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Arbitration, religious law and Islam

IF THE RELATIONSHIP BETWEEN POLITICS AND THE LAW CAN BE CONTROVERSIAL, the intensity of the controversy increases when an additional and complicating factor is introduced: religion. And all the more so when the religion is one whose name can barely be mentioned without strong passions being aroused: Islam.

The shari'a (Islamic law) controversy that erupted in Ontario, with major reverberations in Quebec, had its origin in late 2003 when a retired Ontario lawyer, Syad Mumtaz Ali, announced his intention to establish a "Shari'a Court" under the province's Arbitration Act. This announcement focused public attention on the Arbitration Act, its provisions for private arbitration in family law matters, the use of religious law within those provisions and – especially – the effect on women's rights if the religious law in question is Islamic law. The government commissioned former NDP cabinet minister Marion Boyd to study the questions involved and make recommendations. In December 2004, Boyd recommended that the use of religious law in arbitration be continued, but that new safeguards be introduced to protect vulnerable individuals within religious communities.

Politicians, women's rights advocates, groups within the Islamic community and others took positions for and against the Boyd Report. The controversy spilled over

into Quebec when Liberal MNA Fatima Houda-Pepin, herself a secular Muslim, spearheaded a motion to oppose the establishment of shari'a courts in Quebec; the National Assembly passed the motion unanimously. In September 2005, Premier Dalton McGuinty told the press that there would be no shari'a in Ontario either. But he gave no details, and the legislation he promised had not yet been introduced when *Inroads* went to press at the beginning of November.

In the following pages, Marion Boyd explains why she reached the conclusions she did and assesses the response to her report; a leading Muslim critic of her approach, Tarek Fatah of the Muslim Canadian Congress, responds. Supplementing their exchange are Fatima Houda-Pepin's speech to the National Assembly in support of her motion, in which she outlines the dangers she sees in the introduction of shari'a in Canada, and a reply by Dr. Mohamed Nekili of the Canadian Islamic Congress, which has strongly supported the Boyd Report.

— Bob Chodos

Arbitration in family law: Difficult choices

Whatever the Ontario government does, it won't satisfy everybody

by Marion Boyd

In

RESPONSE TO LOUD PROTESTS OVER THE USE OF SHARI'A (ISLAMIC law) in Ontario, Premier Dalton McGuinty made comments to the press in early September suggesting that he is prepared to outlaw religious courts in Ontario. While this statement was intended to end the controversy, at the time of writing (early October) the government's intentions remain less than clear. An official statement by Attorney General Michael Bryant indicated a somewhat different course of action: to make all family law arbitration subject to Ontario family law. The Premier has promised to introduce legislation this fall, and until that legislation is available, it is difficult to analyze its impact. Whatever the government does, it is important to understand the background to the controversy and the issues at stake.

The protests were based on the mistaken impression that Ontario was about to pass

legislation that would allow Muslims to deal with family law disputes through private arbitration using Islamic law and would require Ontario courts to enforce such arbitration decisions. In fact, the current law already provides for these results. I conducted a review of the Arbitration Act for the Ontario government and submitted my report in December 2004. My main recommendations were that the government make legislative, regulatory and policy changes to circumscribe and curtail the Act's application by specifying safeguards to protect vulner-

able parties before arbitration can be used to resolve family law disputes.

Islamic law became a public issue in Ontario following the announcement that a particular organization, the Islamic Institute of Civil Justice (IICJ), had incorporated as a business and would henceforth provide Muslims in the province with a “shari‘a court.” Its main proponent, Syed Mumtaz Ali, a known advocate of self-determination for Muslims in Canada in a manner similar to the rights of Aboriginals and Quebecers, proclaimed that the decisions of arbitrators would be final and binding, not subject to court review but eligible for court enforcement. He suggested that since this option was now available to Muslims, “good Muslims” would be required, as part of their faith position, to settle all their disputes only in this way.

Unfortunately, out of these statements arose a persistent myth about arbitration in Ontario, which continues to be repeated by both the media and opponents of arbitration despite vigorous efforts to correct the initial misinformation. The myth is that the Ontario government surreptitiously colluded with the IICJ and, without consultation, allowed one particular Islamic group to set up a parallel legal system, thus depriving Muslim residents of their legal rights under Ontario and Canadian law.

