Article: "Sharīʿah Debates": Shaping the Discourse on Islamic Law in Canada

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Abstract

This article critically examines the 2006 Ontario "Sharīʿah debates" to argue that the positions of Islamic courts and Islam in Canadian consciousness were intentionally misrepresented to prevent Islamic tribunals from serving Muslims in Ontario. Consequently, the outcomes of the so-called Sharīʿah debates also undermined the ability of Jewish and Christian courts to operate within their communities. The public discourse surrounding the debates favours secular provincial arbitrations, based on the misguided belief that secular courts are safer for individuals seeking mediation; although anti-Islam lobbyists provide no empirical evidence to support their claims, such narratives become widely accepted. This article highlights how the Sharīʿah debates have influenced how Canadians perceive Islamic law by reinforcing the Islamophobic notion that Sharīʿah is inherently harmful to vulnerable community members, incorrectly suggesting that the use of Islamic law arbitration in Canada would both promote and conceal instances of abuse against Muslim women in particular. This article employs primary source material from the CBC News archives, Ontario Legislature archives, and secondary sources by scholars of Islam who comment on the differences between the perceived and actual status of Muslim women in the West. The findings of this critical analysis reveal a systemic and deliberate misrepresentation of Islamic law to uphold a Western secular ethic. The findings of this article remain relevant as Islamophobic rhetoric continues to be weaponized in the Canadian public political sphere against Muslim individuals and communities.

Keywords: Islam, Canada, Islamophobia, Sharīʿah debates, Ontario, Muslims

On January 25th, 2025, an outgoing member of Ontario's provincial parliament apologized for using the threat of "Sharīʿah law" to defame and delegitimize her replacement, a Muslim Member of Parliament (MPP) (White-Crumney 2025). It is a long-standing, and Islamophobic trend in Canadian politics to use "Sharīʿah law" as a derogatory moral representation of Muslims in the public sphere (See: Government of Canada Anti-Racism Strategy). These utterances are usually coupled with racist comments about the status of women in Islam, the value of secularization, and the fear that so-called "Sharīʿah law" has the potential to replace the *Canadian Charter of Rights and Freedoms* or Canadian common law. The use of the phrase "Sharīʿah law" by anti-Islam actors[1] represents a purposeful lack of understanding of what Sharīʿah is and how it functions in Muslim communities (historically and in the contemporary moment). This article uses the public discourses around the 2006 "Sharīʿah Debates" in Ontario to highlight how the lack of critical understanding of Sharīʿah, including its use as a system of relational moral accountability and *maqasid* to prevent interpersonal harm, negatively impacts the public perception of Muslims and Islam in Canada.

In 2006, the *Ontario Arbitration and Family Law Acts* were amended to exclude religious arbitration from Ontario's judicial landscape. The decision to amend the acts came as a response to protests against the *Islamic Institute of Civil Justice's* 2003 proposal to establish family arbitration for the Muslim community in Ontario. Since the passing of the *Arbitration Act* in 1991, other religious tribunals, like Jewish rabbinical councils, have been operating within their communities without criticism from the public (CBC 2005; Ali and Whitehouse 1992). Through reductive misinterpretations of Sharīʿah and how it serves Muslims, anti-Sharīʿah actors cited two main reasons for condemning the use of Sharīʿah in Canada which kicked off a nearly two-year-long public debate about the place of Islamic law in Ontario. First, it was argued that Sharīʿah law was incapable of upholding Canada's *Charter of Rights and Freedoms* because Sharīʿah is not a definitive set of rules that could be universally applied, as explicated in Shirish Chotalia's assessment of the debates (Chotalia 63, 2006). This argument was made by erroneously comparing the function of Islamic law to Canadian common law rather than assessing how other religious tribunals worked and applying the same logic to Islamic jurisprudence as one might to Mosaic or Canon law, for example. Secondly, so-called feminist protesters sounded calls to protect Muslim women from spousal abuse. They claimed that family law operating in the private sphere would allow violence against women to be perpetuated unchecked (Chotalia 64). Actors argued that if Muslim women were only accessing judicial processes within faith-based tribunals, they would lose their agency, and that Canadian common law was assuredly safer for Muslim women by all rights due to the myth of secular neutrality (For more on the myth, see: Gow and Valerio 2019; Asad, Brown, Butler, & Mahmood 2013).

