

***Faith-based Arbitration in Canada and Beyond:
Recent Developments and Future Prospects***

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1. Introduction

Faith-based arbitration of civil matters, particularly family disputes, has figured prominently in the Canadian news in the last two years. Most of the debate focused on Ontario where a group of Muslims announced in early 2004 that they planned to offer Islamic arbitration to Muslims for the resolution of family law disputes. This proposal generated a storm of controversy and a flurry of media headlines proclaiming the introduction of *Sharia* law in Canada. In response, the Government of Ontario commissioned a report to make recommendations on the future of faith-based arbitration in the province¹. While the report, by former Ontario Attorney General Marion Boyd, recommended allowing faith-based arbitration, subject to the introduction of safeguards, public opposition was strong, by both Muslims and non-Muslims. In November 2005, legislation banning faith-based arbitration was introduced in the Ontario legislature². Earlier, in the spring of 2005, the Québec National Assembly passed a resolution banning faith-based arbitration despite the fact that the *Civil Code of Québec* does not permit the arbitration of family matters on the grounds that it is contrary to public order³.

¹ Marion Boyd. *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*. Submitted to the Attorney General of Ontario, December 2004. <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/>. [Boyd Report].

² *An Act to amend the Arbitration Act, 1991*. Introduced, Legislative Assembly of Ontario, November 15, 2005. [Amendments].

³ National Assembly of Québec, National Assembly, First Session, Thirty-Seventh *Legislature*. *Votes and Proceedings of the Assembly*. Thursday, 26 May 2005 – No. 156. [Québec Resolution].

This paper will provide an overview of the recent controversy over faith-based arbitration in Ontario, review the main conclusions of the Boyd Report and explain the legislative response by the Government of Ontario. It will also briefly examine the situation in Quebec and in three European states with significant Muslim populations (France, Germany and the U.K.). Finally, the paper will conclude with a consideration of the future prospects, if any, for faith-based arbitration in multicultural Canada, a country with a growing Muslim population.

2. Faith-Based Arbitration in Ontario

2.1 How it all began: the Ontario Arbitration Act

Ontario law currently allows for faith-based arbitration through the *Ontario Arbitration Act* of 1991⁴. Based on a provision of this legislation, Jewish, Catholic and Aboriginal citizens of Ontario have implemented and used faith-based arbitration. These result in the formation of legally binding agreements which are worked out by both parties in partnership with religious authorities. The nature of the civil disputes that come before arbitration primarily concern business, property and issues related to a divorce that do not fall under federal jurisdiction.

Generally speaking, mediation and arbitration are alternatives to litigation. When two parties agree to a process of mediation they put together an agreement themselves with the assistance of a neutral mediator. For example, a separation agreement between two married persons can allow the parties to determine control over their financial and property assets can be filed with the

⁴ The proposed amendments have not yet come into force in Ontario. See Amendments, *supra* note 2.

court and thus enforced as an order. Mediation works best in a situation where the two parties have a relatively amicable relationship. By contrast, arbitration occurs where two parties agree to have a third person adjudicate their dispute for them to in the way that the judge would do. Arbitration is binding. Once two parties sign an arbitration agreement they cannot withdraw from it. Both arbitration and mediation, in the context of family law, are considered to be processes that take place outside of the courts where religious values can be taken into account in arriving at a final solution between the two parties.

The *Arbitration Act*, while intended primarily to resolve civil disputes of a largely commercial nature, may also be applied to certain types of family law issues. The legislation itself was passed fifteen years ago. Its primary purpose was to quickly and inexpensively resolve civil disputes outside of the overburdened court system. Effectively, the *Arbitration Act* is a codification of the case management approach to the high volume of civil actions in Ontario courts. The *Act* itself is broad and contains few express limitations within its current framework. Because of this, the *Arbitration Act* has, in effect, allowed the possibility of faith-based arbitration of family matters.