As already noted, Ontarians with disputes have always had the right to choose arbitration as a means of resolving their issues, including family law and inheritance matters, as long as both parties agreed to the

arbitration freely and without coercion, both parties agreed to an arbitrator or arbitrators they believed would be fair, and both parties agreed on the form of law, including religious law, to be used in the arbitration. The enabling legislation, the Arbitration Act, originated in the 19th century and was updated in 1991 as a result of long discussion by the Uniform Law Conference of Canada, a group dedicated to modernizing and harmonizing laws across Canada. Ontario is one of seven provinces that adopted the recommendations of the Conference; both British Columbia and Quebec had amended their legislation prior to its report and have different provisions. Quebec, for example, specifies that arbitration cannot be used to resolve family law disputes.

The 1991 Arbitration Act amendments in Ontario increased the capacity of the courts to enforce arbitration awards and limited the grounds on which the courts could intervene once arbitration had begun within the limits of the law. Religiously based arbitration has been available in many faith communities for years: Jews, Muslims and evangelical Christians, among others, have developed and delivered faith-based mediation and arbitration, with little or no controversy in the past. IICJ was proposing to use the Arbitration Act in the same manner as it is being used by countless other businesses and organizations in Ontario to arbitrate private disputes; it had no special status with respect to the government and the government had no role in its decision to use the existing law to provide its services.

Marion Boyd was an NDP member of the Ontario legislature from 1990 to 1999 and served in the cabinet of Premier Bob Rae from 1990 to 1995. She was commissioned by the current Attorney General, Michael Bryant, and Minister Responsible for Women’s Issues, Sandra Pupatello, to advise the government on the use of private arbitration to resolve family and inheritance cases, and delivered her report, *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*, in December 2004.

The Arbitration Act in no way permits a “parallel legal system.” However, the IICJ persists in describing its business as “the beginning of a shari’a court in Canada,” thus fostering the apprehension of those who have experienced the harsh realities of shari’a-based law in Islamic countries such as Iran or Afghanistan, where criminal punishments can be ordered in civil matters, the rights of individuals are subordinate to the religious dictates of the community and there is no separation between religious authority and the state. These opponents fear that the capacity to use Islamic law with respect to family law is merely the “thin edge of the wedge” and that those seeking a parallel legal system will continue to press for wider use of shari’a over time. It is apparent that many people have little understanding of the constitutional division of jurisdiction and the enshrinement of Charter rights that prohibit the development of such a regime in Canada without a wholesale change to our entire system of government and law, a change that would not be countenanced by Canadians.

The Arbitration Act applies only to civil matters that are subject to provincial jurisdiction, such as separation, property division or support of dependent children and spouses, and matters that are not specifically prohibited by the Act, as labour disputes are. Matters subject to federal jurisdiction, such as criminal law or civil divorce, cannot be arbitrated. An arbitrator has no power to order the parties to do anything that the parties could not have agreed to do on their own and an arbitrator cannot order the parties to do something illegal under Canadian law (since the parties cannot lawfully agree to break the law). The courts retain their power to intervene in the best interests of

children and to set aside arbitration decisions, as they can separation agreements, where the best interests of children are not honoured or where the decision is egregious. Judicial review with respect to fairness and equity in the process of arbitration cannot be waived by the parties.

A wide range of dispute resolution methods provide alternatives to the adversarial win/lose forum of the court system. Many family matters are entirely resolved through negotiated separation agreements that may or may not come under the scrutiny of the court. Increasingly over the past 20 years successive reviews and research have recommended increased use of mediation and arbitration. For example, the Civil Justice Review in Ontario (1995) recommended that mediation should be required in all civil matters before resorting to the courts for decisions.