Amid the "Sharīʿah debates" in Ontario public discourse, anti-Sharīʿah actors staged campaigns promoting the passing of Islamophobic public policy. The campaigns used the Sharīʿah debates to amplify the narrative that Islam is inherently oppressive to women, and dangerous for children and vulnerable populations, broadly (For more on that narrative, see: Abu Lughod 2002 for example). This article argues that the notion of Sharīʿah tribunals equating the oppression of women and the loss of secular law was spread purposely by anti-Sharīʿah actors to de-platform diverse voices and to effect secular public policy in Canada, resulting in policy changes like

[1] With the term "actors," I am referring to Canadian politicians, pundits, and government lobbyists, for the duration of this article.

amendments to the Arbitration and Family Law Acts in 2006. I argue that the use of these narratives in tandem work to consolidate an overarching secular power that (as part of its functioning) legitimizes the myth that Islam is inherently oppressive to women. To demonstrate this, I will provide a critical analysis of Marion Boyd's executive summary on the matter (Boyd 2004). In addition, I will provide comparisons, where appropriate, to similar and ongoing discourses at the nexus of the secular myth of neutrality, white feminist virtue signalling, and Islam in the Canadian zeitgeist. The amendments that came out of the Sharīʿah debates have had lasting repercussions not only for the continuation of all autonomous religious tribunals, but for the Canadian public's misunderstanding of Islam and Islamic family law. Ultimately, this dynamic has allowed Islamophobic ideas to be perpetuated without repercussion in Canada. This exploration offers a case study on systems of power and secularity within the Canadian context (Gow and Valerio 2019; Asad, Brown, Butler, & Mahmood 2013).

Background and the Boyd Report

In 2003, Syed Mumtaz Ali announced to media sources that the Islamic Institute of Civil Justice (IICJ) would offer family and business arbitration in accordance with the Ontario Arbitration and Family Law Acts (1991) and Islamic legal principles (Chotalia 2006). Ali was a retired lawyer and scholar of Islamic law. The proposal of the IICJ came in response to a growing backlog of cases in Ontario provincial courts and was meant to ease the burden on the province and provide the Muslim community in Ontario with expedited legal counsel. The 1991 Ontario Arbitration Act allowed voluntary mediation outside of the Ontario provincial court system and was used by religious and non-religious communities to settle small claims within their communities, at their will. The results of these tribunals were considered legally binding as long as they did not violate any pre-existing Canadian laws (Korteweg 2008). This means that the tribunals could be used to settle separations, inheritance conflicts, custody agreements, and issues pertaining to small businesses so long as they complied with the law of the land. This standard would have been applied to any potential Islamic tribunals in the same way it had been applied to Jewish and Christian arbitration since the early 1990s.

Following Ali's announcement, a series of voices in opposition to establishing Islamic arbitration came to the forefront and ignited a public debate over the place of Sharīʿah within Canadian law. The arguments obscured some key features of Islamic law in favour of reductive assumptions about Sharīʿah and the Muslim community in Ontario more broadly, which I break down in the following pages. The discourse within the public debate also failed to compare possible Islamic tribunals to the already established tribunals of other faith-based arbitration in Ontario. Instead, debaters positioned Islamic law in opposition to Ontario law and Canadian constitutional law, as if Sharīʿah was proposed to replace Canadian law systems entirely, rather than to provide an additional option for the Muslim community. The comparison is inequitable because it places Islam outside of the realm of acceptability of Canadian religions and trivializes the Muslim community's ability to be self-determinate. This exploration has found the criticism brought to the forefront of the debates have not been a point of contention for any other faith-based tribunals thus far.