Under ss. 11(1) of the *Arbitration Act*, consenting parties are permitted to have their disputes settled by any person that they mutually agreed to. Under ss. 10 (1) the Court may appoint anyone to be the arbitrator, providing the two parties agree that particular person to be the best one to resolve their dispute. The *Arbitration Act* allows parties to arbitrate most civil matters between them. However, disputes that involve issues of public status such as marriage and

divorce cannot be arbitrated upon under the legislation. Moreover, divorce is a federal area and outside the domain of provincial jurisdiction of arbitration. Most disputes that are resolved under arbitration relate to commercial disputes although some family matters such as spousal support or division of property acquired by a married couple may be submitted to binding arbitration. It is interesting to note that since 1999, Rule 24.1 of the *Rules of Civil Procedure* of Ontario establishes mandatory mediation for civil, non family, case managed actions.⁵ Family mediation though strongly recommended is not mandatory and the cost must be borne by the mediating parties.⁶ Although these two examples relate to mediation and not to arbitration they illustrate the importance attached to alternative dispute resolution in modern legal life. In the case of family law, in particular, parties are often anxious to avoid a long and expensive litigation.

The arbitration process is described in the *Arbitration Act*. For example in ss. 5(3) it is stipulated that an arbitration agreement need not be in writing. However, as a general rule in Canada most matters in a domestic contract such as custody of children or spousal support must be in writing, signed and witnessed otherwise they are not enforceable. Under subsection 32 (1) it is provided that the parties under arbitration are free to choose the legal framework by which their disputes will be settled so long as the results are not prohibited by law. This is the most important provision in the *Act* which effectively opens up the possibility of using religious principles for resolving civil matters in Ontario. Any

⁵ Ministry of the Attorney General. Fact Sheet. Rules 24.1 and 75.1.
<http://www.attorneygeneral.jus.gov.on.ca/english>

⁶ Ministry of the Attorney General. Family mediation services.
<http://www.attorneygeneral.jus.gov.on.ca/english>

arbitration agreement, under ss. 5(5) may only be revoked through the means available under ordinary contract law. Section 6 allows a court to strike down an award agreed to under arbitration to if one of the parties did not have real consent to arbitrate. This is also an important point that relates to the possibility that duress, coercion or one of the parties' ignorance of Canadian law could be used to force them into a negotiated settlement that they may not understand the implications of. Finally, ss. 50(3) of the *Act* authorizes the court to enforce arbitration awards and states that they are final and binding in Ontario unless set aside or appealed.

2.2 Faith-based Arbitration and Ontario's Muslims

The proposal to create arbitration tribunals that would follow Islamic or *Sharia* law to settle civil matters between Muslims in Ontario originates with members of the Muslim community in Toronto. Through the Islamic Institute of Civil Justice⁷, in Toronto, a group of Muslims have been advocating this approach for a number of years and have publicized their views through frequent interviews in the media, in presentations to the Government of Ontario's *Review of the Ontario Civil Justice System* and more recently through their website. The notion of Islamic arbitration has been regularly advanced by this group since the 1980s. Extensive documentation on their website clearly indicates that efforts have been underway for some time to introduce such a system. However, the position of

⁷ The Islamic Institute of Civil Justice is associated with The Canadian Society of Muslims which is based in Toronto. Their website contains a link to the Islamic Institute of Civil Justice and within it can be found numerous documents about their proposed faith-based arbitration. This section of the paper will draw on the materials located on this website. The president of the Canadian Society of Muslims, the most vocal and well known advocate of this approach is a lawyer. See <http://muslim-canada.org/>. [*Muslims*].

this group on Islamic arbitration is a broad one and does not make reference to specific provisions of the *Arbitration Act* nor does it suggest any clear procedures that would be needed to make such a proposal operational.

The Canadian Society of Muslims advances the view that all Muslims, wherever they live, are bound by Muslim law. However, they note that Muslims living in Canada need to recognize that Canadian law is paramount and thus they call for a “Canadianized *Sharia*”.⁸ For family law matters, the crux of this proposal would be allowing private arbitration for the arbitration of family law matters where both parties are Muslim. In such a case the parties should be permitted to enter into an arbitration agreement to have matters regarding the dissolution of their marriage determined in accordance with principles of Islamic law. To this end, in 2004, members of the Canadian Society of Muslims announced that they planned to set up such a facility.⁹

The Canadian Society of Muslims has also requested that marriage officers appointed under the *Ontario Marriage Act* be empowered to solemnize and register Muslim divorces following procedures similar to those which already exist under Ontario law. They requested that for Muslims, in the case of uncontested joint petition for divorce, the mandatory one year separation requirement should be waived and also proposed that Muslim family law be incorporated into the

8 Natasha Bakht. “Family Arbitration Using Sharia Law: Examining Ontario’s Arbitration Act and its Impact on Women.” National Association of Women and the Law, The Canadian Council of Muslim Women; and the National Organization of Immigrant & Visible Minority Women of Canada. Undated. <http://www.ccmw.com/index.htm> at 15 [Bakh].