The studies point out a number of positive results of alternate dispute resolution: the quicker time frame for resolution, the lower cost, the reduction of emotional stress, the specialized expertise that can be brought to bear on sensitive issues, and the sense of personal agency felt by the disputants. Those who do mediation and arbitration maintain that, when the parties are engaged in the process, they are more likely to respect the outcome, even if that outcome was not what was anticipated or desired. Those advocating religiously based mediation and arbitration argue that parties must have the right to choose to have their matters heard by those who understand their religious priorities, who respect their traditions and who speak their language (both literally and figuratively); the results have both legal and religious authority, thus encouraging compliance on both secular and religious grounds.

Opponents of alternate dispute resolution mechanisms believe passionately that those who are vulnerable, primarily women and children, are always at a disadvantage when private decision-making processes are used. They point to the prevalence of violence against women and children in all communities as an indication that women do not have equal access to power: a balance of power between parties is essential for mediation and arbitration to work as intended. These concerns are magnified when religiously based arbitration is proposed, particularly given the public pronouncements that have been made by some Muslim religious leaders about the role and position of women in society. The opponents portray women, and particularly Muslim women, as being unable to resist the pressure of religious leaders, their families and their communities, fearful that they will be ostracized by the only support system they have. In these circumstances, the essential element of choice in how to deal with family disputes becomes moot; the individual rights of women and their children could be subordinated to the rights of the community.

This is the crux of the problem. Canada is a multicultural society and the constant tension that must be addressed is between respect for the rights of minority groups and the protection of the rights of individuals within those groups. The most vocal opponents of arbitration, the National Association of Women and the Law (NAWL) and the Canadian Council of Muslim Women (CCMW), have urged the government to stop the use of arbitration altogether for family law matters and to follow the example of Quebec, where the Quebec Civil Code prohibits the use of arbitration for family disputes.

As a condition of Confederation, Quebec was allowed to retain its civil law, based on the Napoleonic Code of France; other provinces, like Ontario, are rooted in the British case law tradition. Family law provisions in Quebec are quite different from those in Ontario in many respects. The Quebec Civil Code, for example, requires mandatory mediation of all family matters, a requirement that was opposed in Ontario by NAWL on the same grounds of unequal bargaining power. The Ontario government listened and, although mediation is encouraged, it is not mandatory in family law disputes in Ontario, and Ontario requires that parties to mediation be screened for previous and current abuse in the relationship before mediation can occur. NAWL and CCMW

Ontarians with disputes have always had the right to choose arbitration as a means of resolving their issues, including family law and inheritance matters.

maintain that women's equity rights are best protected by streaming all family disputes through the public court system and that the government should focus its attention on improving court-based responses.

I undertook an extensive consultation in reviewing the Arbitration Act. I found that even those supporting the use of arbitration in family matters believe that the law must be changed to provide additional safeguards for vulnerable parties. At the time the Arbitration Act was passed in 1991, scrutiny of legislation and regulations to determine their impact on gender, race, religion, age and so on was in its infancy. Since then, public policy makers have developed a methodology to apply various lenses to



proposed policies to determine whether they prejudice any particular vulnerable group and how these defects can be remedied. Had such a methodology been applied to the Arbitration Act in 1991, it would have been readily apparent that its provisions do have the potential to disadvantage vulnerable women and children. This is particularly so if religious laws differ from Canadian laws with respect to such matters as support of dependent spouses and children and custody arrangements.

I was assured over and over again by Muslim leaders that, when Muslims live in a non-Islamic country, they are required to follow the law of the country where they reside. The problem is that the Arbitration Act currently does not require that family law matters be conducted in accordance with Ontario and Canadian law. Many of the 46 recommendations coming out of the Review focus on bringing arbitration agreements and decisions under the Ontario Family

Law Act, so that they are subject to the same laws that cover separation, domiciliary and paternity agreements, and so that the same grounds to appeal to the court are available to those choosing arbitration.

The Review also recommends extensive changes in regulations with a view to protecting vulnerable people. Among other areas, these changes cover the making of arbitration agreements, the keeping of files, the provision of written decisions and reasons, the provision of full disclosure of which religious principles might be used, the availability of independent legal advice, and the screening of parties for a history of abuse. The Review recommends the regulation of both mediators and arbitrators and urges that a process for public monitoring of decisions be instituted so that any erosion of individual rights through the use of arbitration can be detected and remedied if seen. I concluded as a result of the Review that the key issue at stake in our multicultural de-

mocracy is how to protect individual choice and yet promote the full inclusion of communities within Ontario under our laws.

