

1-1-2006

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Recommended Citation

Khan, Almas (2006) "The Interaction between Shariah and International Law in Arbitration," *Chicago Journal of International Law*. Vol. 6: No. 2, Article 16.

Available at: <https://chicagounbound.uchicago.edu/cjil/vol6/iss2/16>

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The Interaction between Shariah and International Law in Arbitration

Almas Khan*

I. INTRODUCTION

“Canadian judges soon will be enforcing Islamic law . . . such as stoning women caught in adultery” began a recent WorldNetDaily article.¹ A prominent British newspaper headline also direly predicted *Soon We'll All Be in a Burqa*.² Journalists penning these attention-getters were not referring to the upshot of a territorial invasion by “fundamentalist” Muslims, but to the possibility that religious tribunals applying shariah, or Islamic law, could soon be adjudicating certain classes of personal civil disputes in the Canadian province of Ontario. These journalists’ visions appeared to materialize into reality in December 2004, when Ontario’s Attorney General endorsed the establishment of Islamic arbitration boards with the ability to utilize religious principles that comply with provincial and national laws.³ Ontario thus seemed poised to become the first Western jurisdiction to sanction the use of shariah within a secular legal system. Western nations with burgeoning Muslim populations have accordingly been tracking this novel legal situation,⁴ which recently culminated in the Ontario government’s surprising effort to ban the use of all religious law in arbitration.⁵

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1 *Canada Prepares to Enforce Islamic Law: Judges Will Give Legal Sanction to Disputes between Muslims*, WorldNetDaily (Nov 28, 2003), available online at <http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=35850> (visited Oct 24, 2005).

2 Barbara Amiel, *Soon We'll All Be in a Burqa*, Sunday Times (London) 8 (Aug 22, 2004).

3 Caroline Mallan, *Sharia Report Called 'Betrayal' of Women*, Toronto Star A1 (Dec 21, 2004).

4 Carmela Fragomeni, *Courting Debate: Ontario's Islamic Tribunal Would Either Be a Boon for Faith, or a Tool of Male Hegemony*, Hamilton Spectator G16 (Aug 24, 2004).

5 Beth Duff-Brown, *Jews, Muslims Vow Fight for Tribunals in Ontario*, Press Atlantic City A2 (Sept 15, 2005).

Supporters of the shariah proposal premise their arguments on the Ontario Arbitration Act (“OAA”), under which individuals can agree to vest dispute resolution authority in religious arbitrators, whose decisions are summarily enforced by Ontario courts. However, Ontario Premier Dalton McGuinty is currently seeking to pass legislation prohibiting religious law from being employed in arbitrations.⁶

This Development analyzes the extent to which the freedom to arbitrate using shariah is sustainable in light of international law. Part II provides background information about the OAA and shariah while Part III analyzes shariah within the context of international law, focusing on its conformance or lack thereof with relevant United Nations (“UN”) promulgations. Part IV evaluates possible problems arising from the use of shariah and considers measures that may rectify these while benefiting Muslims and the broader community. The Development concludes that Islamic laws governing business dealings comply substantially with international law and are conducive to being utilized in arbitration agreements, regardless of the secular character of state laws. Thus, Muslims seeking to implement a comprehensive shariah-based arbitration scheme in a predominantly non-Muslim jurisdiction should first pursue the modest objective of achieving governmental acceptance of Islamic commercial law before lobbying for official recognition of controversial Islamic family law principles.

II. THE ONTARIO ARBITRATION ACT AND SHARIAH

The OAA was originally enacted to alleviate the burden of backlogged Ontario courts by allowing parties, particularly sophisticated ones involved in business dealings, to appoint a third party to adjudicate disputes between them.⁷ However, religious groups lobbying for state recognition of their informal arbitration tribunals began invoking the OAA, along with the principles of equality and multiculturalism embraced by international bodies like the United Nations, to support their position.⁸ The OAA notably conditions a provincial court’s enforcement of an arbitration decision upon a showing that the

⁶ Id.