⁹ *Muslims supra* note 8.

regular Ontario justice and family law system.¹⁰ These requests ignore the fact that many aspects of divorce fall under Federal jurisdiction.

The proposals from the Canadian Council of Muslims called for an arbitration process that is based on the *Sharia*. They were justified in doing this since the *Arbitration Act*, as it is currently worded, allow parties to agree to any legal framework they want. This raises new questions since the *Sharia* is a complex legal system within which there are numerous schools of thought. What is generally understood, however, is that Muslim family law has certain widely applicable principles. These include guidelines regarding spousal support, custody of children and the types and circumstances under which divorce may be granted.¹¹ Major differences exist between Muslim family law and general principles of Canadian family law. For example, a wife may not be entitled to long-term spousal support following a divorce, depending upon which school of the *Sharia* is applied. Nor does Muslim family law provide clear guidance as to the division of property and financial assets jointly acquired during a marriage. This is in contrast to Canadian laws which usually allow long-term support to be allowed and the equitable division of property.

In the modern context, the philosophical approaches taken to the introduction of Muslim law in predominately Muslim countries have been fraught with controversy. For example, there has been intense debate over the introduction of Muslim family law in Pakistan, one of the world's largest Muslim countries and

¹⁰ *Muslims supra* note 8 at 3.

¹¹ Two general texts were consulted for this section. See Kashi Prasad Saksena, *Muslim Law*, 4th Ed., Lucknow: Eastern Books, 1963 and Abdur Ratin, *Muhammedan Jurisprudence*. Lahore: All Pakistan Legal Decisions, 1963.

the country of origin for many Ontario Muslims. The *Family Ordinance Act of 1976* codified family law in Pakistan from a fundamentalist or traditional perspective.¹² In contemporary Pakistan there is much ongoing debate regarding the interpretation of the *Sharia* between the traditionalists and the modernists. This same debate is now going on in Ontario and in other Canadian jurisdictions.

2.3 The Boyd Report

In June 2004, as a result of the growing public outcry in Ontario regarding the proposed use of Sharia law in the arbitration of family matters, the Attorney General of Ontario asked Marion Boyd to conduct a review of the use of faith-based arbitration in family and inheritance cases. A total of forty-one groups submitted either written or oral briefs to Ms. Boyd. The groups who made submissions covered a wide range of perspectives including religious groups, women's groups and other interested parties. While Ms. Boyd attempted to seek consensus from the disparate parties, the content and summary of the briefs clearly illustrated the deep divisions that exist in Ontario regarding faith-based arbitration.

The Boyd Report also contains extensive discussion and analysis of the law and practice of arbitration, an examination of family law and of constitutional considerations. In particular, the report noted that religious arbitration of disputes may be beneficial where the parties share a common set of religious and cultural values. The strong belief of Ontarians in the aims of the Canadian Charter of

¹² Izzud-Din Pal, *Islam and the Economy of Pakistan – A Critical Analysis of Traditional Interpretation*. Karachi: Oxford 2005. (forthcoming), and Izzud-Din Pal, *Pakistan, Islam and Economics*. Karachi: Oxford 1999.

Rights and Freedoms was also demonstrated in numerous submissions to the Boyd Report. Yet as Boyd writes “...the application of many of the provisions of the Charter in the context of arbitration is not clear.”¹³

The Boyd Report’s main recommendation was that faith-based arbitration be allowed in Ontario, but that specific measures to ensure justice and to protect the rights of vulnerable groups should be introduced. A number of safeguards were proposed. They fall into the following categories: legislative, regulatory, independent legal advice, public legal education, training and education for professionals, oversight and evaluation of arbitrations, community development and policy development. The table below summarizes these safeguards.

¹³ *Boyd Report, supra* note 1 at 2.