I also recognize the need for extensive public legal education and community development to ensure that parties know what choices of dispute resolution are available and what the consequences of their choices might be. It was apparent that, within the dominant community as well as in minority communities, knowledge of family law is sadly lacking and needs to be addressed. All of us have an array of options for resolving family disputes and, in the settlement of those disputes, we each have priorities that govern our personal choices. For some of us, those priorities include religious principles and community participation. At issue is how to provide the tools and support to ensure that, whatever an individual's priorities might be, she or he is able to make choices free of coercion and in the full knowledge of the basic rights available under Ontario and Canadian law. No matter how good our laws are or how fair our processes, it is still incumbent on individuals to make use of those laws and to object when the processes are not fair and equitable. Part of the task is to ensure that every resident of Ontario has both the knowledge and the means to access the law's protection.

It is apparent that the government faces difficult choices. If it ends the use of religious law in arbitrations, as Premier McGuinty's remarks suggested, it will be taking away religious rights that have been enjoyed by various groups over many years. The response to his comments indicates that the government will undoubtedly face Charter challenges as a consequence. Moreover, informal arbitration within the community will inevitably result, thus ensuring that

vulnerable individuals have no protection under Canadian law.

If it ends the use of arbitration in family law altogether, removing a valued option from all residents, the already struggling court system will be inundated with new cases, resulting in unconscionable delays and costs in resolving family matters. If it does nothing, the status quo will prevail and the vulnerabilities identified in the Review will not be addressed. If the government implements the legislative and regulatory changes recommended in the Review, it will be with the knowledge that these changes will not satisfy the most vociferous opponents, some of whom have also signalled an intention to initiate Charter challenges. If it implements these changes without taking action on public legal education and community development to enable all communities and individuals to understand and use the law effectively, those most vulnerable to coercion and abuse will have little access to laws intended to protect them.

Given the level of the controversy, the government must come to grips with this difficult issue soon and clearly state its intentions. Whatever it decides, it must accept that it cannot please everyone. Nevertheless, the government has an urgent responsibility to act. It has an opportunity to take a balanced approach that addresses the competing rights expressed by proponents and opponents alike and that supports Ontario's policy position on equity in family law and multiculturalism. I hope the government will have the political courage to implement the comprehensive recommendations of the Review which aim to achieve this balance. ■

Marion Boyd just doesn't get it

by Tarek Fatah

THERE ARE MANY PLACES WHERE MARION Boyd demonstrates her preconceived notion about Canada's Muslim communities, but the one that stands out prominently is her remark, "I was assured over and over again by Muslim leaders that, when Muslims live in a non-Islamic country, they are required to follow the law of the country where they reside."

Whom did she consider a Muslim leader? How did she confer the title of "leader" on them and what barometer did she use to ascertain who was a "good" Muslim and who was a "bad" one? As one of many Muslims who presented our opposition to the introduction of shari'a into Canada's judicial system, I am witness to the fact that she dismissed any ideas from Muslims who did not fit her profile of Muslimness.

Here is what some prominent Muslims said about substituting for-profit, private-sector judges-for-hire using a law that did not exist for Ontario's Family Law Courts:

- Professor Omid Safi, who teaches Islamic studies at Colgate University in New York state, said, "The use of religious law as a substitute for laws created by Parliament, and the establishment of a multitier legal system – one for average Canadians and one for Muslim Canadians – is not only unjust, but also detrimental to the well-being of all Canadian citizens."
- One of Islam's leading scholars in Europe, Professor Tariq Ramadan of the University of Fribourg in Switzerland, told a magazine there was no need for Canadian Muslims to set up their own shari'a courts, saying they are "not necessary." He said demanding such courts "is another example of lack of creativity" among Muslims.
- In May of this year, none other than Iranian human rights activist and Nobel Peace Prize winner Shirin Ebadi took a firm stand against the introduction of Islamic tribunals in Canada, warning that they open the door to potential human rights abuses.
- York University's Professor Taj Hashmi wrote, "The Government alone cannot stop the formation of the Sharia Board; civil society in general and liberal Muslims in particular should come forward to stop this vice, which is neither Islamic nor Canadian in character and spirit."
- Niaz Salimi, President of the Muslim Canadian Congress, wrote in the Toronto Star, "We believe that mosques, churches, temples and synagogues have an important role to play in the community, but their role should be restricted to mediation and reconciliation, not interfering with the Canadian justice system and running

a parallel private-sector judiciary with self-styled religious judges for hire.”

