

NOT JUST ANY LAW WILL DO

Questions for Alia Hogben

BY PATRICIA W. ELLIOTT, ASSISTANT PROFESSOR, UNIVERSITY OF REGINA SCHOOL OF JOURNALISM

When the Ontario government decided to accept religious law in family arbitrations, a “little bunch of immigrant women” stood up and said no. In April, after nearly three years of debate, the government backed down. Alia Hogben is executive director of the Canadian Council of Muslim Women.

Canada’s legal system already allows for private arbitrations to be settled in a variety of ways. Why the alarm? Yes, but with Canadian law. That was the crux.

How did the debate begin?

There was a specific case between Ontario and a US state that led to a clause stating any law could be applied under the *Ontario Arbitration Act*. Some Muslims started to say we could bring in what they called Sharia—our Council stayed away from that word—to settle family arbitrations.

How was this opening created?

Although the *Arbitration Act* was designed primarily for commercial disputes, lawyers use it all the time to settle family issues. But they use it with Canadian law. The new clause said it could be the laws of Timbuktu, it could be Hindu laws, laws from anywhere, even made up laws—any law that the two parties agree to.

How would this affect family arbitrations?

For example, in most Muslim laws, maintenance after marriage only exists for a few months after marriage breakdown. Also, there’s no such thing as a matrimonial home that belongs to both parties. Generally speaking, children are seen as belonging to the father’s family. But it was nothing to do with Muslims. It was about protecting equality rights for all religious women.

Wouldn’t there be safeguards?

You would just register the arbitral award in the court. Nobody oversees it, nobody checks it, unless somebody challenges it. And although both parties must agree to the law used, we know Muslim women have a tendency to put their own rights last.

What was your main concern specific to Muslim law?

Muslim law is extremely complex. It is applied in dozens of countries. There is no one common law, and there are variations and schools. Even two countries using the same school of law may have completely different understandings of it. Which law was going to be applied, and how? And where would be the oversight?

Wouldn’t the judiciary provide oversight?

The whole point of private, legally-binding arbitration is that the courts don’t get involved. In any case, judges wouldn’t want to touch it with a ten-foot pole. How would they make an assessment of it? Judges are reluctant to go where they don’t have the expertise.

How did you start getting the *Act* changed?

A lot of Muslim scholars helped us when we started to look into it. Also there was an international network, Women Living Under Muslim Laws, that had recently completed a ten-year research [project] on Muslim majority countries where Muslim laws were being applied.

QUESTION PERIOD

What did they find?

They found that some countries' laws were better than others, but none of them had women's equality rights embedded in them—not one.

Was there a Canadian research base?

There was none. One or two mosques said they were using Muslim laws, but when we checked into it, we couldn't find any details about how. Now there's a professor at the University of Windsor looking into informal agreements taking place in mosques and Islamic centres, but at the time there was nothing.

Did you see a parallel to First Nations justice?

We didn't go there. We deliberately never compared ourselves with the aboriginal system. They have a special relationship with the federal and provincial governments, and they are not minorities, they are the First Nations.

How did the debate broaden?

The whole thing got terribly muddled by people saying this is multiculturalism, this is religious freedom. We kept saying we don't think it is any of those things—it is simply a fact that religious women's equality rights were being threatened.

Were you worried about playing into intolerance?

Yes. Reporters were always on about it being a Muslim issue. And it wasn't. It could be a Mennonite, or an Amish woman or a Hassidic woman.

How did people react?

There were people saying, what are you doing, washing the dirty linen of Muslims in public? Muslims felt all this argument opened up only because it was Muslims applying to use their laws, and we agreed. There was Islamophobia—people saying women's hands would be chopped off in downtown Toronto, and that wasn't true.

But you saw it as a broad issue in Canadian law?

We did. Why should a religious woman be treated differently from one who isn't?

Was it difficult to be heard?

Initially it was very bad. We were treated disrespectfully by the government and their staff, sloughing us off as a little bunch of immigrant women. We also got negative feedback from academics who said we were interfering with religious rights and women's choices.

What was your argument on that?

We said hang on, we don't agree. There have to be certain things that are good for everybody, and if a culture is treating a woman badly, we need to question it.

Did you have a schism with the academic community, then?

Not all of them. I think the academic community was torn. Some women law professors did wonderful work in support of us. And the majority of Muslim scholars were with us. But they worried about Islamophobia—everybody worried about that—and they said you have to be very careful, very delicate.



Ms. Alia Hogben, Executive Director, Canadian Council of Muslim Women

What was the outcome?

What we got was no religious law in family matters: no Jewish law, no Christian law, nothing outside the *Family Law Act*. We also got an agreement that arbitrators have to be trained. If a Muslim religious leader or a Rabbi wants to become an arbitrator, fine—but he must use Canadian law.

Were you satisfied?

We ended up with a huge coalition. Some feminist organizations in the coalition had for years been fighting against all private arbitration, because they felt women were in vulnerable positions and they didn't come out well from it. But they decided they weren't going to get 'no arbitration,' so they went along with us.

So was it a victory?

There will be legal training of arbitrators, all awards have to be registered with the Attorney General's office, the woman has to have independent legal advice, and the arbitrators have to do some kind of testing to see if there's family violence. Also there was an agreement to review the *Family Law Act* in two or three years' time. All those protections are very good. We fought for them and we got them.

Is there a good working model for balancing gender and religious rights?

Not that I know of. A lot of lawyers felt the *Charter* would not apply because it was set up for the individual against the state, not another individual. But with the *Charter* itself, a few law professors told us the gender equality section should override everything else.

Accommodation of diversity has become a hot policy topic on many fronts, and now the debate in Ontario is turning to faith-based schools. What are your thoughts?

If we're going to have a vast influx of new Canadians coming in, where will they learn about what it is to be Canadian? For me, one of the fundamental things is education. I don't want to make any assumptions about religious schools, but there is a potent argument for why all our children should be educated together.

Then there's the debate about women voters wearing the niqab. How did this become an issue?

From what I gather, Elections Canada, probably with the best intentions, thought this may be a problem, we'd better have some kind of ruling. But Muslim women I don't think are going to object to showing their faces. So I think it's been made into a Muslim issue, which is always our worry because immediately it gives rise to anti-Muslim hysteria. And supposedly the women in Quebec are now saying they will all put on these long black gowns and will go in and not show their faces and see how they're treated.

Do you think Muslim women can be confident about their future in Canadian policy?

I don't think so. While there is still stereotyping, hostility and constant jumping onto anything that smacks of Muslims and Islam, how can we be confident?

What's next?

We've started some research policy papers. One is on informed consent and choice, one is on cultural relativity and women, and the third one is a pilot project in the schools to address our deep concern about Muslims turning inward and self-segregating.

So you're concentrating on building a research base.

But it's really practical. Like with the pilot project, we are making a template that can be used in other parts of the country. So it's activism, not policy for the sake of policy.

Have you experienced any backlash?

No. I think it's because as an organization we keep saying we're believing women, we are proud to be Muslim, and we want to remain Muslim and find solutions within Islam. But we also feel Muslims need to be more thoughtful and self-critical. We realize it's extremely difficult, though, to be self-critical when you feel you're under siege. When you're constantly battering down the hatches, it's hard to think of anything else—but still we should try. In Canada it's possible, you see. ∞