Category**Key Safeguards Recommended**

Legislative	<ul style="list-style-type: none">*Amend the Family Law Act to add mediation and arbitration agreements to the definition of “domestic contracts”.*Amend the Arbitration Act to permit courts to set aside an arbitral award if not in the best interests of the children affected, if a party did not have or waived independent legal advice, the parties were not given a copy of the arbitration agreement or if the parties did not receive a statement of principles of faith-based arbitration
Regulatory	<ul style="list-style-type: none">*All arbitration agreements of family law and inheritance cases must be in writing*Parties to an arbitration agreement must have either a certificate of independent legal advice or an explicit waiver of independent legal advice*Arbitrators and mediators in family law and inheritance cases must be a member of a voluntary professional organization*Arbitrators who apply religious law in family law and inheritance arbitrations must develop a statement of principles that will be distributed to all participants in faith-based arbitrations
Independent Legal Advice	<ul style="list-style-type: none">*All participants in faith-based arbitration must be certified as having received independent legal advice. If waived, the party must clearly state this.
Public Legal Education	<ul style="list-style-type: none">*Expanded legal education, especially for immigrant communities
Training and Education for Professionals	<ul style="list-style-type: none">*Improved training for members of professional bodies on independent legal advice and on the special issues arising from family and inheritance arbitrations.
Oversight and Evaluation of Arbitrations	<ul style="list-style-type: none">*Copies of all arbitrations in family law and inheritance cases must be kept on file by the arbitrator for at least ten years. Arbitrators should maintain detailed records of all family and inheritance cases.
Community Development	<ul style="list-style-type: none">*The Government of Ontario should encourage and fund community organizations who run arbitration services to produce public information on rights and obligations under religious law.
Policy Development	<ul style="list-style-type: none">*The Government of Ontario should further study the legality of providing higher court oversight of cases of family law and inheritance where settlement has been based on religious principles.

The proposed safeguards focused on improving the legal checks and balances that would govern faith-based arbitration in Ontario. They all flow from the premise that the resolution of family law and inheritance cases through faith-based arbitration should be allowed.

It is important to remember that, despite the circumstances that gave rise to it, Marion Boyd was not given an explicit mandate to examine Muslim mediation of family disputes but rather to examine the broad issue of faith-based arbitration. Consequently, the Boyd Report fails to deal with one of the thorniest issues stemming from the proposal to allow Muslims to arbitrate solutions to family disputes: which interpretation of Islam will prevail? Just as Islam itself is comprised of sects and schools, the *Sharia* is not uniform and can be divided into two main approaches: fundamentalist and modernist. Women's rights under Muslim family law vary by sect. For example, whether a woman will be awarded long-term spousal support depends on the school of Islamic law applied. Similar differences exist with respect to the division of marital property. The school of law that is followed can thus have a major impact on the outcome of the arbitration process. The Boyd report fails to address this important issue and as a result, provides no guidance.

Since arbitration is binding, issues of consent and appeal are especially important for women. Women may unwittingly agree to a division of marital property or to custody rights that are not in their best interest or in the best interests of the children involved. The *Arbitration Act* provides for appeal where consent has been obtained through duress or coercion. Yet for immigrant and

visible minority women such as most Muslim women in Canada, knowledge of the law and of their legal rights in Canada is generally poor. The Boyd report provides provisions to waive or set aside an arbitration agreement and suggests that legal counsel be recommended but not made mandatory. The Boyd report also recommends that where legal counsel is waived, this must be confirmed in writing and the party must state that they understand the implications of doing so. This does not go far enough and leaves the possibility for coercion or uninformed consent open. The requirement for mandatory legal advice is important to ensure that women understand what they are entitled to under Canadian law compared to Muslim law.

The *Arbitration Act* provides no safeguards to ensure women's equality in the essentially private arbitration process. For example, an award made by a faith-based arbitrator may make a woman worse off compared to what she would have been entitled to in court. Unless a woman can prove coercion or lack of consent it will be difficult to have the award overturned by the courts. Again, this issue is not addressed by the Boyd report.

The role of arbitrators also means that family law matters in which all Canadian women, especially immigrant women, are historically disadvantaged becomes privatized. The arbitrator, who is paid for his or her services, also has a financial interest in the outcome. While no data is available it seems likely that husbands are often responsible for paying the arbitrator.

Currently no written records are maintained of arbitration processes. This may be viewed as a positive factor, since no "dirty laundry" is washed in public

but also means that there is no legal process to provide for review of any written arbitration proceedings. The Boyd report does recommend that a written record be kept of these arbitration proceedings and that not maintaining records gives a party the right to apply to have an arbitration award set aside.

