aziz v. Al-Masri*, 2011 BCSC 985, [2012] W.D.F.L. 1573, and *Delvarani v. Delvarani*, 2012 BCSC 162, 2012 CarswellBC 298], and Ontario refused to enforce the mahr agreement in *Yar v. Yar,* 2011 ONSC 301 ["*Yar v. Yar*"](unreported at this time; appeal pending), in 2011. Before I comment about *Yar v. Yar*, I wish to highlight some salient points.

The principles enunciated by the courts is that like all domestic contracts, the enforceability of mahr will be considered in light of the specific facts of each case. The precise wording of the mahr, the circumstances of its execution (for example, was it executed minutes before the actual wedding ceremony, duress, disclosure), any facts that would suggest unconscionability, and the provincial legislation regarding prenuptial agreements will likely inform the analysis.

The courts have indicated what they expect from these agreements in order to enforce them. This has resulted in more precise written terms in some of these standard form contracts so that they are drafted with enough specificity to meet the requirements of a valid and binding contract. However, the parties' bargaining and subsequent contracting must also meet the voluntariness standards and be conscionable.

Mahr agreements are typically standard form contracts or boilerplate agreements where the parties' names, details and mahr amount is handwritten into the agreement. Appendix B is a sample Mahr agreement which is appended to the Judgment in *Amlani v. Hirani.* This is an Ismaili mahr agreement. Interestingly, four of the cases in which mahr was enforced (*Khanis v. Noormohamed*, *M. (N.M.) v. M. (N.S.).*, *Nathoo v. Nathoo* and *Amlani v. Hirani*) involved adherents to the Ismaili school of thought who were married in Canada or the U.S. The courts in these cases awarded the amount of the mahr as an additional benefit for the wife, on top of what she was entitled to if there were no mahr, in accordance with the terms of their standard Ismaili mahr agreements. As such, the Ismaili boilerplate agreement is a standard for enforcement, assuming all the other elements necessary for contractual validity are complied with, including sufficient time to negotiate the terms and understand the obligations assumed.

***Yar v. Yar* (2011)**

Qasim Yar and Roya Yar, both medical doctors, were married in a civil ceremony in England in 1991, and an Islamic marriage ceremony in Germany in 1993. They separated after 13 years. The mahr agreement provided for a payment of $741,643 and was a boilerplate contract with vague enforcement provisions. In order to interpret the agreement, the court required parol evidence from the parties to flesh out the terms of the skeletal agreement, and opinions from experts in Islamic law. Interpreting the boilerplate mahr provisions in this way may have instead confused the parties' original intent.

The court accepted the opinion of one expert over another and held that "*the Islamic marriage between the parties is void as it was conducted under circumstances that <u>contravene Islamic law</u>… (as they) were married during this period of time without performing a marriage based on Islamic law… and (the Respondent was) an atheist and had relinquished his Islamic faith."* (paras. 14 and 15; emphasis added). The court proceeded to state, *"<u>according to Islamic law</u>, a Muslim woman can only marry a Muslim man. If a woman marries a non-Muslim man, all conditions attached to the marriage contract become null and void."* (para. 16; emphasis added)

The court further found that the parties had no intention of performing an Islamic marriage, and the purpose of the marriage was <u>not to fulfill a religious requirement</u> but to satisfy the bride's father: the Islamic marriage was *"staged for ostentatious reasons rather than <u>for religious purposes</u>"* (para. 19) and the amount claimed for Mahr of $741,643 (CDN) was *"completely out of line and unreasonable."*

The court finally held, *"if I am in error with respect to the validity of the Islamic marriage, then the amount that the husband paid for the wedding ceremony ($30,000 plus a mink coat) at the time of the marriage <u>is sufficient to satisfy his obligations under the Maher</u>.*" (para. 20; emphasis added)

In *Yar v. Yar*, the court is deeply entangled in the "religious thicket" in determining whether or not a contract "contravenes Islamic law", and by independently determining religious doctrine. The contract met all Ontario legal formal requirements, was voluntarily entered into, was understood by the parties, and was negotiated. By

abstracting the purely secular principles of law, the mahr should have been enforced. It appears that the "exorbitant" amount may have persuaded the court against enforcement, but the decision creates a precedent for inter-faith marriages. Moreover, the court misunderstands marriage in Islam and implies a "sacramental" element by suggesting a "religious purpose" of marriage in Islam.