- CBC Radio producer Natasha Fatah wrote in her regular cbc.ca column, “There is no formal system through which you can challenge religious clerics, the masters of the Shariah universe. And if you do challenge them, get ready to be called a blasphemer.”

Did Marion Boyd pay any heed to these Muslims? Did she regard these Muslims as Muslims? Apparently not, or she would not have used the language she did.

Boyd’s position that her report was a balanced approach that addressed the competing rights expressed by proponents and opponents alike and that it supports Ontario’s policy position on equity in family law and multiculturalism does not withstand scrutiny. Proposing the continuing privatization of the judicial system does neither of the above. Equity in family law cannot be served by allowing self-appointed arbiters to market their services at \$200 an hour to vulnerable citizens. Multiculturalism does not get served by pushing an entire community into the hands of its priests, who would be answerable and accountable to no one.

If the Ontario government had implemented the Boyd Report, I believe the move would have further ghettoized the already marginalized Muslim community and would have played into the hands of racists who would like nothing better than to exclude Muslims from the mainstream.

Boyd refused to address the international geopolitical implications of her endorsement of shari’a. Had Premier McGuinty

accepted the Boyd Report, it would have had a profound long-term impact not only on our society, but also across the Muslim world, where progressive and liberal men and women are fighting to keep shari’a out of the political system. In the words of Professor Safi,

We are alarmed at the prospects of repressive Muslim governments around the world pointing to Canada, and the implementation of shari’a within Canada, as a justification for their oppressive legal systems. This is not a comment on Islamic jurisprudence as a whole, but rather on the repressive interpretations of shari’a found in those countries. It is unrealistic to think that the ayatollahs of Iran or the proponents of Wahhabism in Saudi Arabia will not use this to promote the viability of their oppressive visions.

My position is not against religion. On the contrary, I stand for the constitutional guarantee of freedom of religion. However, freedom of religion does not mean that we dilute laws and strengthen the power of imams, priests and rabbis over their communities – and especially the most vulnerable within them.

In the end, Marion Boyd succumbed to the pressure of imams, priests and rabbis; Premier Dalton McGuinty didn’t. For once a politician spoke with courage for all Ontarians and said that while he respects the desire of religious communities to use their faith-based laws to mediate and resolve problems, it is not the business of the state to validate or endorse any set of religious laws. ■

Tarek Fatah is Communications Director of the Muslim Canadian Congress and host of the weekly *Muslim Chronicle* on CTS television. He lives in Toronto.

Can Canada afford two justice systems?

by Fatima Houda-Pepin

T

ODAY, WITH ONE VOICE, THE MEMBERS OF THE NATIONAL Assembly of Quebec are saying “no” to the introduction, in Quebec and Canada, of so-called Islamic courts. That’s the answer the members wish to give certain groups that are trying to remove Muslims from Canadian and Quebec law.

The demand these groups have put forward led the Attorney General of Ontario to commission Marion Boyd, a former minister responsible for women’s issues, to prepare a report examining the question of Islamic courts in light of the Arbitration Act. The conclusions of this report, submitted on December 20, 2004, are troubling to say the least. The issue here is the application of shari’a law in a non-Islamic context, which is what these minority groups are pushing for. They are using the Charter of Rights to strike at the very foundations of our democratic

institutions. Yet the Canadian Charter is clear: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law.”