⁷ See Ontario Arbitration Act, § 1, SO 1991, ch 17 (1991) (defining “arbitration agreement” as “an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them”) (hereinafter OAA).

⁸ See Paul Weinberg, *Rights: Proposed Sharia Court in Canada Raises Women’s Fears*, Inter Press Service (Sept 13, 2004); *UN-HABITAT Report Celebrates Multicultural Cities* (Sept 14, 2004), available online at <http://www.unhabitat.org/report_celebrates.asp> (visited Oct 24, 2005); Universal Declaration of Human Rights, preamble, General Assembly Res No 217A (III), UN Doc A/810 (1948) (discussing equal rights for men and women) (hereinafter UDHR).

standards of “equity and fairness” have been satisfied.⁹ The statute operated with minimal controversy for a decade, but as Ontario’s Muslim population nearly doubled from 1991 to 2003, Muslims increasingly began resolving disputes through informal religious tribunals employing Islamic law.¹⁰ Then, after discovering that the OAA could confer state legitimacy on religious arbitration decisions, a group of Muslims established the Islamic Institute for Civil Justice (“IICJ”) to empanel officially-recognized religious arbitrators who would apply shariah at the request of disputing parties in certain civil cases. But in late 2003, several Muslim and human rights groups urged the Ontario government to forestall the IICJ’s operation, alleging that the IICJ–selected panelists would reach decisions by using rules that violated international law.¹¹ Such organizations continued to campaign even more vigorously after the provincial government’s cautious approval of the IICJ in December 2004.¹² Today, they celebrate Premier McGuinty’s proclamation that “[t]here will be one law for all Ontarians.”¹³

What constitutes pure Islamic law, or “shariah,” is distinguishable from the scope of “shariah” for the purposes of measures like the OAA. The term is broadly translated as “the path leading to water,” or the source of life, and it thus guides all aspects of a devout Muslim’s existence from birth until death.¹⁴ True shariah encompasses the full 1,400 years of Islamic law dating from the era of Islam’s founder, the Prophet Muhammad, through modern times. It is comprised of rules set forth in four sources: the Qur’an, the penultimate, unchanging source of law in Islam; the Hadith, or sayings of the Prophet Muhammad; the Sunnah, or practices of the Prophet Muhammad; and fatwas, or the rulings of Islamic scholars,¹⁵ which can be adapted to suit changing

⁹ OAA, §§ 3, 19(1).

¹⁰ Rita Trichur, *Muslim Community at Odds over Shariah: Should Faith-Based Tenets Be Part of Ontario’s Arbitration Act?*, Hamilton Spectator A11 (Aug 23, 2004).

¹¹ See, for example, *Canada: Shariah Based Arbitration Racist and Unconstitutional*, Intl Humanist and Ethical Union (Aug 26, 2004), available online at <<http://www.iheu.org/node/134>> (visited Sept 14, 2005). See also Alia Hogben, *Should Ontario Allow Shariah Law?*, Toronto Star A19 (June 1, 2004) (suggesting that the procedural protections available in arbitration are inadequate to protect rights accorded women by the Universal Declaration of Human Rights and the Canadian Charter of Rights).

¹² Mallan, *Sharia Report Called ‘Betrayal’ of Women*, Toronto Star at A1 (cited in note 3).

¹³ Duff-Brown, *Tribunals in Ontario*, Press Atlantic City at A2 (cited in note 5).

¹⁴ Salim Mansur, *Shariah for Ontario Muslims?*, London Free Press F7 (Oct 9, 2004).