This case highlights the use (and misuse) of expert witnesses to provide accurate interpretations. These expert men often confuse their cultural beliefs with accurate interpretations of Islam, and fail to advise the courts of variations in schools of thought. The judge, relying on the expert's opinion, may not realize that this is just one interpretation of Islamic law, and may create binding precedents representing only one school of thought. Courts can become inappropriately entangled in varying interpretations of Islamic law, and worse choose between different Islamic schools of thought, as the court did here – resulting in inconsistent and misleading precedents. The differences of opinion regarding the various Islamic schools of thought and differing geographic traditions make it difficult for courts to know who constitutes a reliable source. In my opinion, a judge should have a basic understanding of what mahr is, such as outlined in this article, but it is best for courts to use only the explicit terms of the agreement, abstract secular principles of law, and a judge's equitable inclinations in interpreting the agreement.

As interfaith marriages increase in number, there is a development within various Islamic schools of thought, which sanction the interfaith marriage between a Muslim individual and a non-Muslim individual.

Regardless, Mr. Yar voluntarily entered into the mahr agreement (and perhaps represented that he was in fact still Muslim). He knew its terms: he agreed to those terms. The sequence of events does not impact or undermine the validity of the contract or the marriage. Having entered into a contract that satisfies the contractual validity rules, when the question of enforcing the payment of the mahr arises, the husband cannot plead its terms are now unconscionable and say by way of defense that the amount was excessive and beyond his means. Whether the husband was a non-Muslim, a non-practicing Muslim, or an atheist, the mahr agreement should have been enforceable as a contract: it is a valid contract pursuant to the provincial rules of validity.

Mahr and Other Claims Under Family Law Legislation

Mahr has been enforced in addition to the equalization claims pursuant to provincial laws, and in addition to support claims under family law legislation. There is strong support for this approach in most Muslim communities as this is the most representative of the mahr's true intention.

In particular, the four Ismaili cases in which mahr was enforced had marriage contracts which included the words *"in addition and without prejudice to and not in substitution of all my obligations provided for by the laws of the land"*, which is typical of the Canadian Ismaili standard form mahr agreement. The courts in these cases awarded the amount of the mahr as an additional benefit for the wife, on top of what she would get if there were no mahr.

When entered into in Canada, mahr agreements contemplate bargaining in addition to default divorce laws, with expectations of Canadian enforcement. When formed in other countries, Muslim parties most likely do not anticipate litigating in Canadian courts and confronting the equitable property division laws. Courts are then faced with whether to enforce the mahr as supplemental to the claims under the family law legislation, when the mahr agreement does not have a provision stipulating this.

Of note, the Ontario Court of Appeal in *Khanis v. Noormohamed*, held that the trial judge was correct in excluding the mahr from the wife's net family property; otherwise, treating it as an asset by the wife and a liability by the husband would render the contract meaningless.

Mahr agreements should not be applied to exclude a wife from traditional property division upon dissolution of marriage, unless this was specifically stated. Even in these cases, if the wife is in a vulnerable financial position and the *mahr* amount is small, it would be unconscionable *not* to set aside the agreement entirely as the wife would not receive an adequate share of marital property or appropriate support. The wife would then be in the exact financial position that the *mahr* was specifically designed to avoid.

An award of mahr may have an indirect bearing upon a wife's claim for spousal support, if the assets are significant and/or have possible income earning potential. In this case, I argue that Mahr awarded should be a factor considered in the location of the range of spousal support, but should not terminate spousal support. A husband should not claim absolution from his obligation to spousal support, unless the quantum of mahr paid is a reasonable substitute and provides enough support to enable the wife to become self-sufficient.

The Virginia case of *Chaudhary v. Ali*, No. 0956-94-4, 1994 Va.App. LEXIS 759, is an unusual example of a husband seeking to enforce a provision of the marriage contract, as a single lump-sum payment, which would free him from future alimony obligations. The Virginia Court of Appeals refused to enforce the 'nikah nama,' covering spousal support, as it failed to comply with Virginia's laws on ante-nuptial contracts. The court decided that the contract was not negotiable, required no disclosure of assets, and the wife received no legal advice prior to agreement. These safeguards were expected even though the agreement was made in Pakistan, and it was unlikely that a party living in Pakistan would obtain legal advice from an American lawyer. There was also no discussion of matrimonial culture in Muslim countries, where disclosure of assets is not expected.