The victims of shari’a have a human face, the face of Muslim women. Their strong reaction to the Boyd Report is not surprising. Let us hope that Ontario’s Attorney General, who must now respond to the report, is more receptive to their voice. The introduction in Canada of so-called Islamic courts is not a matter of religious freedom or reasonable accommodation. Muslim Canadians are

full-fledged citizens, who enjoy the same rights and have the same obligations as all Canadians. They have the freedom to build mosques and run Islamic schools, some of which are publicly funded. North America's first mosque, Al Rashid Mosque, was built in Canada, in Edmonton to be precise, in 1938. Quebec's first mosque, Markaz al Islam Mosque, was established by a bill passed by the National Assembly 40 years ago, in August 1965.

The Islamic community, whose first members arrived in Canada in 1871, has made significant efforts to integrate, despite the stigmatization and stereotyping it has faced. The rising generation of Muslim youth is especially promising: they rank among Canada's most educated.

But the effort of tens of thousands of Muslims to integrate is jeopardized by an active Islamist minority that is endeavouring to impose its system of values in the name of a particular conception of God. Yet Islam is a lay faith, a religion that has no clergy, no intermediary between God and believers, a religion where imams are simply prayer leaders who are not priests, let alone recognized legal authorities. For several years now, Canada has been the arena of intense struggles for control of the Islamic community. The push to introduce shari'a law in Canada is part of the same strategy of isolating the Islamic community to subject it to an archaic vision of Islam, a vision whose ideologists, propagandists, financial backers and activists are Islamists.

How can we justify the introduction of shari'a in Canada when civil society groups

in Islamic countries are demanding that it be abolished to end discrimination against women? Implementing shari'a in Canada is a power grab aimed at undermining one of the cornerstones of our democracy: our justice system. It divides and weakens an Islamic community already under stress as a result of fallout from international events.

Let us look at this demand in context. The idea of setting up what are known as Islamic courts emerged in Canada some 15 years ago, under the aegis of Rabita al-Islamiya, the Muslim World League, an organization based in Saudi Arabia. In August 1991, the Muslim World League financed a meeting in Washington attended by imams from the United States and Canada. The Canadian imams came from Montreal, Toronto, Mississauga, London, Edmonton and Vancouver. The theme of this meeting was the development of strategies for introducing shari'a to Canada and the United States.

Two lines of action were defined. The first was to convince Canadian Muslims to withdraw from the reach of secular law since God is the only sovereign. Arafat Al-Ashi, then head of the Muslim World League in Toronto, said at the time that "no Muslim is worthy of the name unless they can practise this law [shari'a] ... Otherwise they are considered nonbelievers."

The second line of action consisted in lobbying elected representatives and political parties so that they would support the establishment of Islamic courts. The Islamists targeted Canada as the country where they felt their project had the best chance of success because of the constitutional

Fatima Houda-Pepin is the Liberal member of the Quebec National Assembly for La Pinière. This is an edited version of an address she delivered in the National Assembly on May 26, 2005, in support of a motion she introduced "to oppose the establishment in Quebec and in Canada of so-called Islamic courts." The motion was adopted unanimously.



guarantees extended to minorities through charters of rights and multiculturalism legislation. If shari'a were to be established in Canada, it would serve as a powerful symbol to discourage Islamic countries from modernizing their codes of law. If Aboriginal nations have their own justice system, Arafat Al-Ashi claimed, why shouldn't Muslims have theirs?

The follow-up committee appointed at the meeting was placed under the leadership of a man of unwavering conviction, a lawyer who once worked at the Ontario Attorney General's Office and is considered an expert in matters of Charter law and the rights of Canadians. I'm referring to Syed Mumtaz Ali, also president of the Canadian Society of Muslims.

In September 1991, he told a Toronto journalist, "Divorce is a divine right accorded to the husband. In Islam, marriage is a civil contract. Once the marriage is dissolved, that contract is terminated, and the husband is no longer responsible for his spouse." On the question of imams who, under Canadian law, have the authority to perform marriages and who stretch this authority to include granting divorces, Syed Mumtaz Ali stated that he saw no problem there and argued, "Just as you have accepted religious marriages, accept religious divorces."

When news of this initiative reached the community, the response was immediate. Finding themselves up against a wall of opposition, the promoters of the project beat a strategic retreat and kept a low profile for

some 15 years before the same Syed Mumtaz Ali came back to haunt the Muslim community in the fall of 2003.