¹⁵ Trichur, *Muslim Community at Odds over Shariah*, Hamilton Spectator at A11 (cited in note 10); Sharon Boase, *Islamic Law in Ontario*, Hamilton Spectator G14 (Dec 29, 2003).

circumstances.¹⁶ The word shariah is thus a misnomer when used to characterize proposals like the one Ontario was considering, which would have allowed religious arbitrators to apply shariah only in particular classes of civil disputes—those involving marriage, divorce, inheritance, and business transactions.¹⁷ The “patron-in-chief” of the IICJ has adopted the more apt term “Muslim personal/family law” (“Muslim PFL”) to describe the limited body of legal principles that religious arbitrators could have permissibly relied upon in accordance with the OAA.¹⁸ The provincial government’s detailed inquiry into—and ultimate rejection of—Muslim PFL was likely informed by how private shariah has been interpreted and used in foreign jurisdictions subscribing to United Nations human rights treaties.

III. SHARIAH’S RELATIONSHIP TO INTERNATIONAL LAW

This part will examine shariah’s international legal implications by first generally considering how international law views the use of religious law in resolving civil disputes. The subsequent discussion will focus on private shariah, particularly its current use and its possible incompatibility with universal human rights standards.

International covenants establish a core set of principles for all nations to abide by, but these promulgations also endeavor to accord individuals the maximum amount of autonomy to practice their faith. For example, the International Covenant on Civil and Political Rights (“ICCPR”) declares that:

[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁹

It also recognizes that “[f]reedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”²⁰

¹⁶ Faisal Kutty and Ahmad Kutty, *Shariah Courts in Canada, Myth and Reality*, available online at <<http://www.iviews.com/articles/Articles.asp?ref=IV0403-2242>> (visited Oct 24, 2005).

¹⁷ Amran Abocar, *Muslim Law to Be Used in Some Disputes in Canada*, Wash Post B7 (Jan 3, 2004).

¹⁸ Interview by Rabia Mills with Syed Mumtaz Ali (first published Aug 1995), transcript available in *Interview: A Review of the Muslim Personal/Family Law Campaign*, available online at <<http://muslim-canada.org/pfl.pdf>> (visited Oct 24, 2005).

¹⁹ International Covenant on Civil and Political Rights (1966), art 2, 999 UN Treaty Ser 171, 173 (1976) (hereinafter ICCPR).

²⁰ Id at art 18(3).

Achieving the ICCPR's optimal balance between the individual's freedom to exercise his or her faith and the international community's interest in upholding human rights has proved challenging in Muslim countries, notably those that have adopted literalist interpretations of Islam's holy book. The Qur'an classifies all people as believers or unbelievers, the latter of whom are either *dhimmis* ("protected persons"—namely Christians and Jews) or "unprotected persons" under an Islamic government. While *dhimmis* have traditionally been granted many privileges that their Muslim countrymen receive, they may also be discriminated against in a manner potentially contravening international law. For example, *dhimmis* are often compelled to subsidize the state-run system of religious institutions, including mosques and schools, and are ineligible for top executive positions in the government. "Unprotected persons" are, by definition, accorded fewer rights than both Muslims and *dhimmis*, leaving them particularly vulnerable to coercive conversion and other forms of oppression. Furthermore, legal principles that affect only the Muslim community can also be in tension with international law. While some Islamic governments have responded to this dilemma by mandating that secular law wholly govern the state, others have adopted a purely religious or pluralist legal model.²¹ In any case, determining what "shariah" definitively is remains a virtual impossibility since no authoritative version of it applies uniformly across all jurisdictions; there exist seven principal schools of interpretation, each of which is in turn shaped by cultural norms.²²

Nations with Muslim PFL thus have a diverse array of approaches to issues like divorce, child custody, spousal assistance, and inheritance. For example, depending upon the country, a divorce may be obtained unilaterally, through mutual consent, or via a ruling pursuant to a petition from the husband or wife.²³ With regard to alimony, divorced wives who initiate divorce proceedings in certain regions with more "fundamentalist" interpretations of shariah may only

²¹ Ann Laquer Estin, *Embracing Tradition: Pluralism in American Family Law*, 63 Md L Rev 540, 549–50 (2004). Muslim nations with full-fledged shariah are the exception; many countries in the Middle East and North Africa maintain a dual system of secular and religious courts, with the latter regulating family affairs. Additionally, some non-Muslim nations with prominent Muslim populations have administered Muslim PFL. *Sharia*, Fact Index, available online at <<http://www.fact-index.com/s/sh/sharia.html>> (visited Oct 24, 2005).