Conflict of Laws

According to s. 15 of Ontario's *Family Law Act*, R.S.O. 1990, c.F.3, the property rights of spouses arising out of the marital relationship, are governed by the internal law of the place where both spouses had their last common habitual residence or, if there is no place where the spouses had a common habitual residence, by the law of Ontario.

Canadian principles of validity of contract determine if the contract should be enforced. Pursuant to s. 58 of the *Family Law Act*, the manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that:

> (a) a contract of which the proper law is that of a jurisdiction other than Ontario is also valid and enforceable in Ontario if entered into in accordance with Ontario's internal law;
>
> (b) s. 33(4) (setting aside provision for support or waiver) and s. 56 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and
>
> (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not enforceable in Ontario.

There is no tradition in Islam requiring disclosure of assets or the seeking of legal advice prior to matrimony. There is usually no formal disclosure of financial information, other than what can be generally inferred from each family's status within the community and their job titles. These are not factors many Muslims contemplate at the time of the agreement's formation, and these requirements are clearly at odds with Muslim practice, particularly in other countries.

Conclusion

Some Muslims in Canada separate and divorce, and some Muslim husbands die before their wives. It is imperative that family law lawyers and judges understand the concept of mahr. A woman should have the benefit of her bargained-for agreement. A spouse who chooses not to honour his agreement to pay mahr should not be condoned for this reprehensible conduct. Given the diversity in Canadian Muslims, courts interpreting Islamic marriage contracts cannot assume one set of norms. Contractual law principles must also be given appropriate consideration. Deciding whether to enforce a mahr agreement, the courts should continue to evaluate each case on its merits to determine the most equitable solution.

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APPENDIX A – CHART OF SELECT MAHR CASES

Case	Mahr Amount	Mahr Enforced	Comments/ Quotable Quotes
Vladi v. Vladi (1987), 7 R.F.L. (3d) 337, 79 N.S.R. (2d) 356, 196 A.P.R. 356, 39 D.L.R. (4th) 563, 1987 CarswellNS 72, (N.S.S.C).	UNKNOWN	NO	Nova Scotia. Equalization payment of $246,500 paid instead of enforcement of mahr (determined as either/or in this case). The court refused to enforce mahr on the basis of 'substantial justice', and invoked the doctrine of renvoi in this interesting case. *"In Iran, a wife in the position of Mrs. Vladi would be entitled to minimal support and a nominal award in relation to a so-called "mahr" or "morning-gift". Otherwise she would have no direct claim against assets standing in the name of her husband.* (para. 11)*"* *"To put it simply, I will not give effect to Iranian matrimonial law because it is archaic and repugnant to ideas of substantial justice in this province.* (para. 30)*"*
M.H.D. c. E.A. (1991), Droit de la famille - 1466, 1991 CarswellQue 221 (C.A.Q.).	UNKNOWN	NO	Quebec. Gender equity principles were discussed. *"With all due respect to the beliefs of the religious authority as well as to those of the husband, the court believes that such traditions, customs and doctrine put before us are not applicable to the wife, and that the court must consider the wedding present discussed above only with respect to the* Quebec Civil Code*"* *Mahr* was viewed as a contractual donation.
Nathoo v. Nathoo, [1996] B.C.J. No. 2720, 1996 CarswellBC 2769 (B.C.S.C.).	$20,000	YES	Husband paid $37,747.17 to wife upon reapportionment of family assets (7% to wife) and $20,000 mahr as additional and separate obligation, for a total of $57,747.17, after less than 9 months of marriage. Justice Dorgan stated, *"our law continues to evolve in a manner which acknowledges cultural diversity… Attempts are made to be respectful of traditions which define various groups who live in a multicultural community. Nothing in the evidence before me satisfies me that it would be unfair to uphold provisions of an agreement entered into by these parties in contemplation of their marriage, which agreement specifically provides that it does not oust the provisions of the applicable law."* (para. 25)
Kaddoura v. Hammoud, [1998] O.J. No. 5054, 44 R.F.L. (4th) 228, 168 D.L.R. 4th 503, (Ont. Gen. Div.).	$30,000	NO	Court held that it should not determine the rights and obligations of the parties under an agreement providing for mahr, as it would lead the court into the "religious thicket" (paras. 25-26). *"The obligation of the mahr is a religious obligation and should not be viewed as an obligation that is justiciable in the civil courts of Ontario."* The court expressed a clear desire to keep church and state separate under the law (mentioning the United States Constitution, as there is no codified separation of church and state in Canada). The court (wrongfully in my opinion) equated mahr to an obligation in a Christian marriage "such as to love, honour and cherish, or to remain faithful." (para. 25).
Amlani v. Hirani, 2000	$51,000	YES	This was an unsuccessful application by the husband for a declaration that the mahr agreement was not a "marriage agreement" for the purposes of s. 61 of the