All the wiser from his experience, he is determined this time round not to repeat past mistakes. He carefully and thoroughly set about playing down the impact of these courts. No efforts are spared to avoid shocking the public in any way, even to the extent of avoiding the term *shari'a*. Centre stage is given to Muslim women singing the praises of the Islamist version of family mediation. Rabbinic courts are held up as evidence of purported discrimination against Muslims. And the issue of polygamy, which is commonly practised in Canada, has conveniently been swept under the carpet.

Syed Mumtaz Ali, who now heads the Islamic Institute of Civil Justice, has found a loophole in Ontario's Arbitration Act and has cunningly used it to claim nothing less than the introduction in Canada of so-called Islamic courts. And with Islamic courts comes *shari'a*, a legal system developed between the eighth and 12th centuries to regulate civil, penal, criminal and international matters.

Several codes of law have been grafted onto this rootstock so that there are now as many law systems based on the *shari'a* as there are Islamic countries. Which system will prevail in Quebec and Canada? The same one as in Pakistan where, in the name of *shari'a*, a rape victim must produce four male witnesses to corroborate that she was indeed raped, or else she will be flogged? The same one as in Nigeria where, in the name of *shari'a*, Muslim women have been stoned to death for having sex outside of marriage? The same one as in Sudan where, in the name of *shari'a*, the hands and legs of hundreds of people have been cut off, supposedly to prevent robbery? The same

one as in Iran where, in the name of *shari'a*, men can have as many women as they want through *Jawaz al-Mutaa* or pleasure marriages? Or the same one as in Saudi Arabia where, in the name of *shari'a*, women are not allowed to drive their own cars?

Another crucial question: what is the legal authority, recognized by the Islamic community as a whole, that will be responsible for applying *shari'a* in Canada? The market is open and very lucrative. One thing is sure: in Islam, there are five authorized schools of law, four Sunni and one Shiite. Which will be accredited in Canada?

Implementing *shari'a* in Canada is a power grab aimed at undermining one of the cornerstones of our democracy: our justice system. It divides and weakens an Islamic community already under stress as a result of fallout from international events.

Shrewd strategists that they are, Syed Mumtaz Ali and the Islamist groups that support him like to play down their demand and present it as a simple matter of family mediation. If that were the case, why create courts, when family mediation in Islam is neither a legal nor an institutional matter? It has, for centuries, been conducted within the family circle. Why judicialize family mediation in a religion that does not provide for it? What interests are at stake here?

The truth is that in Canada, home of the Charter of Rights, repudiation of a wife and polygamy are currently practised behind the backs of the legal authorities. What the courts the Islamists are demanding will do is institutionalize these practices, which are against our laws. For example, an imam

who has the authority to perform marriages under Canadian law must know that this delegated power does not give him the authority to grant divorces. These practices must be stopped, not encouraged.

Just because a supposedly religious practice exists within a community, that doesn't mean it should be recognized and sanctioned by our justice system, a system that is admittedly far from perfect but is nonetheless open to improvement. On the contrary, it is our duty to protect the most vulnerable among us, the victims of arbitrary decisions and abuse. This is where we must fight, for there is more involved here than

women's issues or issues of concern to the Islamic community. The very foundations of our democracy are at stake and we must protect them. Allowing shari'a in Quebec and in Canada would be tantamount to calling into question all the headway we have made collectively over the last 50 years to promote equality, justice and human rights.

By loudly and clearly stating its opposition to the application of shari'a law in Quebec and Canada, the National Assembly is making history and showing leadership of a kind that should be emulated by other legislatures, in Canada and throughout the Western world. ■

A historic mistake in Quebec

by Mohamed Nekili

STATEMENTS MADE BY QUEBEC LIBERAL MNA Fatima Houda-Pepin are troubling to say the least. It was Houda-Pepin who in March of this year invited a number of parliamentarians to a presentation at the National Assembly in relation to Islamic shari'a law and the Arbitration Act in Ontario.