²² Sunnis, the majority of Muslims, follow one of four legal schools, while members of the minority Shi'a sect abide by the precepts of one of their three legal schools. Kristine Uhlman, *Overview of Shari'a and Prevalent Customs in Islamic Societies—Divorce and Child Custody*, § 2.0 (Jan 2004), available online at <http://www.expertlaw.com/library/family_law/islamic_custody.html> (visited Oct 24, 2005) (discussing which Islamic countries follow each legal school).

²³ Id at § 6.0.

receive three months of monetary assistance.²⁴ However, divorcées in other areas are often entitled to reasonable support, particularly if they keep physical custody of their young children, as distinguished from legal custody, which the husband ordinarily retains. Some legal schools allow mature children to choose which parent they desire to live with, but others mandate that physical custody automatically be transferred to the father when the child reaches some age between seven and young adulthood.²⁵ Finally, in inheritance matters, men typically receive twice the bequest of women, but must use their portion to provide familial support.²⁶

Forms of private shariah prescribed by some nations thus possibly conflict with the “International Bill of Human Rights,”²⁷ which consists of the Universal Declaration of Human Rights (“UDHR”),²⁸ the International Covenant on Civil and Political Rights (“ICCPR”),²⁹ and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).³⁰ The UDHR’s preamble proclaims that “the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women”³¹ Furthermore, article 16 states that “[m]en and women of full age . . . are entitled to equal rights as to marriage, during marriage and at its dissolution,”³² and the ICCPR adds that “[i]n the case of dissolution, provision shall be made for the necessary protection of any children.”³³ The ICESCR asserts that “[t]he widest possible protection and assistance should be accorded to the family . . . while it is responsible for the care and education of dependent children.”³⁴ Recent international conventions, notably the Convention on the Elimination of all Forms of Discrimination

²⁴ This law applies in certain predominantly Muslim nations, like Pakistan, and some non-Muslim countries, such as India, which has by statute exempted Muslim women from long-term alimony. Lisa Beyer, *The Women of Islam*, Time Online Edition (Nov 25, 2001), available online at <<http://www.time.com/time/world/article/0,8599,185647,00.html>> (visited Oct 24, 2005).

²⁵ Uhlman, *Overview of Shari'a*, § 8.0 (cited in note 22).

²⁶ Beyer, *The Women of Islam* (cited in note 24).

²⁷ David G. Littman, *Human Rights and Human Wrongs: Sharia Can't Be an Exception to International Human-Rights Norms*, Natl Rev Online (Jan 19, 2003), available online at <<http://www.nationalreview.com/comment/comment-littman011903.asp>> (visited Sept 15, 2005).

²⁸ UDHR (cited in note 8).

²⁹ ICCPR (cited in note 19).

³⁰ International Covenant on Economic, Social and Cultural Rights (1966), art 10, 993 UN Treaty Ser 3, 7 (1976) (hereinafter ICESCR).

³¹ UDHR, preamble (cited in note 8).

³² Id at art 16.

³³ ICCPR, art 23(4) (cited in note 19).

³⁴ ICESCR, art 10 (cited in note 30).

against Women (“CEDAW”)³⁵ and the Convention on the Rights of the Child (“CRC”),³⁶ address the potential problems that religious traditions present to international law with more specificity than the International Bill of Human Rights. Official bodies within the United Nations have, on an ad hoc basis, identified certain religious-based family laws that contravene the principle of gender equality,³⁷ but their conclusions have not been adopted or enforced by the international community. One major reason for this tepid response may be the backlash many diplomats would face at home if they were to agree with the United Nations’s findings.