As a result of the "Sharīʿah debates" taking place in the public sphere, including outside of the province, Ontario Premier Dalton McGuinty asked for a formal inquiry into the implications of

allowing the IICJ to move forward with Islamic arbitration committees. Marion Boyd, former Attorney General and Minister Responsible for Women's Issues, presented her executive summary in December of 2005. Boyd addressed several critical issues to the public, considering the introduction of Sharīʿah tribunals. In what is called the "Boyd Report," two main issues are addressed and are meant to represent the opinion of the Ontario public surveyed. Ontarians' two main concerns were whether Islamic law goes against Canadian constitutional rights and whether or not Islamic law has the ability to protect Muslim women from perceived increased domestic violence within Muslim communities. Boyd notes the particular importance of the Canadian Charter of Rights and Freedoms in the discussion is rendered as follows:

> Ontarians believe deeply in the Canadian Charter of Rights and Freedoms' aims of justice, fairness and equality. They do not see multiculturalism to be an unlimited concept but rather one that must be balanced against individual freedoms. All participants in the Review articulated a desire to protect and enhance access to justice but took very different perspectives on what this would look like. All participants in the Review had a high level of interest in the Charter, but the application of many of the provisions of the Charter in the context of arbitration is not clear. Nonetheless, the Review did not conclude that the Charter prohibits the use of arbitration for resolving disputes about family law and inheritance (Boyd 2004).

In the statement, Boyd relays that multiculturalism and individual freedoms are to be balanced against each other to ensure equal rights. This sentiment is something that comes up in the "Sharīʿah debates" as a strike against Islamic law tribunals. The understanding is that individual rights should be valued over the rights of a collective. However, secular collective rights in Canada do function in a way that maintains and aids in individuals having equal access to Charter rights, while using multiculturalism as a hegemonizing force, as in the case of settler colonial Quebec nationalism and laïcité (See also: Ghaffar-Siddiqui, Saleh & Valerio 2022). An example that could be made in favour of collective organization are labour unions, which hold provincial and federal legislative bodies accountable to the diverse groups of people they serve. Unions help educate workers about their rights and how best to access those rights. The value of unions is that they aim to help individuals navigate governmental systems. Arguably, religious counsels could do the same. Individual and collective identities are not separate, and often intersect with other social and demographic issues.

Of Boyd's forty-six recommendations on how to move forward with addressing religious tribunals, many emphasize training and education for religious communities and government agents to better work together. The recommendations also reiterate that non-governmental mediation is voluntary, and her report suggests formalizing processes of witnessing written agreements and documentation of arbitrations that occur outside of the Ontario court system (Boyd 8). Relying primarily on the results of public surveys, and without providing concrete domestic violence data, Boyd's findings concerning violence against women include the following:

> Exposing and ending violence against women is a pressing public policy concern in most parts of the world. This concern is expressed and supported by the United Nations Declaration on the Elimination of Violence Against Women. Addressing

> domestic violence is impossible when attitudes and beliefs that condone violence persist. Alternative dispute resolution may provide a venue for continued abuse after the breakdown of a relationship, and therefore, safeguards must be in place. Many respondents to the Review recognized the need for the Muslim community to counter *traditional* attitudes that may condone violence against women (Boyd 6, emphasis added).

Without offering an analysis of which so-called "traditional attitudes" condone violence against women in Islam in particular, this statement is reductive and rooted in Western perceptions of women's agency in Islam. Further, it is important to note that the executive report does not offer specific demographic information on how many individuals were surveyed or who participated in the survey. The report only notes that all participants had an interest in the Charter. A case could be made against other faiths for their limited views of women, but other religious tribunals were not contested on the same grounds as Sharīʿah tribunals. This implies that secular governance must be the safeguard for Muslim women rather than allowing the Muslim community to formally establish their systems of mediation and accountability, similar to other faiths. This criticism is nicely summarized by Anna Korteweg, who criticized perceptions of Muslim women's agency within the context of the Boyd report. Korteweg said, "The interest groups construed Muslim women's capacities as severely limited by Islam, and Islamic legal rules regarding family matters as inherently gender unequal" (Korteweg 436, 2008). Muslim women were not allowed the right to faith-based arbitration based on Western perceptions of what gender equality should look like and without the understanding that Muslim women are diverse and have diverse needs. The argument that Islam is gender unequal renders a monolithic view of both Islam and Muslim women in the West that aids the spread of anti-Sharīʿah and Islamophobic propaganda. In reality, Muslim women have religious and social needs that intersect, among other factors, race, age, ability, sexuality, and religious practice – Islam itself is a multi-faceted, discourse-based tradition rooted in an ethic of incommensurability making a diversity of approaches and opinions a definitive practical outcome.