BCSC 1653, 13 R.F.L. (5th) 1, [2000] B.C.J. No. 2357.			*Family Relations Act*. Agreement provided that mahr " shall be *in addition and without prejudice* to and not in substitution of all of my obligations provided for by the laws of the land'." Wife initiated divorce and yet received mahr. Issue does not appear to have been raised.
M. (N.M.) v. M. (N.S.)., 2004 BCSC 346, 26 B.C.L.R. (4th) 80, [2004] B.C.J. No. 642.	$51,250	YES	$51,250 mahr paid in addition to $101,911 division of family assets and an additional $2,000 monthly in spousal support. *"Mahr has been found enforceable in cases where the Mahr agreements were in writing and expressly indicated that the Mahr amount was in addition to the obligations under the law…"*
Khan v. Khan, 2005 ONCJ 155, 15 R. F. L. (6th) 308, O.J. No. 1923	UNKNOWN	NO	Valid marriage contract in Pakistan was a valid domestic contract under the *Family Law Act* but the waiver of spousal support was deemed unconscionable. The court stated, *"deference should be given to religious and cultural laws and traditions of groups living in Canada… (but) if cultural groups are given complete freedom to define family matters, they may tread on the rights of individuals within the group and discriminate in ways unacceptable to Canadian society."* *"The court is prepared to enter the 'thicket' and find that this document represented more than mere religious significance to the parties and that it did bind them civilly."* (para. 32). "Nikah" bound the parties civilly but in these particular circumstances, did not find it binding on the wife because she did not understand the nature and consequences of the marriage agreement.
Nasin v. Nasin, 2008 ABQB 219, 53 R.F.L. (6th) 446, [2008] 291 D.L.R. (4th) 432, W.D.F.L. 2690.	$10,000	NO	Mahr was a pre-nuptial contract, but it was unenforceable in that case (para. 23 and 120). *"If parties enter into pre-nuptial agreements in a religious context, they will be enforced if they meet the requirements under the Matrimonial Property Act and the courts do not find the contracts invalid for other reasons."* (para. 24). Formalities deficient – this pre-nuptial agreement met none of the requirements: • no written contract about the mahr between the parties although the ceremony was, apparently, videotaped (but not introduced in evidence); • no certificate of acknowledgment that met the requirements of s. 38 of the Matrimonial Property Act; • parties did not receive independent legal advice.
Khanis v. Noormohamed [2009] O.J. No. 2245, 2009 CarswellOnt 3164 (Ont.	$20,000	YES	Ontario Court of Appeal confirmed that mahr is indeed enforceable in Ontario. Trial judge held that it was a valid marriage contract under Ontario law that the parties had entered into at the time of marriage and was therefore enforceable. Payment was in addition to property division pursuant to provincial laws. On appeal, it was further held that the terms of the mahr were valid and binding

