

Lessons from the 2003–2006 “Sharia Debate” (Or, How Dalton McGuinty Dropped the Ball)

Nine years ago, in late 2003, the head of the Islamic Institute of Civil Justice (IICJ) Syed Mumtaz Ali held a press conference announcing it was offering arbitration services in family disputes in accordance with Sharia (Islamic law) and the province of Ontario’s 1991 Arbitration Act.

An explosive international public debate followed. At its starkest, the debate portrayed the issue as one in which Canadian Muslims, guided by international Islamic fundamentalists, sought to create a parallel legal justice system, which, opponents feared, would weaken the rights of Muslim women and the functioning of the liberal democratic state. Our volume, [*Debating Sharia*](#), delves more deeply into issues surrounding the debate. In particular contributors note how:

- **The debate ignored key aspects of the everyday reality of living a Muslim life** in a Western country. Muslims in Ontario sought mediation but not arbitration. Furthermore, it is primarily Muslim women who turn to imams and other religious authorities to grant them a religious divorce. These religious authorities tend to clearly distinguish between religious and civil divorce.
- Despite a focus on Muslim women’s rights, **public discourse failed to appreciate the gendered implications of arbitrating family affairs**, whether according to Western legal practice or Islamic jurisprudence. Arbitration in heterosexual relationships assumes both parties enter negotiations from a similar position of power. However, they do so rarely. The debate did not lead to a meaningful discussion of the ways in which family law arbitration reproduces gendered power dynamics. In addition, it did not acknowledge the ongoing development of Islamic jurisprudence in the context of family law, where contemporary scholars have made significant strides to address issues of power.
- Fear of Islamists infused this public debate, **painting Muslims in broad brushstrokes as threatening the achievements of liberal democracy**, including the purported attainment of gender equality. This racialized Ontario’s diverse Muslim communities, stifling discussions within them and limiting the discursive space for meaningful debate more generally.

- The debate **falsely positioned a support for women's rights as being tantamount to a full rejection of religiosity.**

Following the international public outcry at the notion of 'Sharia courts,' Ontario Premier Dalton McGuinty sought advice from Attorney General Michael Bryant and Sandra Pupatello, the Minister Responsible for Women's Issues. As public pressure escalated, in June 2004, Bryant and Pupatello appointed former Attorney General Marion Boyd to conduct a formal six-month review of the use of arbitration in family and inheritance law in the province. In December 2004, she presented forty-six recommendations in a 191-page report.

Contrary to the vehement concerns expressed at Queen's Park, in letters to the editor and through social media, Boyd [concluded](#) that binding religious arbitration of family law issues based on 'Islamic legal principles' was permissible according to the 1991 Arbitration Act. She also expressed concern for the protection of individual rights, and proposed amendments to the Arbitration Act to address concerns about gender inequality and the training and accountability of arbitrators.

However, McGuinty decreed that he would not allow his province to become the first Western government to allow the use of Islamic law to settle family disputes, and that the boundaries between church and state would be clearer if religious arbitration was banned completely. He concluded, 'There will be no Shariah law in Ontario. There will be no religious arbitration in Ontario. There will be one law for all Ontarians'.

The promise of 'one law for all' was a cynical appeal to a common legal ground: the new law did not actually create real change. Extensive interviews conducted by Julie Macfarlane and Christopher Cutting (in two different research projects) show that the debate's premise was erroneous: religiously based family law arbitration was not something that Canadian Muslims engaged in or that Muslim Arbitration Boards conducted. So the IICJ announcement did not have an audience. Furthermore, Islamically-informed mediation practices mostly benefitted Muslim women.

At the same time, the Sharia debate identified a number of problematic gender issues related to Islam: namely, the power disparities in *talaq* (unilateral male-initiated divorce) and the insufficient response by some imams to domestic violence. And insofar as Macfarlane and Cutting both suggest that concerns around domestic violence are not always fully acknowledged, by creating the false security that 'there will be no

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religious law in Ontario', McGuinty contributed to leaving this issue out of the public eye.

The revised Arbitration Act does not do what McGuinty promised; it still allows for adjudication based on religious principles – they just cannot be mentioned explicitly in the ruling. These rulings have to fall within the scope of the Canadian legal framework but that was always the intent of the IICJ.

Most problematically, the Sharia debate underscored insufficiencies in the legal practice of private arbitration by showing how gendered power inequalities can inform private ordering in ways that go unchecked.

Sharia debates are not unique to Canada. Many Western immigrant-receiving countries include religiously and ethnically diverse Muslim populations and are negotiating the legal and social implications of Sharia.

Take, for instance, the high-profile discussion that took place in 2008 when the Archbishop of Canterbury claimed that Sharia could, and perhaps should, be accommodated in British law making. His comments, as well as subsequent reports by a conservative British think tank that eighty-five Sharia Councils were deciding various legal matters in Britain, resulted in an uproar with clear parallels to the Canadian debate. There are similar debates taking place in the United States.

The issue of gender inequality raised in Ontario appears to influence a great number of debates about the role of Islam in the West. Ongoing headscarf debates (and more recently, anti-niqab and burqa legislation) in a number of Western European countries including France, Switzerland, Belgium, Spain, and the Netherlands can similarly be interpreted as conflicts over religious accommodation in the context of particular ideas about secularism and gender equality.

The Sharia Debate became so impassioned because it touched on a number of changes in Canadian society since the 1960s, including the questioning of multiculturalism; a significant increase in religious diversity in the country's urban centres; growing rights accorded to women; and most recently, securitization and Islamophobia following 11 September 2001.

The 2003 debate matters today because faith-based arbitration continues to be possible within the Ontario privatized system. Religion

can inform an arbitrator's rulings, so long as the texts of final rulings use the language of Canadian law.

Little has been done to address the real gender disparities to which any arbitration process might give rise. The very idea of 'one law for all' used to justify abolishing all faith-based arbitration at the close of the debate in 2006 is false. Couples habitually contract out of the default provisions of the Family Law Act, privatizing contracts regarding family matters and placing them outside of state oversight.

Some, like Marion Boyd, tried to insert a thoughtful voice into the debate. Most, however, including Premier Dalton McGuinty, dropped the ball. Not only did they debate based on false premises, but their pronouncements did little to further the participation of Muslim Canadians in the public sphere.

To read more about the debate, please see [*Debating Sharia: Islam, Gender Politics, and Family Law Arbitration*](#) (eds. Anna C. Korteweg & Jennifer A. Selby, University of Toronto Press, 2012).