2.4 Legislative response by the Government of Ontario

In the months following the release of the Boyd Report in Ontario, the controversy that had begun in early 2004 resumed. The Boyd Report recommendation to allow faith-based arbitration came under intense criticism and the issue of *Sharia* in Canada was once more headline news.¹⁴ It became increasingly apparent, as the Boyd Report was subjected to intense scrutiny and criticism, that not only were the majority of Ontarians and Canadians¹⁵ opposed to giving any religious community the right to use faith-based arbitration but that, in addition, Canadian Muslims were divided amongst themselves over whether or not *Sharia* law should be the basis for faith-based arbitration of family disputes between Muslims. Canadian Muslims, a population of 650,000, can be divided into two groups. While one group advocates that Muslims should resolve their disputes in a secular manner, another more conservative and fundamentalist faction supports faith-based arbitration for Muslims wherever they live. Representatives from both sides made submissions to the Boyd Report. These submissions revealed the deep divisions in the community. As Boyd herself

¹⁴ See Norma Greenaway. "63 per cent oppose faith-based arbitration". Ottawa Citizen. October 31, 2005. www.canada.com/ottawa/ottawacitizen; Marina Jimenez and Omar El Akkad, "Values at heart of Islamic tensions". Globe and Mail, November 8, 2005. www.globeandmail.com.

¹⁵ Centre for Research and Information on Canada. "Portraits of Canada", 2005. www.cric.ca.

noted in her report, some groups strongly opposed to faith-based arbitration refused to make submissions to Ms. Boyd because they felt there was no scope for compromise.¹⁶

In September 2005, the Premier of Ontario announced that he would introduce legislation to ensure that all family law arbitrations would be conducted exclusively under Ontario and Canadian law.¹⁷ Two months later, legislation was introduced to amend the *Arbitration Act*.¹⁸ In effect, under the proposed legislation, family law arbitrations based on laws and principles (including religious ones) other than Canadian law would have no legal effect and be considered as advice.

Specifically, the proposed legislation makes two key amendments to the *Arbitration Act*. The first is to add a definition of family arbitration as being arbitration that is “conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction”. (s. 1(1) (b)). The second amendment is that third party decision making processes that result in a family arbitration must be conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction (S. 2.2.(1)). Other changes include an amendment to provide for appeal of family arbitration awards to Ontario Family Court or to Superior Court. The *Arbitration Act* made no specific provision for the appeal of family arbitration awards. Finally, the amendments allow for the establishment of regulations specifically addressing family arbitration.

¹⁶ *Boyd Report*, *supra* note 1 109.

¹⁷ “Ontario bill bans faith-based tribunals”. *Globe and Mail*, November 15, 2005. www.globeandmail.com.

¹⁸ *Amendments*, *supra* note 2.

3. Faith-based Arbitration in Other Jurisdictions

Ontario is not the only jurisdiction in the developed world to grapple with the issue of faith-based arbitration. As the brief analysis below indicates, it is a concern in Québec and in some countries in Western Europe.

3.1 Québec

In Québec, Muslims may seek religious mediation to resolve a civil dispute. However, both sides are free to ignore any decision and courts neither recognize nor enforce such a religious ruling.¹⁹ Article 2639, *Civil Code of Québec*, actually outlaws arbitration in family law matters. Some Muslims in Québec support the introduction of binding arbitration for Muslim family law matters.²⁰ For now, however, this remains a possibility only unless Ar. 2639 is challenged in court.

Despite this, the concern that arose in Ontario spilled over into Québec where a growing Muslim community has been pressuring the Government of Québec for the right to conduct faith-based arbitration. In May 2005, a motion was passed by the National Assembly of Québec that opposed "...the establishment of the so-called Islamic courts in Québec and in Canada."²¹

¹⁹ Interview of Pascale Fournier, Boulton Fellow, McGill University, Dec. 3, 2004.

²⁰ Kristin Grovenor. "Muslims court Sharia." *Montreal Mirror*. Sept. 9-15, 2004. www.montrealmirror.com

²¹ *Québec Resolution*, *supra* note 3.

3.2 Europe: U.K., France and Germany

In Western Europe, as in Canada, immigration from Muslim countries has meant that the *Sharia* has been discussed as a model to resolve family and other civil law matters that have come before the courts in both France and Germany.²²

French law promotes a secular state. Unlike Canada, France does not recognize multiculturalism or provide funding to religious minorities. Yet France has a large Muslim population which now numbers four million.²³ French courts have refused to recognize polygamous marriages, unless the marriage took place on foreign soil. The Muslim concept of dowry (*Mahr*) has, however, been routinely enforced by French courts. Under Muslim law, a husband has the right to pronounce the word “Talaq” three times to immediately dissolve a marriage. French courts have not recognized this form of divorce in France except under special bilateral agreements with Algeria and Morocco.