S.C.J.). Appeal: 2011 ONCA 127, 91 R.F.L. (6th) 1[2011] O.J. No. 667 (Ont.C.A.).			under *Ontario's Family Law Act*. Husband's appeal was dismissed. The Court of Appeal also found that the trial judge was correct in excluding the $20,000 payment required under the mahr under s. 4(2)6 from the wife's net family property, otherwise, treating it as an asset by the wife and a liability by the husband would render the contract meaningless. (para. 74 of the trial decision, and paras. 9 and 10 of the appeal.)
Droit de la famille - 10717, (2010) 2010 CarswellQue 3072, EYB 2010-172092, 2010 QCCS 1342. (C.S. Que).	1,000 gold coins	YES	Married in Iran. 2½ year marriage. Mahr was one volume of Holy Koran, 1000 gold coins, one mirror and a pair of candlesticks. Paid 100 gold coins, pursuant to Iranian court order. Owed one coin a month for 400 months thereafter, failing which he would be convicted. (Court found that 400 gold coins amounted to CDN $61,088.) Court could not recognize the foreign judgment as materials did not specify which judgment to recognize, and no evidence was heard regarding Iranian law or procedure. The court applied Quebec law as no evidence of Iranian law was introduced, and reduced the gift to $5,000.
Ghaznavi v. Kashif-Ul-Haque [2011] W.D.F.L. 4547, W.D.F.L. 4545, 5 R.F.L. (7th) 241 (Ont. S.C.J.).	$25,000	YES	Wedding and mahr agreement in Brampton, Ontario. Justice Pazaratz found the parties entered into a valid Islamic marriage contract and that the mahr contractual obligation was binding and enforceable as a civil obligation in Ontario courts (para. 30.).
Aziz v. Al-Masri, [2012] B.C.W.L.D. 1838, [2012] W.D.F.L. 1573 (B.C.S.C.).	500 grams of 21-carat gold (worth $21,000)	NO	Iraqi-Canadian man now living in Ontario, and an Iraqi-American woman now living in Vancouver, were married in Jordan before moving to Canada. The mahr in dispute was 500 grams of 21-carat gold, worth about $21,000 at the time (70 grams worth approximately $3,000 was paid as prompt mahr). *"It is clear that our courts have striven to be flexible in cases of this kind, seeking to recognize and accommodate the traditions of other countries and cultures where it is feasible and appropriate to do so. I start from the premise that this is the correct approach, generally.* (para. 3)*"*. Mahr found unenforceable (whether Canadian or Jordanian law is the applicable law by which the Contract should be interpreted) due to technicality in wording of contract (as wife's uncle named as contracting party, although wife signed agreement, and it is not clear that she is the intended recipient of the "dowry").
Yar v. Yar, 2011 ONSC 301 (unreported at this time) – appeal pending.	$741,643	NO	Married in England. 13 year marriage. Both medical doctors. Justice Festeryga accepted the opinion of one expert over another and found that *"the Islamic marriage between the parties is void as it was conducted under circumstances that contravene Islamic law… (as they) were married during this period of time without performing a marriage based on Islamic law… and (the Respondent was) an atheist and had relinquished his Islamic faith."* (paras. 14 and 15).

			"According to Islamic law, Muslim woman can only marry a Muslim man. If a woman marries a non-Muslim man, all conditions attached to the marriage contract become null and void." (para. 16). He further found that the parties had no intention of performing an Islamic marriage, and the purpose of the marriage was not to fulfill a religious requirement but to satisfy the bride's father. The Islamic marriage was "*staged for ostentatious reasons rather than for religious purposes"* (para. 19) and the amount claimed for Mahr of $741,643 (CDN) was *"completely out of line and unreasonable."* *"If I am in error with respect to the validity of the Islamic marriage, then the amount that the husband paid for the wedding ceremony ($30,000 plus a mink coat) at the time of the marriage is sufficient to satisfy his obligations under the Maher.* (para. 20).
Delvarani v. Delvarani, 2012 BCSC 162, 2012 CarswellBC 298, 2012 BCSC 162, 211 A.C.W.S. (3d) 381.	3,000 gold coins ($750,000 or $450,000)	NO	Mahr Agreement appears to have been executed in Iran. *"In this case, I am not satisfied on the balance of probabilities that in fact the parties had any agreement that Mr. Delvarani would pay these 3,000 gold coins to Ms. Javadi. I am not satisfied that this part of the document was completed at the time it was signed by Mr. Delvarani. Mr. Delvarani may have been infatuated with Ms. Javadi at the time of the marriage, but it is difficult to accept he would have committed himself to paying such a large amount of money in addition to any other obligations he might have under the laws of British Columbia."* (para. 209) *"Even if this were a valid marriage agreement under the FRA, it is clearly unfair. Although there was no evidence to prove the value of these gold coins, in her argument, Ms. Javadi asserted that they were worth $450.00 Canadian, but that she would take $250.00 Canadian per coin as compensation. Even this would be $450,000.00. At $450.00 per coin, this would be $750,000.00. Based on the evidence before me, I am simply not prepared to accept that Mr. Delvarani would have agreed to such an amount, nor would it have been a fair agreement as contemplated by the FRA. This is so particularly in light of the very short marriage and the fact that there is really no connection whatsoever between the amount of money to be paid, the length of marriage, the need or dependency of Ms. Javadi, or the ability of Mr. Delvarani to pay that amount. Ms. Javadi's claims, pursuant to this document, are dismissed."* (para. 210)

APPENDIX B – SAMPLE MAHR AGREEMENTS

A copy of the Marriage Contract attached to the Judgment in *Amlani v. Hirani,* [2000] B.C.J. No. 2357, 13 R.F.L. (5th) 1 (B.C.S.C.)