The notion that the secularization of Muslim women is a restoration of their modernity, thus the fulfilment of their rights as women, is explored as a marker of colonial violence in the West by Fatima Chakroun in her publication on gendered Islamophobia and veil pulling. Chakroun explicates that assimilationist ideals about how Muslims are to look, act, and practice their faith forwards a colonial ethic that views women as subjugated by Muslim men through elements of religious practice like the hijab (Chakroun 2025, 5-7). Chakroun contextualizes her ideas within French occupied Algeria, but Canada likewise applies colonial, secular legal systems to "unveil" Muslim women. By this, I mean that the same colonial undercurrent from French Algeria is present in Canada and produces such laws as the banning of the hijab, bans on public prayer, and prohibitions on Islamic arbitration. The concerns raised by secular, Western so-called "feminists" are not misplaced, but rather, they are purposely hidden behind ever present, colonial and Orientalist assumptions about Islam and Muslim women (See also: Said 1978).

With her findings in mind, Boyd recommended that religious tribunals continue operating under the Arbitration Act if the Ontario government implements forty-six safeguards and changes to the existing Act to ensure the accountability of non-governmental arbitration committees with Ontario and Canada law. These safeguards include visibility and accountability to Ontario's

governing bodies and parallel programming to what is offered by common law courts in Ontario (Boyd 8).

Without consideration or acknowledgement of Boyd's December 2004 proposals for the future of religious law tribunals in Ontario, on Sunday, September 11, 2005, Ontario Premier McGuinty announced that he would ban all religious arbitration, including ending already long-standing Jewish and Christian family law tribunals in the province. McGuinty introduced amendments to the Arbitration and Family Law Acts (1991) to ensure "one law for all Ontarians." The haste of his decision amid public pressure implies that his changes to the Arbitration Act came in accordance with “public outcry to safeguard the agency of Muslim women” (Korteweg 437). In a statement made by the Ministry of the Attorney General, the Ontario government affirmed "that there will be no binding family arbitration in Ontario that uses a set of rules or laws that discriminate against women" (Chotalia 63).

The newly amended section of the bill reads, "Family arbitration means an arbitration that deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under Part IV of the Family Law Act, and is conducted exclusively in accordance with the law of Ontario or of another Canadian Jurisdiction." Although it does not explicitly mention banning religious arbitration, the amendment places strict parameters regarding where legally binding arbitration can occur. The amended bill notes that nothing in the amended section "restricts a person's right to obtain advice from another person." Presumably, the addition of iterating the right to seek a second opinion comes as a compromise to the Jewish and Christian communities for the cessation of their established arbitration tribunals.

Responses of Ontario’s religious leaders to McGuinty's decision were documented by the CBC. Members of a Jewish rabbinical council expressed disappointment. They reiterated that outlawing all religious arbitration because of "internal differences of opinion" was not fair to the religious community as a whole (CBC News 2005). By not engaging critically in the discourse surrounding Islamic legal tribunals, or with Muslim leaders in Ontario, Premier McGuinty shut the door on collaboration between religious bodies and the Ontario government. Collaborations could have been meaningful for inspiring inter-faith support and serving inter-faith families.

Equating Secularism and Human Rights

In Shirish Chotalia's assessment of the Ontario Sharīʿah debates, she raises some questions about how Islamic family arbitration would fit into the makeup of Canadian constitutional rights. She poses her argument against Islamic law as rooted in a "human rights perspective," concluding her assessment by saying that "The integrity of Canada's justice system rests upon rule of law and secularism." Chotalia notes that the *Charter of Rights and Freedoms* maintains the power to override laws that are inconsistent with the Charter's provisions. She says that while Canadian laws are open to Charter scrutiny, Muslim law is not (Chotalia 67). Her analysis raises the question of, at what point Islamic law was proposed as being codified into Canadian law? The standard that Islamic law is being held to within the discourse of the Sharīʿah debates is, according to the sources I have consulted, disproportionate to how Jewish rabbinical tribunals or Christian mosaic law have been assessed and understood by both law makers and commentators.