Furthermore, the United Nations’s position on gender equality presupposes the existence of government-mandated religious courts, as opposed to a system of voluntary arbitration, and the UN’s position may be less readily justifiable in the latter context. This conclusion follows from two assumptions: that both parties to the arbitration were relatively well-informed and that they consensually entered into a compact considered just according to the tenets of their religion, although facially in contravention of international law. In reality, of course, parties rarely possess comparable knowledge, and even when they do, international law may seek to compensate for purported imbalances in bargaining power that may lead a party to act adversely to its material interest. But international law neglects to account for the fact that individuals may use ostensibly inequitable agreements to commit themselves to acting against their temporal self-interest and in service of their spiritual self-interest. This global consensus appears sensible at one level, given the preliminary difficulty of determining the legitimacy of particular religious exceptions and the secondary concern that a host of such exemptions could undermine the universal nature of international law. However, if the aforementioned procedural safeguards are intact, international law should not forestall parties from contracting out of the default legal regime, especially when resolving commercial disputes not involving international human rights laws.

IV. POTENTIAL CONCERNS ABOUT STATE RECOGNIZANCE OF PRIVATE SHARIAH AND A PROMISING SOLUTION

Secular countries that contemplate allowing Muslims to employ religious arbitrators are confronted with many legal and practical difficulties. First, they

³⁵ Convention on the Elimination of All Forms of Discrimination against Women (1979), 1249 UN Treaty Ser 13 (1981).

³⁶ Convention on the Rights of the Child (1989), 1577 UN Treaty Ser 3 (1990).

³⁷ See, for example, a United Nations Economic and Social Council resolution recommending that men and women with an equivalent relationship to the decedent receive equal shares of the bequest. UN ESCOR, 34th Sess, Supp No 1 at 19, UN Doc E/3671 (1962).

must evaluate whether shariah-based arbitration creates constitutional and statutory dilemmas with respect to national law, as well as whether shariah conflicts with international law, as discussed above. Such individuated analysis of Islamic laws requires a significant expenditure of governmental time and resources. In addition, although arbitration has the benefits of speed, affordability, and privacy, it lacks the robust procedural safeguards characterizing adjudication.³⁸ For example, unlicensed arbitrators often preside over proceedings, deliberations usually remain confidential, and abbreviated records may hamper judicial review. Parties displeased with an arbitrator's decision can bring a litany of claims when appealing to a court, and since arbitration is partially intended to relieve congested courts, it would be inefficient in this context. More disturbingly, inviting state intervention in religious matters would erode the wall partitioning church and state.³⁹

Many secular states, especially in the West, have thus far presumed that the costs of even authorizing "shariah light" would outweigh any resultant benefits. The movement toward legal pluralism in family law, of which Ontario was, until recently, the most striking example, suggests that the potency of this assumption may be waning. But the incendiary reaction of many nations to the Ontario shariah proposal, and Premier McGuinty's belated but bold response to these criticisms, indicate that family law remains a controversial topic.⁴⁰ Muslims interested in introducing shariah-based arbitration to secular nations may accordingly garner stronger support for their objective by concentrating on a modest goal: state legitimization of religious arbitrators with jurisdiction over business disputes.

Because salient differences exist between Western and Islamic principles of commercial law, international arbitration provisions in business contracts with at least one Muslim party have often stipulated that Islamic law governs all disputes arising from the contract. As international trade has flourished, and as Islamic banks have grown at an annual rate of 5 to 15 percent per year (with a total of \$200 billion invested in shariah-compliant financial institutions as of 2002), the number of international arbitrations involving Islamic law has burgeoned

³⁸ Amiel, *Soon We'll All Be in a Burqa*, Sunday Times (London) at 8 (cited in note 2).

³⁹ See Interview by Seamus O'Regan with Dr. Mohamed Elmasry and Alia Hogben, *Sharia Law Tribunals Divide Muslim Canadians*, CTV Television (Sept 9, 2004), available online at <http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1094680399477_11> (visited Oct 24, 2005).