03/13/00 MON 09:54 FAX 604 732 3883 Winfred A van der Sande This is Exhibit "C" referred to in the affidavit of Al Ayaz Mitha Amlani sworn before me at the City of Vancouver in the Province of British Columbia, this 24th day of July, 2000

SCHEDULE "A"

HIS HIGHNESS PRINCE AGA KHAN SHIA IMAMI ISMAILI JAMAT

SANTA CLARA (NAME OF TOWN)

MARRIAGE CONTRACT

Date of Engagement 8/31/97 Marriage Register Entry No. M-02-98

Date of Marriage JUNE 13, 96 6:00 a.m./p.m.

1. I, AL-AYAZ MITHA AMLANI a Shia Imami Ismaili Muslim of 11559 - 90th Ave, Delta BC Canada (address) having attained the age of eighteen (18) years and having completed a civil marriage ceremony at Alameda, CA in and in accordance with the laws of CA, USA on the 11 day of Sept 19 97 with Amynah Hirani of Fremont, CA (bride) I hereby agree and undertake to pay an agreed sum of money by way of "MAHER" to my said wife. I, HEREBY AGREE CONFIRM AND DECLARE that my undertaking to pay the agreed sum of money by way of Maher to my said wife shall be in addition and without prejudice to and not in substitution of all my obligations provided for by the laws of the land.

2. I, AMYNAH daughter of ALAUDDIN HIRANI a Shia Imami Ismaili Muslim having attained the age of 18 years hereby accept AL-AYAZ son of ALADIN AMLANI in accordance with the tenets of the Shia Imami Ismaili Tariqah as my husband and hereby confirm acceptance of the agreed sum of money by way of Maher.

3. We hereby declare and confirm that when we completed the civil marriage ceremony as stated above, there was no impediment or other hindrance to our marriage as prohibited by the Holy Constitution of the Shia Imami Ismailis.

4. Having thus been married to each other in accordance with the tenets and rites of our Shia Imami Ismaili Tariqah, we and each of us do hereby solemnly and sincerely declare that henceforth we shall observe and perform the rights obligations and duties of a lawfully married couple towards each other and as devolves upon each of us.

* The said agreed sum of money by way of "Maher" is $51.00

* NOT TO BE ANNOUNCED

The following pages(2pg.document) is a true copy of the original on file with us.

Farid Solehdin, Honorary Secretary
His Highness Prince Aga Khan Shia Imami Ismaili Council for the Western United States 1

MARIAGEC.DOC(06/96)

IN WITNESS WHEREOF WE, the undersigned, having read and fully understood the provisions of this Contract and the said Holy Constitution have hereunto set our hands in the presence of Mukhi and/or Kamadia of the Ismaili Jamat of SANTA CLARA and in the presence of other witnesses hereto in accordance with the said Holy Constitution this 13 day of JUNE One thousand nine hundred and NINTY EIGHY

WITNESS:
SIGNATURE [signature]

Bridegroom's signature

NAME Wizan Hussain Date: 6-13-98

ADDRESS: Fremont, CA

OCCUPATION: Student

WITNESS:
SIGNATURE [signature]

Bridegroom's signature

NAME Ghalib Rajan Date: 6-13-98

ADDRESS: 2273 Mary Hill Rd. Port Coquitlam, BC, Canada, V3C 2A5

OCCUPATION:

OFFICIAL NOTE

We Mukhi/Kamadia of His Highness Prince Aga Khan Shia Imami Ismailia Jamat of SANTA CLARA hereby declare that AL-AYAZ MITHA AMLANI and AMYNAH ALAUDDIN HIRANI of BRITISH COLUMBIA & FREMONT who of their own free will and volition have signed the foregoing Marriage Contract in our presence, are hereby declared married in accordance with the Shia Imami Ismaili Tariqa. The said Contract has been signed by the said parties in our presence after they had accepted all the conditions therein.

HIS HIGHNESS PRINCE AGA KHAN SHIA IMAMI ISMAILI JAMAT
MUKHI KAMADIA [signature]
DATE 6-13-98 PLACE SANTA CLARA

I/We as parents/guardians of hereby give my/our consent to the aforesaid marriage.

(for use when either or both parties have not attained the age of majority)

Pg.2 True copy of the original

Farid Solehdin, Honorary Secretary