What is forgotten in this argument is that Islamic legal tribunals were never proposed as a new form of governance to which all Muslims were expected to adhere. Chotalia's use of language in her analysis suggests that Islamic family arbitration would have been used to circumvent Charter rights. The reality of religious arbitration in Canada, though, is that it must adhere to pre-existing Canadian laws. As well, secular law systems are not inherently more protective on the basis that they are secular, especially for minority groups in Canada. Generalizing secular law as inherently good and religious law as inherently bad is a dangerous assumption in its own right. For example, secularizing laws such as Bill 21 in Quebec sacrifice individuals' Charter rights to religious freedom by forcing those in the public sector to choose between outward expressions of faith (such as hijab or kirpan) and their careers (see: CCLA). On top of the secular versus religious debate, Islam tends to be on the receiving end of a particularly unnuanced and uncritical dispute in Canadian political discourse, discourse that does not often incorporate or centre diverse Muslim voices and experiences, particularly those of Muslim women.

Gendering the Discourse: Muslim Women's Agency

To address the argument that Islamic law is inherently oppressive to women, Anna Korteweg argues that within a Western, secularist framework, women's agency in Islam has been constructed in a particular way in public discourse and by media coverage of the debates, that disregards intersectional rights to gender and religious expression. Korteweg is a sociologist at the University of Toronto, where her work focuses on gender, social policy, and contemporary Muslim life in Canada, the USA, and the UK (See: UTM). She argues that diverse opinions on Islamic family arbitration have been obscured by the public in order to place emphasis on Muslim women's perceived inability to safeguard their interests within Islamic jurisprudence. She aims to bring forward intersecting approaches to the Sharīʿah debates by the Muslim women who were the most heavily quoted in news coverage at the time of developing discourse on Islamic family law arbitration. She pays special attention to how their voices were applied and by which news sources. In order to engage with media coverage on the Ontario "Sharīʿah debates," Korteweg identifies the idea of agency that has most often been presented by media coverage in Canada. Korteweg proposes two definitions of agency. The first, which is most often used in the context of the debates, is the ability to react against forces of domination. The second is an understanding of agency that reflects active engagement in shaping one's life. The latter is embedded in social, cultural, and linguistic contexts that reflect diversity within groups of women (Korteweg 437). Korteweg notes that in her findings, a small, select group of voices was treated as an authority on Islamic law tribunals. Although there were diverse and intersecting, often contradicting, opinions for and against Sharīʿah tribunals within the "secular and religious Muslim community," Korteweg found that the most often quoted voices in media were of secular opponents of Islam, Muslim men, and Muslim women with adverse experiences with community mediation (Ibid 442). By heavily featuring secular voices in the debate, rather than having a range of religious and secular opinions to consider, approaches to women's rights that are inclusive of intersecting lived experiences with race, religion, class, and sexual orientation have been lost in translation.

Anti-Sharīʿah Lobbies

To illustrate the nexus of the "Sharīʿah debates" in Ontario, anti-Muslim legislation and other prohibitive and far-right policies in Canada and the USA, the Southern Poverty Law Centre (SPLC) created an active and ongoing project. "Tracking Anti-Muslim Legislation Across the US" is a website that offers information on two-hundred and twenty-seven bill proposals claiming to "prevent Sharīʿah law" that have been used to pass other restrictive legislations in state senates. The intersectional hate-based legislation lobbied by anti-Muslim groups disproportionately targets Muslim women and girls, the LGBTQ community, and access to sex-based medical care such as abortion or gender-affirming care (Shanmugasundaram 2023). In severe cases where bills have been passed, anti-Sharīʿah proposals are used to criminalize abortion access and their providers. This was the case with North Carolina's House Bill 695, or the "Family, Faith and Freedom Protection Act," a prohibitive act regulating so-called "foreign law" in North Carolina's family law arbitrations. The Bill affirms Christian family arbitration in the state of North Carolina but deems "foreign" family arbitration, namely Jewish and Islamic law tribunals, as threatening to the United States Constitution. When this Bill made its way through the Senate, the senator's review committee attached several abortion restrictions to it that aimed to shut down abortion facilities, prevent doctors from providing abortion care, and exclude abortion from medical insurance coverage (Zakaria 2013). In this case, we can see how the use of Islamophobic values in public policy has adversely affected intersecting issues pertaining to women's health more broadly. The same argument could be made for the above mentioned Bill 21 with regards to job and income loss for religiously marginalized individuals in Quebec, with Muslim women, especially veiled Muslim women, being disproportionately impacted by the bill (Shanmugasundaram 2023).