⁴⁰ Lynda Hurst, *Protest Rises over Islamic Law in Ontario*, Toronto Star A4 (June 8, 2004) (discussing the British government's unequivocal refusal to authorize the use of shariah to settle Muslim family disputes); Mallan, *Sharia Report Called 'Betrayal' of Women*, Toronto Star at A1 (cited in note 3) (describing the outrage of women's and civil rights organizations after learning about the Ontario Attorney General's tentative approval of Islamic arbitration boards).

dramatically.⁴¹ By applying shariah in a variety of commercial contexts over an extended period of time, international arbitrators have promulgated precedents that prove shariah can be resourcefully employed to resolve contemporary disputes. International Islamic arbitration centers have fostered this progression by certifying arbitrators, encouraging parties to use arbitration, providing information about the process, and helping to formulate uniform laws.⁴²

Commercial shariah diverges from Western business law in several notable respects, particularly with regard to how it treats interest, profits, risk, and remedies. Interest is generally prohibited in Islam, and excessive profits are strictly condemned. In addition, any contract based upon speculation or containing a provision that is activated on the basis of a specific, but uncertain event is void, meaning that an Islamic arbitrator would not award anticipated profits in an action for breach of contract.⁴³ Finally, Islamic law is considerably more receptive to equitable remedies than its secular counterpart.⁴⁴ Muslims endeavoring to establish religious arbitration boards in their nations would be more likely to succeed by pressing for these relatively benign innovations, which would be unlikely to engender an intense negative media blitz.

Muslims and non-Muslims residing in secular countries would both reap benefits from such officially-recognized shariah tribunals. First, recent Muslim immigrants not acclimated to the secular court system, and thus wary of using it, may currently have their rights undercut without recourse, while formalized shariah tribunals would offer the “best of both worlds”—Islamic law with limited state monitoring.⁴⁵ Muslim newcomers would also be more readily integrated into mainstream society if they believed that their voice was represented in the formulation of laws.⁴⁶ In addition, parties may prefer resolving disputes in a non-adversarial setting that allows them to retain their privacy while conserving time and money. And since arbitrators are paid by the parties, residents of the nation at-large may profit from a formal system of shariah tribunals, if one assumes low state oversight costs. Surplus tax revenues

⁴¹ Nudrat Majeed, *Investor-State Disputes and International Law: From the Far Side*, 98 Am Socy Intl L Proceedings 30, 31 (2004).

⁴² Charles N. Brower and Jeremy K. Sharpe, *International Arbitration and the Islamic World: The Third Phase*, 97 Am J Intl L 643, 653–55 (2003).

⁴³ Kristin T. Roy, *The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?*, 18 Fordham Intl L J 920, 946–69 (1995).

⁴⁴ Fatima Akaddaf, *Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?*, 13 Pace Intl L Rev 1, 35–36 (2001).

⁴⁵ Weinberg, *Rights* (cited in note 8).

⁴⁶ DeNeen L. Brown, *Canadians Allow Islamic Courts to Decide Disputes*, Wash Post A14 (Apr 28, 2004).

could then be utilized to expedite the resolution of cases before courts.⁴⁷ On a more expansive level, the successful implementation of shariah in a secular nation could help invigorate legal reform efforts in Islamic countries with doctrinaire interpretations of religious laws.⁴⁸

The modern rise of limited state-sanctioned religious arbitration in secular states suggests that the virtues of this adjunct legal system may exceed its vices. This conclusion especially holds with regard to Islamic business law, but also extends to the field of Islamic family law from a practical (if not normative) perspective. Shariah-based arbitration is most often used to settle family disputes, and if it remains “underground,” there may be no possibility for the state to review whether a particular decision complies with applicable national and international laws or whether it deprives a party of fundamental rights.⁴⁹ However, under schemes like the one Ontario was on the cusp of implementing, the government can police the manner in which shariah is applied in order to contain abuses, thereby protecting the rights of all concerned parties.