MNA Houda-Pepin also reportedly "warned that the public should make an effort to get to know those in the community who are lobbying for application of shari'a," and that "one of the strengths of Islamists is that they know you very well. They know our history, they know our culture, they know our justice system, the Charter of Rights."¹

Her statements suggest that all Muslim citizens who express their values in the public domain are "Islamists," and according to her definition they are aliens, suspects or conspirators who nefariously exploit their knowledge of Canadian history, culture, the justice system and the Canadian Charter of Rights and Freedoms.

Houda-Pepin's assertions are simply unacceptable and irresponsible, and will unfortunately increase the level of public suspicion toward a community already largely distrusted after the events of 9/11. Also, refusing Muslims the right to avail themselves of existing legal resources within Canadian arbitration laws is blatantly discriminatory.

Monique Gagnon-Tremblay, Quebec Minister of International Relations, went even further along this dangerous path, suggesting “Quebec should refuse immigrants who believe the Islamic system should be applied.”²

Such statements from a government minister of her stature not only question the existing citizenship of Canadian Muslims who are in favour of Islamic arbitration; they are even more troubling in their implications for new Muslim immigrants who could face discrimination based on unfounded claims that an opinion in favour of Islamic arbitration in Ontario contradicts the Quebec Civil Code.

Unfortunately, these unfounded statements have already made their way to a motion unanimously approved by the National Assembly on Thursday, May 26, 2005, and presented by Fatima Houda-Pepin, along with MNAs from opposition parties, to ban Islamic tribunals from Quebec – and all of Canada. Worse still, the motion was passively adopted without debate and is to be sent to all Canadian provincial parliaments.

The urgent responsibility now lies with the Liberal Party of Quebec (PLQ) to clarify the statements of MNA Houda-Pepin and minister Monique Gagnon-Tremblay, indicating to what extent they reflect (or hopefully, do not reflect) the official party position.

And not only should the PLQ officially distance itself from these Islamophobic and irresponsible statements; it should also facilitate a presentation to Quebec parliamentarians clarifying the position of

Muslim citizens who are in favour of Islamic arbitration in Canada. And finally, it should establish mechanisms to prevent similar incidents in the future.

It is regrettable that this motion was based on false allegations that Muslim Quebecers have initiated formal or informal procedures in relation to family mediation or arbitration, and that the focus of Houda-Pepin’s original motion was not on faith-based arbitration in general, but rather on Muslims and shari’a only.

This all makes one wonder why the MNAs of other parties did not trouble themselves to question the authenticity of MNA Houda-Pepin’s claims and instead let themselves become passively drawn into a historic political mistake that openly discriminates against Muslim Quebecers and Muslim Canadians. Why were no voices raised to request further studies and consultation as happened for Ontario through Marion Boyd’s report?

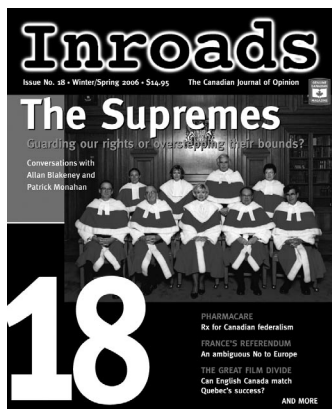
This disastrous National Assembly motion serves only to annihilate so much of the effort expended by Muslim organizations during the past decade to encourage Muslims of this country to exercise their full citizenship. It is sad to say that this motion has damaged the trust Muslim Quebecers have always invested in their political representatives. ■

Notes

¹ Montreal Gazette, March 11, 2005.

² Ibid.

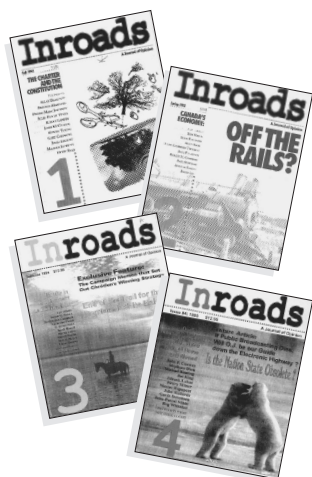
Dr. Mohamed Nekili is a member of the National Board of the Canadian Islamic Congress (CIC) and lives in Montreal. This article initially appeared in the September 9, 2005, issue of the Friday Bulletin, the CIC’s weekly online newsletter.



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