The groups involved in promoting anti-Muslim laws are active in the USA and Canada and have been successful in influencing public perception and public policy decisions by launching funded ad campaigns against Islam. Groups like the American Public Policy Alliance and Centre for Security Policy push for anti-Muslim policy in Canada and the USA by weaponizing their biased, Christian-centric construct of the status of women and girls in Islam. They aim to coerce the public into believing that if Muslim communities in North America are allowed access to faith-based community initiatives like Islamic legal tribunals, eventually, "Sharīʿah law" will "take hold" of federal governments (Shanmugasundaram 2023).

To provide an example of how anti-Muslim hate groups in Canada have perpetuated the rhetoric from the Sharīʿah debates, I point to the 2013 anti-Sharīʿah bus ads in Edmonton, Alberta. Bus ads reading "Muslim Girls Honor Killed by Their Families: Is Your Family Threatening You? Is There a Fatwa on Your Head?" were sponsored by the American Freedom Defence Initiative or the "Stop Islamification of America" (Stevenson 2016). The founder of this group, Pamela Geller, is a self-proclaimed anti-Muslim activist in the USA. She promotes intersectional, white supremacist hate in the public sphere to garner support from white nationalist groups in service of pushing anti-Muslim policies (See: SPLC Geller Profile). The removal of the ads from Edmonton public transit buses was contested as a violation of the *Charter of Rights and Freedoms* (Stevenson 2016).

Conclusion

While it has been argued in Canada that Islamic law does not uphold the *Canadian Charter of Rights and Freedoms* or that Islam is inherently anti-feminist, we have clear examples of how far-right, white supremacist lobby groups have constructed a version of Islam that is rooted in Orientalism and Islamophobia. Additionally, Canadian secularist ideologies, through discourses on Islam, purport to be "religiously neutral" while rendering the actual practice of religious traditions increasingly difficult or illegal (Gow and Valerio 2019). Similarly, anti-Islamic rhetoric and the vilification of the veil has subjected Muslim women and families to ever increasing colonial violence in Canada. A prime example of this is the attack and murder of three generations of the Afzal family in London, Ontario in 2021. In an article published by Al-Jazeera stating that the family was targeted for being Muslim, the journalist references the 2017 mass shooting in a mosque in Quebec City relating it to the attack in London (Al-Jazeera 2021). This relation should serve as a means to illustrate a thread of anti-Muslim hatred and violence in Canada. The cessation of religious law tribunals on the basis that Islamic council would inevitably result in domestic violence against Muslim women has been brought forward not out of genuine concern for the women in question, but as a means of maintaining a racist, colonial, and secular status quo that results in discrimination. The use of anti-Sharīʿah bills to restrict access to medical care, restrict access to freedom of religion, and promote hatred toward the Muslim community has resulted in an increased rate of hate crimes in Canada since 2001 (increasing about 5% per year since 2017) and a 94% increase from the previous year in reported hate crimes against Muslims in 2025 (Chakroun 6; Canadian Heritage Combatting Islamophobia Report 2024-2025). As this article made clear, the perpetuation of anti-Islam and anti-feminist rhetoric has intersected to restrict Muslim women's rights and women's rights more broadly. Reductive assumptions about the status of Muslim women in Islamic jurisprudence aim to quash public critical analysis of how the intersectional needs of Muslim women could be met.

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