V. CONCLUSION

In recent times, Muslims from countries with sizable Muslim populations have increasingly settled in secular nations. However, instead of following their progenitors in assimilating into the dominant culture and dispensing with religious heritage, many of these Muslims have imported their faith, subject to the legal constraints of their new homeland. By campaigning for measures to accommodate their beliefs, they have sought to live as better Muslims within a modified version of the legal framework existing in their country of residence.⁵⁰ This abiding commitment to self-determination has impelled the movement to attain official recognition of religious tribunals applying shariah. For a number of decades, non-Western secular nations have, in certain contexts, placed the state’s imprimatur on Islamic law, and, until September 2005, Ontario was at the vanguard of Western jurisdictions considering state authorization of Islamic law-based arbitrators—notably with the power to render binding decisions in the divisive area of family disputes, where the compatibility of traditional shariah

⁴⁷ Kutty and Kutty, *Shariah Courts in Canada, Myth and Reality* (cited in note 16).

⁴⁸ See Dahlia Lithwick, *How Do You Solve the Problem of Sharia?*, *Slate Magazine* (Sept 10, 2004) (discussing the possibility of creating a more equitable interpretation of shariah).

⁴⁹ Social pressures may deter an aggrieved party from pursuing judicial review, even if he or she illegally entered into an informal agreement to utilize shariah in case of a dispute. This problem would be alleviated, although not wholly eliminated, under a state-approved shariah scheme that clearly acknowledged a legally enforceable right to Islamic law-based arbitration, subject only to conformity with national and international legal standards.

⁵⁰ See, for example, Kathleen M. Moore, *Al-Mughtaribun: American Law and the Transformation of Muslim Life in the United States* 138 (SUNY 1995).

with international legal principles is most suspect. Thus, Premier McGuinty's recent decision to proscribe the use of state-sanctioned religious arbitrators is not entirely unexpected. The prospects for Muslims to achieve state recognizance of Islamic law in Western countries would be bolstered if they focused on establishing religious arbitration boards to hear commercial disputes before seeking to expand such tribunals' jurisdiction into more sensitive fields. Policymakers could better gauge the successes and shortcomings of a major legal experiment without the overhanging cloud of potential international human rights law violations, thereby increasing the shariah tribunals' chances for resilience.

But even if commercial Islamic law is technically compatible with international law, the negative connotations associated with the word "shariah" (which, in most Western countries, conjures up images of women being stoned to death for purported adultery) may prevent any form of Islamic law from achieving fruition. Furthermore, nations more open-minded about private shariah will still spurn interpretations that contradict express provisions in the International Bill of Human Rights, as well as constructions that are inconsistent with more recent international treaties specifically acknowledging the importance of rights for women and children. Thus, much of shariah as applied today in family matters will not be granted legitimacy in Western nations with secular democratic systems. In reaction to the Islamic arbitration board proposal in Ontario, the governments of Britain and the Canadian province of British Columbia emphatically declared that shariah would not be applied within their boundaries.⁵¹ Germany and France have also refused to acknowledge the legitimacy of Islamic marriages. More generalized interpretations of shariah underscoring equality and justice may gain traction in Western democracies, but these principles are likely already incorporated into such political systems; labeling Western laws "shariah compliant" would merely be a symbolic exercise. Thus, in the near future, it appears unlikely that secular democracies, at least in the West, will embrace an alternative dispute resolution mechanism based on shariah in any meaningful sense. The analysis in this Development suggests that this would be an unfortunate consequence of the media's focus on shariah's shortcomings. Muslims who reside in nations where the press and broadcasting stations promote hostile views of shariah will have to campaign vigorously for a prolonged period to achieve official recognition of Islamic law-based arbitration,

⁵¹ See Hurst, *Protest Rises over Islamic Law in Ontario*, Toronto Star at A4 (cited in note 40); *No Religious-Based Law for B.C., Says AG*, Canadian Broadcasting Corporation (Sept 8, 2004), available online at <http://vancouver.cbc.ca/regional/servlet/View?filename=bc_shariah20040908> (visited Sept 15, 2005).

and the current political climate likely assures that governmental approval will not be forthcoming.