Like France, Germany also has a large Muslim population, three million out of eighty-nine million.²⁴ The vast majority of Muslims in Germany are of Turkish origin. Under German law, no Islamic religious community has the legal status of a corporation under German law as do both Christian churches and the Jewish community. As a general rule, German courts follow and apply foreign laws to residents of Germany who are not German citizens. Until very recently, German nationality was highly restricted and difficult to obtain. For example, Iranian couples who had been living in Germany for thirty years found

²² Pascale Fournier. “The Reception of Muslim Family Law in Western Liberal States,” paper within for the Canadian Council of Muslim Women, 2004. www.ccmw.com. This section of the paper is based on this article. [Fournier]

²³ Fournier *supra* note 14 at 9.

²⁴ Fournier *supra* note 14 at 15.

themselves facing the possibility of their divorce being granted on the basis of Iranian *Sharia*. However, such foreign laws can only be applied to the extent they are compatible with German law. German courts have not recognized polygamy and *Talaq*, although they have upheld a woman's right to obtain dowry.

Muslims are the U.K.'s largest minority religion, numbering two million in total.²⁵ Overall, the trend in the U.K. is to maintain a secular approach to family law. As in Ontario, Muslims in the U.K. produced, in 1984, a Muslim charter that would accord a place to the *Sharia* in personal law.²⁶ The U.K. government refused this request on the basis that religious legal systems like the *Sharia* could risk violating universally accepted values of human rights, especially regarding women. In addition, the question of interpretation arose. Which version(s) of Muslim family law would apply and who would interpret them?

Islamic dispute resolution has been available to U.K. Muslims since 1982.²⁷ This system works outside the judicial system. The Islamic Sharia Council of the U.K. provides professional conciliation services. No formal Islamic arbitration is offered nor does any Islamic tribunal exist although groups in the U.K., like the Canadian Society of Muslims, support a more formal mechanism that would be sanctioned by law.

²⁵ *Fournier supra* note 14 at 18.

²⁶ *Fournier supra* note 14 at 22.

²⁷ *Fournier supra* note 14 at 25.

4. Conclusion: Does Faith-Based Arbitration Have a Future in Canada?

A number of fundamental issues emerge from an examination of faith-based arbitration in Canada and abroad. The first is that it is extremely difficult to generalize when it comes to a discussion of Muslim principles and religious laws. Islamic jurisprudence has evolved over many centuries and different schools of thought have emerged as a result. Would faith-based arbitration in the Canadian context adopt a more rigid school of thought, as practised in Saudi Arabia, a more moderate tradition such as exists in Egypt or a Shia version originating from Iran? Which version of Sharia should be accepted in a Canada where Muslims themselves come from and thus represent diverse traditions of religious law?

If Canadian Muslims wish to avail of assistance in resolving their family law disputes, then mediation could also play the same role. This approach is less fraught with some of the dangers, particularly for women, which arbitration holds. Yet it would allow parties to discuss family law disputes with the assistance of a mediator who is trained in Canadian and Muslim law.

Finally, it is worth considering that perhaps one of the defining elements of the debate over faith-based arbitration in Canada is not necessarily about religious tolerance and freedoms but in fact about the privatization of public institutions. Many of the same groups who advocate the use of religious mediation also support the establishment of private religious schools funded with public money. By allowing faith-based arbitration as an alternative to the court system, it could be argued that the Government of Ontario was reneging on their

responsibility to provide access to justice for all. Does allowing faith-based mediation recognize cultural and religious diversity or does it marginalize minority communities to the outer reaches of Canadian society?

The issue of Islamic mediation will not likely fade away. More and more Muslims live in Canada than ever before. The latest census data show that in the last decade the Muslim population in Toronto grew by 140%, in Montréal by 143% and in Vancouver by 125%.²⁸ It seems probable that Muslim calls for faith-based arbitration will grow. The role of legislators therefore becomes a delicate balance between multiculturalism, politics and the law.

²⁸ Statistics Canada. Selected Religions for Metropolitan Areas. www.12.statcom.ca

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²⁹ Although both articles are by the same author and have the same title there are some slight differences in the text between the two of them hence both are cited here.

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